



FREQUENTLY ASKED QUESTIONS:

The NWT Employment Standards Act

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What are the maximum hours an employer can request of an employee?

The maximum hours of work for employees are 10 hours per day and 60 hours per week with at least one day off per week. Overtime is still payable after the standard hours of 8 hours per day and 40 hours per week. An employer may not direct or authorize an employee to work in excess of the maximum hours unless the employer has an Extended Hours or Overtime Averaging Order. The only exception to this would be if there is an emergency situation. Orders are obtained upon application to and approval from the Employment Standards Officer.

Reference: Sections 7-10 of the *Employment Standards Act*

When should overtime be paid?

A day equals 24 hours; a week is seven consecutive days. Overtime is payable after the standard hours of work, which are 8 hours per day and 40 hours per week. Overtime pay is calculated on a daily and weekly basis. Overtime is at least 1.5 times the employees' regular hourly rate. For example, if an employee worked 9 hours per day, he or she would earn 8 hours at the regular rate of pay and 1 hour each day at a rate of 1.5 times the regular rate for the first five days. On the sixth day, all the hours worked would be calculated at the overtime rate because the employee has already worked forty regular hours within the week.

An employer may apply for an Overtime Averaging Order which could vary the payment of overtime. If the Employment Standards Officer has granted an Order to an employer, the Order is to be posted where employees affected by the Order may have access to it to familiarize themselves with the terms set out in the Order.

If an employee is employed primarily in a management capacity, the overtime rules may not apply. Managers are exempt from the payment of overtime with the exception of statutory holidays.

Different rules apply to overtime if an employee is being paid on a basis other than time. For example, if an employee is being paid by commission, per trip, per kilometer or salary. Please contact the Employment Standards Office directly at 1-888-700-5707 for more info.

Reference: Sections 7, 9-11 of the *Employment Standards Act*.

Can overtime be “banked”?

Yes. An employer and employee may enter into a written agreement where an employee agrees to take time off with pay instead of overtime pay, as long as both parties agree. The time off with pay should be taken at a rate equal to 1.5 times for every overtime hour worked. If an employee requests payment for the overtime worked, the employer must comply and pay it out. When an employee has overtime banked and the employment ends, the overtime is payable on the final pay.

Reference: Section 12 of the *Employment Standards Act*

How long does the employer have to pay once the employment has ended?

The employer has 10 calendar days following the employee’s final day of work to pay the employee all wages earned and any accrued wages owing, including outstanding vacation pay and lieu time.

Reference: Section 13 of the *Employment Standards Act*

If an employee damages the employer’s property, can the employer deduct the cost from the employee’s pay cheque? Can an employer and a third party negotiate payment of an employee’s outstanding debt by deducting the payment from his or her pay cheque?

No. An employer may not make deductions from an employee’s pay cheque for damages, breakages, shortages or outstanding debts. An employer must have a written authorization signed by the employee agreeing to any deductions with the exception of taxes government authorized payments, like employment insurance, and court ordered payments, like maintenance. Any other deductions without signed authorization are considered unlawful. The employee must receive a direct benefit from the deduction; for example, rent or payment of the balance on a charge account.

Reference: Section 14 of the *Employment Standards Act*

What types of things cannot be deducted from employees' wages?

Employers cannot deduct the costs of:

- vehicle, equipment and tool repair or loss;
- breakage or other damages;
- faulty work or poor quality work;
- theft, including dine-and-dash incidents;
- cash shortages;
- inventory shortages;
- uniforms and special clothing required by employers if the employee must return;
- business supplies;
- interest charges or other fees for cash advances or cashing cheques;
- education expenses that only benefit the employer unless it is a condition of employment on hiring;
- any other deductions that are of no direct benefit to the employees'.

Reference: Section 14(2) of the *Employment Standards Act*

Does the employer have to provide a pay statement with my cheque?

Yes. An employer must provide a pay statement to an employee at the time that the payment of wages is being made to the employee. That statement must include the period for which the payment is being made, the number of hours being paid for, the rate of pay, a list of deductions and the actual sum being received by the employee.

Reference: Section 19 of the *Employment Standards Act*

What are the statutory holidays in the Northwest Territories?

