

# Hot topics from the recent amendments to the *Employment Standards Act, 2000*

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# Agenda

- Holiday pay calculation: the new (old) way
- The equal pay provision
- Personal emergency leave

# Holiday pay

# Holiday pay calculation – The Evolution

## **Old Employment Standards Act Formula**

The total amount of regular wages earned  
+  
The total amount of vacation pay payable to the employee

***In the 4 weeks before the work week in which the public holiday occurred***

÷ 20

## **Fair Workplaces Better Jobs Act – New formula**

The total amount of regular wages earned in the pay period immediately preceding the public holiday

÷

Number of days worked in that pay period

## **Ontario Regulation 375/18 – Reinstating the Old Formula**

The total amount of regular wages earned  
+  
The total amount of vacation pay payable to the employee

***In the 4 weeks before the work week in which the public holiday occurred***

÷ 20

Prior to the FWBJ Act

January 1<sup>st</sup> 2018

July 1<sup>st</sup> 2018

# Issues with the new holiday pay calculation

- Unrepresentative
  - The hours worked by part-time and casual workers were not being accurately represented by the new holiday pay calculation
  - Since part-time and casual workers have less consistent hours, reducing the dividing factor from 20 days to the number of days worked in the pay period resulted in a failure to represent the amount of time actually worked
- Inequitable
  - Because the new calculation used the number of days worked in the pay period as the dividing factor, it resulted in inequalities for part-time and casual workers
  - For example, if a part-time employee worked 6 hours over 1 day during the pay period, the employee would receive higher holiday compensation than a part-time employee who worked 6 hours over 2 days at the same wage rate during the same pay period

# Holiday pay calculation – Where are we now?

- As of July 1<sup>st</sup> 2018, the **old formula** for calculating Holiday Pay will be reinstated
- Ontario will be conducting a review of the public holiday system in 2018
- The reinstatement of the old Holiday Pay formula is an *interim* decision, so the formula is subject to change again in the future
- **Key Take-away:**
  - Employers should update their holiday pay policies, internal payroll processes, and employee handbook (where applicable), **by July 1<sup>st</sup>, 2018**

# Equal pay

*Image from the Recruiting Times*

# Equal pay provision – What changed?

- As of April 1<sup>st</sup>, 2018:
- Under the *Employment Standards Act* an employer cannot pay an employee at a rate of pay less than another employee on the basis of
  - Sex
  - **Employment Status**
- When they perform the same kind of work in the same establishment, the work requires the same skill, effort and responsibility and the work is performed under similar working conditions



# Equal pay provision – Decoded

- What is a difference in employment status?
  - A difference in the number of hours regularly worked (i.e. part-time versus full-time)
  - A difference in the term of employment (i.e. permanent, temporary, seasonal or casual)
- What is a difference in a rate of pay?
  - Hourly pay, salary, overtime pay rate, commission rate
  - Does not include a difference in benefit plans
- What does this mean for employers?
  - A part-time employee cannot be paid less than a full-time employee for equal work
  - A seasonal employee cannot be paid less than a permanent employee for equal work

# Equal pay provision - Exceptions

- Employers may pay employees who do equal work different rates if the difference can be attributed to:
  - A seniority system
    - A system where employees receive rights based on length of service
  - A merit system
    - A system where employees receive compensation based on the quality of their job performance
  - A system that measures earnings by production quantity or quality
    - A system where each employee is paid \$X for each widget produced
  - Any other factor other than sex or employment status

# Personal emergency leave

# Personal emergency Leave – What is it?

- An entitlement of 10 days of job-protected leave
- The *Employment Standards Act* defines Personal Emergency Leave as any leave of absence due to:
  - Illness, injury or a medical emergency relating to the employee
  - Illness, injury, medical emergency, death or urgent matter of particular family members
- Which family members are covered by the Act?
  - A spouse, parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee **or the employee's spouse**
  - The spouse of the employee's child
  - A brother or sister of the employee
  - A relative of the employee who is dependent on the employee for care or assistance

# Personal emergency leave – What's changed?

- All employers must now provide Personal Emergency Leave, regardless of how many people they employ in Ontario
- All employees are entitled to the full 10 days, regardless of whether they were hired part-way through the calendar year
- Employers must pay for the first two days of Personal Emergency Leave, if the employee has been employed for a minimum of one week. If the employee has been employed for less than one week, their first two days of leave will not be paid
- Employers can no longer require a Doctor's note to validate Personal Emergency Leave

# Personal emergency leave – Reconciling the changes with your current sick leave policy

- If your current sick leave policy provides a greater entitlement than the Personal Emergency Leave provisions in the *ESA*, then your current sick leave policy can still apply
- If your current sick leave policy does not provide a greater entitlement, then the standards in the *ESA* will apply
- Employers may count days taken under a private sick leave policy against the 10 days provided by the *ESA*
- Employers may ask for a medical note to validate leave when their sick leave policy provides a greater entitlement than the *ESA*
  - For example, if your sick leave policy provides 7 days of paid leave, you cannot ask for a medical note to validate the first two days. However, you can ask for a medical note to validate days 3,4,5,6 and 7. If a medical note is not submitted to validate these days, the employer must still grant personal emergency leave as per the *ESA*, however the employer is not obligated to pay the employee for these additional days.

# Personal emergency leave – What an employer can and can't ask for

- The changes to the *ESA* mean that employers cannot ask for a note from a “qualified health practitioner”, i.e. a doctor, nurse or psychologist
- An employer may still ask for evidence that is reasonable in the circumstances
  - This will vary from case to case, and will depend on factors such as the duration of leave, whether there is a history of absences, if evidence is available and the cost
  - Evidence can include parking receipts (at a doctor's office or hospital) or pharmacy receipts

# Personal emergency leave – Other important information

- Personal Emergency Days do not carry over into the next year
- Employees must let their employers know that they are taking Personal Emergency Leave – but if they don't they are still entitled to it
- If an employee only takes a few hours off from a work day, or only takes off half of a work day, an employer may count it as a full day when tracking Personal Emergency Leave
- Certain employees such as automobile manufacturing or construction employees are subject to different rules for PEL



# Questions?

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