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## VACATION LAW

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### How much vacation are my employees entitled to?

Under the B.C. Employment Standards Act (the “ESA”) which applies to most (but not all) employees working in B.C., employees are entitled to:

- at least 2 weeks of vacation per year, after 12 consecutive months of employment; and
- at least 3 weeks of vacation per year, after 5 consecutive years of employment.

The above vacation entitlement does not include statutory holidays. Statutory holidays must be provided in addition to an employee’s annual vacation.

### Can I pay out untaken vacation or allow employees to carry vacation over into another year?

Under the ESA, employees must take their minimum annual vacation as time off from work. Employees are therefore not allowed to waive their entitlement to the ESA vacation or be paid out for untaken vacation. The objective of the ESA is to ensure that each employee receives, and takes at least a minimum of two or three weeks per year off from work. Therefore, an employer who fails to allow an employee to take the minimum vacation prescribed under the ESA is in breach of the ESA and may be penalized by the Director of Employment Standards vacation pay. Employers can, however impose a different policy to cover any vacation *over and above the ESA minimum*. For example, an employer can:

- institute a “use it or lose it” policy, which required that all vacation (in excess of the ESA minimums) be taken within 12 months of the year in which it was earned, and that any vacation which is not taken within that time will be lost or;
- allow employees to carry forward and bank vacation (in excess of the ESA minimum) up to some limit: e.g. carry forward up to a maximum of 6 weeks, for a period of no more than 6 years;
- agree that any vacation (in excess of the ESA minimum) which is not taken in any year will be paid out by the employer.



However, if one of the above policies is implemented the employer has to be very careful to ensure that the policy applies only to the vacation that is provided in excess of the ESA minimums. For example if an employer grants 5 weeks of vacation to an employee within 6 years of service, then this employer's "use it or lose it" policy can only apply to the 2 weeks of vacation granted in excess of the employee's 3 weeks of ESA minimum vacation. If this distinction is not clearly defined, then the Director of Employment Standards may determine that the employer's policy violates the ESA and enforce the ESA provisions as applicable to all of the vacation granted.

### **Can I determine when an employee will take their vacation?**

Under the ESA, employers have the right to determine when vacations will be taken, provided that an employer cannot require an employee to take their vacation in increments of less than a week. Therefore while most employers will give their employees considerable discretion in deciding when to schedule their vacation, it is helpful to keep in mind that employers are within their rights to deny a vacation request if it would conflict with the objectives of the employer.

### **How can I pay vacation pay?**

For employees with less than five years of consecutive employment, vacation pay under the ESA is calculated as 4% of the employee's total wages during the year of employment entitling the employee to the vacation, and increases to 6% after five consecutive years of employment. Vacation pay can be paid in three different ways:

- an employer can pay the vacation pay in a lump sum at least seven days before the employee starts their vacation;
- an employer can pay the employee's vacation pay in installments on the employee's scheduled paydays, provided that this has been agreed to in writing by both the employee and the employer. To avoid disputes about whether or not vacation pay has been included in an employee's periodic pay, the pay stubs delivered to the employee should calculate and clearly show the vacation pay included with each payment; or
- for employees receiving a salary, the employer can chose to just continue payment of the regular salary while the employee is on vacation.

It is important to keep in mind however that for employers who pay commissions, the employer cannot simply treat commissions received by an employee while on vacation as part of the employee's vacation pay.