There are 11 statutory holidays in the *Employment Standards Act*. They are:

New Year's Day
Good Friday
Victoria Day
National Aboriginal Day
Canada Day
First Monday in August
Labour Day
National Day for Truth and Reconciliation
Thanksgiving Day
Remembrance Day
Christmas Day

Reference: Section 22 *Employment Standards Act*

Are Easter Monday and Boxing Day statutory holidays?

No. They are not addressed as statutory holidays in the *Employment Standards Act*. An employer may choose to recognize them but is not obligated to under the Act.

Who gets paid for a statutory holiday?

There are several conditions employees are required to meet to qualify for statutory holiday pay. They are:

- An employee must have worked for the employer for 30 days within the 12 months prior to the holiday.
- An employee must report to work on their last scheduled work day prior to the holiday and their next scheduled work day following the holiday.
- An employee must report to work on the holiday if they are scheduled, or called to work.
- An employee on pregnancy or parental leave is not entitled to statutory holiday pay while they are on leave.
- Part time employees are entitled to statutory holiday pay once they meet the conditions set out above.

Reference: Section 23 of the *Employment Standards Act*

What should employees be paid for a statutory holiday?

If an employee meets all the conditions for entitlement to statutory holiday pay and has the day off, he or she is entitled to receive an average day's pay for the holiday. If an employee meets all the conditions and works on a statutory holiday, he or she must receive payment for the hours that he or she worked at the rate of time and one half, **plus** an average days' pay. Alternatively, the employer may transfer the holiday to another day, giving the employee a day off with pay. Overtime is usually paid after 8 hours per day and 40 hours per week. During a week containing a statutory holiday, overtime is calculated after 8 hours per day and 32 regular hours in that week. The payment for the statutory holiday is calculated separately.

The method of payment for statutory holiday pay is different if the employee is being paid on a basis other than time. Contact Employment Standards for further information.

Reference: Section 23(1)(b) of the *Employment Standards Act*

When is an employee entitled to an annual vacation?

All employees are entitled to vacation pay on all wages earned. After the first year of employment, an employee is entitled to a minimum of 2 weeks off work for vacation. The employer must grant the employee's vacation within the next 6 month period following the completed year in which the vacation was earned. An employee earns a minimum of two weeks' vacation for each completed year of service and, after 5 completed years of employment, the entitlement increases to a minimum of 3 weeks of vacation each year.

Reference: Section 24 of the *Employment Standards Act*

What amount is an employee entitled to receive as vacation pay?

All employees are entitled to receive 4% of their total gross wages as vacation pay for the first five years of employment and 2 weeks off per year after each of the first 5 years. Upon completion of the 5th year, vacation pay is earned at the rate of 6% and the employee is entitled to 3 weeks off after the 6th and subsequent years. The employer must pay vacation pay at least 24 hours prior to the beginning of the employee's vacation.

Vacation pay is calculated on regular pay, overtime pay, commission, bonuses which form part of the employee's employment agreement, recall pay, termination pay, profit sharing, shift premiums and statutory holiday pay.

All employees are entitled to vacation pay. Vacation pay accumulates from the first hour worked.

Reference: Sections 24 and 25 of the *Employment Standards Act*

What if an employee quits or is terminated before having the opportunity to take vacation?

Any outstanding vacation pay earned must be included in the final pay cheque. The employer has 10 days from the employee's last day worked to pay any wages owing or accrued.

Reference: Section 25(3) of the *Employment Standards Act*

Do part time or casual employees get vacation and vacation pay?

Yes. All employees earn vacation pay on their gross earnings.

What conditions must an employee meet before she can take pregnancy leave?

An employee must have worked for an employer for 12 consecutive months before she is entitled to pregnancy leave. If the employer requests a medical certificate, she is obligated to provide it. The employee must give the employer at least 4 weeks' written notice prior to her leave. If an employee does not qualify for pregnancy leave, she is still entitled to sufficient time off work to meet her physical needs connected with the birth.

Reference: Section 26 of the *Employment Standards Act*

What conditions must an employee meet before they can take parental leave?

An employee must have worked for an employer for 12 consecutive months before he or she is entitled to parental leave. They must give the employer at least 4 weeks' written notice prior to the leave. Parental leave must be taken within the first year of the baby's life or within a year of the adopted child arriving at the employee's home.

