

Vacations more than just giving time off

Employers are required to give employees vacation time and pay but entitlement standards are different

| BY BONNY MAK |

EMPLOYEE VACATIONS are a part of every workplace and this includes more than just time off. Payroll must ensure employees use their proper entitlement and get paid for it, too. An employee's entitlement to time off and vacation pay are different and separate legal rights and employers must ensure employees receive the right amount of both.

For example, an employee who began employment on April 1, 2008, and resigned on Oct. 31, 2008, would not be entitled to any vacation time under employment standards legislation because he was not employed for a full year. However, the employer must pay him vacation pay equivalent to four per cent of the wages he earned during his time with the company, even though he wasn't entitled to take time off.

The distinction between vacation time and vacation pay

Vacation time is a period of time off from work. Vacation pay is the wages that are payable to an employee during a vacation. Under the Ontario Employment Standards Act, 2000 (ESA), for example, an employee who has completed one vacation entitlement year is entitled to two weeks of vacation time and vacation pay equal to four per cent of the wages earned during the year, excluding vacation pay.

An employee is entitled to take vacation time only after he completes a vacation entitlement year. By contrast, vacation pay is earned right from his first day of employment. Other jurisdictions have similar vacation requirements, though each has its own variations.

Calculating vacation pay correctly

Because many employers think of vacation as "paid time off work," it is common for an employer to simply continue paying an employee's regular salary when he is on vacation. While in many cases such a practice would be in compliance with, or even exceed, the minimum entitlement under the ESA, under certain circumstances it could lead to an employer underpaying the employee's earned vacation pay (see example on page 8). Under the ESA, "wages" include not only regular salary but also other monies paid to an employee such as overtime pay, public holiday pay, allowances for room or board, non-discretionary bonuses related to an employee's hours of work, productivity or efficiency, profit-sharing bonuses and commissions.

All employees get vacation time

Regardless of whether an employee is employed on a full-time, part-time, casual, seasonal or fixed-term basis, an employer is required to give him two

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Bosses held hostage for severance

IN THESE tough economic times, workers in France will do whatever it takes to make management listen to their demands, even if it means holding them hostage.

Workers at a Caterpillar plant in the French Alps let four executives go after holding them for more than 24 hours in a dispute over employee severance packages.

The workers agreed to release the executives after French President Nicolas Sarkozy said he would meet with the union and save the site.

Earlier this year, the Peoria, Ill.-based manufacturer announced it would be cutting 22,000 jobs around the world. Combined with those already laid off, about 1,000 workers at the French factories in Grenoble and Echirolles are losing their jobs.

Workers at a Sony plant in Pontonx-sur-l'Adour, in southwest France, also held their boss overnight in an attempt to get better severance packages.

COVER

Vacation pay must always be paid

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weeks of vacation time if the employee completes a vacation entitlement year.

An exception in Ontario is where an employee belongs to a category of employees that is specifically exempted by employment standards legislation such as Crown employees, certain professionals and secondary school students performing work under a work experience program authorized by the school board.

Approvals required for agreement to forego vacation time

Under the ESA, an employee cannot simply agree to forego his vacation time. Such an agreement between an employer and an employee is valid only if it is approved by the Director of Employment Standards. With some variations, other jurisdictions have similar provisions.

An employer must pay an employee his vacation pay even if the employee has chosen to forego vacation time pursuant to a valid agreement.

Keeping accurate records of vacation time and vacation pay

Most employment standards legis-

lation requires an employer to keep the following records for each vacation entitlement year for at least three years:

- The amount of vacation time earned and taken.
- The balance of vacation time not taken.
- The amount of vacation pay paid.
- The wages on which vacation pay was calculated and the period of time to which the wages relate.

Furthermore, an employer should keep accurate records of vacation time and vacation pay for other practical reasons.

In the event of a complaint to the Ministry of Labour, if the employer is unable to produce records that satisfy the Ministry that vacation time and vacation pay were in fact given to the employee, the Ministry may choose to accept the employee's allegations and make an order against the employer. Therefore, keeping accurate records not only ensures statutory compliance but also protects the employer's interests if a dispute arises.

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Calculating vacation pay

AN EMPLOYEE hired Jan. 1, 2008, works a regular 44-hour week at \$15 per hour. During his first year of employment, the employee worked and was paid 100 hours in overtime and received a \$500 incentive bonus for meeting a production target. The employee did not take any time off during his first year of employment.

On Jan. 1, 2009, the employee is entitled to two weeks' vacation time. The amount of vacation pay, however, is not simply two weeks' salary:

Regular salary: \$15 x 44 hours per week x 52 weeks	\$34,320
Overtime pay: \$15 x 1.5 x 100 hours	\$2,250
Incentive bonus:	\$500
Wages (Jan. 1 to Dec. 31, 2008):	\$37,070
Vacation pay equivalent to four per cent of wages:	\$1,482.80

If the employer simply paid two weeks' regular salary (\$15 x 44 hours per week x two weeks = \$1,320) as vacation pay, it would be underpaying his vacation pay by \$162.80.

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