Where an employee takes parental leave in addition to pregnancy leave, the employee must start their parental leave immediately following the pregnancy leave, unless the employer and employee agree otherwise.

Reference: Section 28 of the *Employment Standards Act*

How much time off is an employee entitled to receive when they have a baby?

If the employee meets all conditions, they would be entitled to unpaid pregnancy leave of 17 weeks and unpaid parental leave of up to 61 weeks for a maximum combined total not exceeding 78 weeks.

Two-parent families, including adoptive parents, are also able to access an additional 8 weeks of unpaid leave for the second parent.

Reference: Sections 26-28 & 34 of the *Employment Standards Act* and sections 11 & 12 of the Employment Standards Regulations.

Does an employee get paid while they are on pregnancy and/or parental

No.

leave?

Should an employee be able to return to the same job after pregnancy and/or parental leave?

Upon completion of the pregnancy and/or parental leave, the employer must reinstate the employee. The employee is entitled to receive the same position (or a comparable position at the same wage), benefits and seniority including any increases the employee would have received if the leave had not been taken.

Reference: Section 35 of the *Employment Standards Act*

Is an employee entitled to be paid for sick leave?

No. Sick leave is addressed in the *Employment Standards Act* as unpaid leave. The Act states that an employee is entitled to 5 days of sick leave, without pay, in a 12 month period. A doctor's note does not obligate the employer to grant an employee time off pursuant to the Act.

Reference: Section 29 of the *Employment Standards Act*

Does an employee get time off work when a family member dies?

Yes. If a member of the employee's family dies, the employee may take three to seven days off work to attend a family member's funeral or memorial. The length of time depends on where the service takes place. Employees do not have to be paid for the time they miss work.

Reference: Section 31 of the *Employment Standards Act*

Can an employer terminate an employee because the employee is pregnant, on pregnancy or parental leave, compassionate leave, bereavement leave, sick leave or court leave?

No. The employer must prove that any change in the conditions of employment is not due to the employee taking unpaid leave pursuant to the minimums set out in the *Employment Standards Act*.

Reference: Section 36 of the *Employment Standards Act*

What is the definition of family member?

The definition of family member matches the definition in the *Employment Insurance Act*, which includes:

- the spouse or common-law partner of the individual;
- a child of the individual or a child of the individual's spouse or common-law partner;
- a parent of the individual or a spouse or common-law partner of the parent;
- a child of the individual's parent or a child of the spouse or common-law partner of the individual's parent;
- a grandparent of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's grandparent;
- a grandchild of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's grandchild;
- the spouse or common-law partner of the individual's child or of the child of the individual's spouse or common-law partner;
- a parent, or the spouse or common-law partner of a parent, of the individual's spouse or common-law partner;
- the spouse or common-law partner of a child of the individual's parent or of a child of the spouse or common-law partner of the individual's parent;
- a child of a parent of the individual's spouse or common-law partner or a child of the spouse or common-law partner of the parent of the individual's spouse or common-law partner;
- an uncle or aunt of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's uncle or aunt;
- a nephew or niece of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's nephew or niece;
- a current or former foster parent of the individual or of the individual's spouse or common-law partner;
- a current or former foster child of the individual or the spouse or common-law partner of that child;
- a current or former ward of the individual or of the individual's spouse or common-law partner;
- a current or former guardian of the individual or the spouse or common-law partner of that guardian;
- a person, whether or not related to the individual by marriage, common-law partnership, or any legal parent-child relationship, whom the individual considers to be like a close relative or who considers the individual to be like a close relative.

Reference: Section 1 of the *Employment Standards Act*.

What is termination of employment?

This means your employment is ended. Common expressions for termination of employment include:

- fired
- quit
- let go
- discharged
- laid off (permanently)
- dismissed
- terminated

Who is entitled to receive notice of termination or termination pay?

If an employee has been employed for 90 days or more and works 25 hours per week or more, he or she would be entitled to receive either written notice of termination or termination pay in lieu of notice unless the employer had just cause to dismiss the employee. There are exceptions to this rule. If an employee is employed in the construction industry, he or she may be dismissed without notice or pay in lieu. If an employee is employed for a specific term or task and completes that term or task, he or she is not entitled to notice or pay in lieu. If an employee is employed seasonally, he or she is not entitled to termination pay.

An employer is not required to provide an employee with the reason he or she was terminated as long as the employer has met their obligations pursuant to Sections 37 of the *Employment Standards Act* and Section 4.1 of the Employment Standards Regulations.

Reference: Sections 37 of the *Employment Standards Act* and Section 4.1 of the Employment Standards Regulations.

Assuming I am entitled to receive notice of termination or termination pay, how much would I be entitled to receive?

An employee is entitled to written notice of termination or termination pay depending on their length of employment. The following chart specifies the periods of notice or pay required:

Length of Employment	Notice required
Less than 90 days	None
90 days but less than 3 years	2 weeks
3 years but less than 4 years	3 weeks
4 years but less than 5 years	4 weeks
5 years but less than 6 years	5 weeks
6 years but less than 7 years	6 weeks
7 years but less than 8 years	7 weeks
8 years or more	8 weeks

An employer may give a combination of notice and pay in order to discharge their obligation to the employee. For example, an employee who has been employed for 5 years could receive 3 weeks' notice and 2 weeks' termination pay, or any combination thereof, to equal 5 weeks' pay.

Reference: Section 37 of the *Employment Standards Act*

Does an employee have to give notice to his or her employer if they are quitting or resigning?

There is no obligation under the *NWT Employment Standards Act* for an employee to give notice to their employer that they are terminating their employment. If an employee gives notice, it would be considered a courtesy.

What is the progressive discipline, and does an employer have to use it before dismissing an employee?

Progressive discipline is a method employers are required to use to attempt to correct employee performance or behavioural issues by assisting the employee in understanding that his or her performance or behaviour is not meeting the expected standards and by offering the employee direction on how to correct any problems. Discipline should progress from less severe disciplinary steps, such as a verbal warning, to more serious steps, such as written warnings and/or suspensions, if the problem continues. At each step of progressive discipline, an employee must be advised:

- What they have done wrong;
- What is expected (i.e. what the employer's standards are);
- What will happen if the situation is not corrected; and
- If the problem is one which takes time to correct, the employee must be given a reasonable period within which to make the corrections or meet a reasonable standard.

When an employer follows progressive discipline and has all the steps documented, it shows that the employee was provided opportunities to correct the problem and was aware that his or her job was in jeopardy. If progressive discipline is followed properly and the undesirable behavior continues, the employer may have just cause to terminate the employee.

All offences cannot be given the same weight. Some problematic behaviour causes more inconvenience or financial loss to the employer than others. Some offences would be considered serious enough to warrant immediate dismissal, also known as just cause.

An employee whose employment is terminated for just cause is not entitled to notice of termination or pay in lieu under the Act.

An employer does not have to use progressive discipline before terminating an employee. An employer may choose to give written notice of termination or termination pay in lieu of notice to meet their obligation under the Act.

Can an employer cut hours or pay rates in the notice period for an employee who has been given termination notice?

No.

Reference: Section 37.(5) of the *Employment Standards Act*

What is group termination notice?

An employer is required to provide notice of termination to the Employment Standards Officer, and to any trade union of which the employees may be members, when an employer wishes to terminate 25 or more employees at one time. The period of notice required ranges from four to 16 weeks depending on the number of employees affected by the group termination.

Individual notice of termination may coincide with the notice of group termination to the Employment Standards Officer. For example, if an employer is required to provide an individual employee with two weeks' notice of termination and provide four weeks' notice of group termination to the Employment Standards Officer, the notices can be provided concurrently; the total period of notice would be four weeks.

An employer is prohibited from terminating the employment of any employee for which notice of group termination is required before the required period of notice has expired.

Reference: Section 41 of the *Employment Standards Act*.

Can an employer temporarily lay an employee off?

If an employer wishes to temporarily lay an employee off, they are required to provide the employee with written notice indicating their expected return to work date. Failure to provide this notice to an employee could result in the termination of their employment.

The temporary layoff period must not exceed 45 days during a period of 60 consecutive days. If an employer lays an employee off longer than this period, the employee would be deemed to have their employment terminated on the last day of the temporary layoff and the employer would be required to pay the employee termination pay, if applicable.

If an employer wishes to temporarily lay an employee(s) off for a period longer than 45 days, they require an extension from the Employment Standards Officer. To obtain an extension, an employer must submit a written request to the Employment Standards Officer indicating:

- The number of employees affected;
- The number of days they are seeking to extend the temporary layoff by; and
- The rationale for the extension.

In considering such a request, the Employment Standards Officer must be satisfied that special circumstances justify the extension and the employee(s) will be recalled.

A temporary layoff period does not interrupt the continuity of employment of an employee.

Reference: Sections 42 & 43 of the Employment Standards Act and Section 12.4. of the Employment Standards Regulations.

Is there any exception to the requirement to provide group termination notice?

If an unforeseeable event or circumstance that is beyond an employer's control prevents them from respecting the relevant group termination notice requirements in the Act, the Employment Standards Officer may waive, by order, the amount of notice of group termination required by the Act.

The exception would only apply to situations beyond an employer's control, such as the destruction or major breakdown of machinery or equipment, climatic or economic conditions, or emergencies. Employees would retain their entitlement to individual termination notice or pay in lieu of notice (termination pay).

An employer would still be required to provide notice of group termination to the Employment Standards Officer and any applicable trade union as soon as possible. The proposed exception would only affect the amount of notice required when an unforeseeable event prevented an employer from respecting the periods of notice set out in Act.

Upon receipt of insufficient amount of group termination notice from an employer, the Employment Standards Officer would make a determination whether the exception applied to the situation by verifying that:

- the circumstances that prevented the employer from providing notice were truly beyond the employer's control;
- the employer exercised due diligence to foresee and avoid the cause of termination; and
- the cause of termination prevented the employer from respecting the periods of notice set out in Act.

Any decision or order made by the Employment Standards Officer to waive the group termination notice periods in the Act will be served to the employer and any affected trade union. The Employment Standards Officer is also required to post a notice of their decision on the Employment Standards webpage and the employer is required to post a copy of the notice at the worksite, where possible, or provide copies of the notice to affected employees, if it is not possible to post a notice at the worksite.

Reference: Section 41 of the Employment Standards Act.

How old must a person be to work?

There is no minimum age requirement to work in the *Employment Standards Act*. Youth less than 17 years of age require authorization from the Employment Standards Officer to work between the hours of 11 pm and 6 am or when they are required to be at school. Anyone under the age of 16 is prohibited from working in certain industries, such as construction and forestry, among others.

Reference: Section 45 & 47 of the *Employment Standards Act*

What is the minimum wage in the Northwest Territories?

Effective September 1, 2021, the minimum wage in the NWT is \$15.20 per hour.

Reference: Section 5 of the Employment Standards Regulations

What is recall pay?

When an employee reports to work at the call of his or her employer, and was not scheduled in advance, the employer is required to pay the employee wages at the employee's regular rate of pay, for a minimum of 4 hours.

This applies whether the employee, after reporting to work, is called on to perform any work.

Whether an "on-call" employee is entitled to receive recall pay, depends on the employee's individual circumstances. If the employee, as part of his or her employment agreement, expects or routinely reports back to work, this time is not considered a recall.

Reference: Section 6 of the Employment Standards Regulations

Do employees get meal breaks?

Yes. After 5 continuous hours of work, an employee is entitled to an unpaid meal break of at least 30 minutes. The employer is not obligated to pay the employee for this time unless the employer manipulates that time by asking the employee to work or stay on the premises. It is not always possible to give meal breaks and, in those cases, the employer must apply to the Employment Standards Officer for a Meal Break Waiver.

Reference: Section 13 of the *Employment Standards Regulations*

Do employees get coffee breaks?

No. An employer is not obligated to provide coffee breaks. A coffee break would be considered a benefit over and above the minimum requirements identified in the Employment Standards Act.

FREQUENTLY ASKED QUESTIONS: *The NWT Employment Standards Act*

For more information please contact the Employment Standards Office:

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Toll Free: 1-888-700-5707

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Fax: 867-873-0483

Website: www.ece.gov.nt.ca

This information is not a legal document. It is intended to give a general overview and is subject to change. For detailed information refer to the current legislation of the Employment Standards Act and Regulations or contact the Employment Standards office.

