

Frequently Asked Questions 1 – 99

What is "substantial control over hours of work?"

Most employees are told by their employer when they are required to work. What days they will work, the hours they will work on those days and when they will take their breaks. Although these employees can request changes to their schedule, they do not have substantial control over their hours of work.

Other employees have the ability to organize their work schedule to suit their needs and the needs of clients. They may need to check in with the employer once and a while, but the employer generally does not set the schedule or control their day-to-day activities. These employees may have "substantial control over their hours of work"

How do you determine if someone has "substantial control over their hours of work?"

In most situations, the employer controls the hours of work. In some situations, they allow an employee this control. If an employee can choose to work or not work at their discretion, they would likely have "substantial control of the hours of work"

Who determines if I have "substantial control of my hours of work"?

The onus is on the employer to prove that an employee has substantial control over the hours of work if they want to use this exemption.

I work when my clients work, not when the rest of the office works, do I have substantial control over my hours of work?

Many factors determine if an employee controls their hours of work. When an employee works is not as important as the flexibility to adjust a schedule without the need for approval from the employer.

What are the general holidays in Manitoba?

There are eight general holidays throughout the year:

- New Year's Day
- Louis Riel Day (3rd Monday in February)
- Good Friday

- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day

Most employees are paid general holiday pay for these days whether they work or not.

<i>General Holiday</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
New Year's Day	January 1	January 1	January 1
Louis Riel Day	February 15	February 20	February 19
Good Friday	March 25	April 14	March 30
Victoria Day	May 23	May 22	May 21
Canada Day	July 1	July 1	July 1
Labour Day	September 5	September 4	September 3
Thanksgiving Day	October 10	October 9	October 8
Christmas Day	December 25	December 25	December 25

Are Easter Sunday, Terry Fox Day, Remembrance Day and Boxing Day general holidays?

Employees who do not work on Easter Sunday, Terry Fox Day, and Boxing Day do not have to be paid because these are not general holidays.

Although Remembrance Day is not a general holiday, there are restrictions for operating businesses and special requirements for paying employees who work that day. See the [Remembrance Day](#) fact sheet for more details.

What if employees work on the general holiday?

Employees who are eligible are paid general holiday pay regardless of whether they work that day or not. An employee who works on a general holiday would normally be paid 1 ½ times the regular rate of pay for the hours worked on the general holiday.

What if the general holiday is on a weekend?

When a general holiday falls on a Saturday or Sunday that an employee does not normally work, the employee must get the next regular workday off with general holiday pay.

What if the general holiday is a day the employee does not normally work?

When a general holiday falls on a weekday that the employee does not normally work, the employer must give the employee a normal workday off with general holiday pay. This must be given before the employee's next vacation, or at another time agreed to by the employee.

Do all employers need to pay 1 ½ times the regular wage for work on a general holiday?

At most workplaces, employers must pay employees who work on a general holiday their general holiday pay, plus 1 ½ times their wage for the hours worked on that day.

The exception is for employers operating a gas station, hospital, hotel, restaurant, place of amusement, continuously operating business, climate-controlled agricultural business, or a seasonal industry (excluding construction), or those employing domestic workers. These employers can pay regular wages for work on the holiday if they provide another day off with general holiday pay within the next 30 days. If employers and employees agree, the day off may be taken sometime before the employees' next annual vacation.

What if the employment ends before the alternate day off for the general holiday is taken?

If the employment ends before the day off is taken, employers must pay the holiday pay within 10 days of the employment ending. This pay cannot be used as part of a notice period.

How does a general holiday affect an employee's rights to have a weekly day of rest or to get paid for overtime?

The wages paid for a general holiday are considered hours worked for the purposes of overtime and must be included when calculating employees hours of work. A general holiday does not substitute for a weekly day of rest.

How do general holidays affect vacations and vacation pay?

General holidays are not counted as a vacation day. If a general holiday falls during an employees vacation, the employee would receive another day off with pay and general holiday wages for the day of the general holiday.

General holiday pay is included when calculating vacation wages. For more information, see the [Vacations & Vacation Pay](#) fact sheet.

Where can I obtain further information?

Our office is here to help. If you have any questions on this issue, or any other Employment Standards concern, call our 24-hour Inquiry Line 1-800-821-4307 outside Winnipeg 945-3352 in Winnipeg. Or you can email us at: employmentstandards@manitoba.ca.

On the Internet, you can find us in both English and French at

<http://www.gov.mb.ca/labour/standards/>

where you can find general information regarding most Employment Standards issues.

This information sheet provides general information on specific provisions of Employment Standards legislation. It is intended as a guide only, and does not represent a legal opinion. For complete information, please refer directly to the Employment Standards Code.

How long can employees be off on bereavement leave?

Under *The Employment Standards Code*, employees are allowed to take up to three days as bereavement leave to deal with the death of a family member.

Who can take bereavement leave?

Anyone employed for at least 30 days with the same employer is entitled to bereavement leave.

Do employees need to be paid while on bereavement leave?

No. The legislation only requires an employer to provide time off and allow an employee to return to their job when the leave has ended. Employers are not required to pay wages during the leave. Employers can, and often do, give greater benefits than those provided for in the legislation.

Who are considered family members?

Family is defined very broadly for Employment Standards purposes. Children, stepchildren, parents, grandparents, spouses, common law spouses, brothers, sisters, step-brothers, step-sisters, aunts, uncles, nieces and nephews are all considered family members. The definition also includes those who are not related, but whom the employee considers to be like a close relative.

What must employees who take bereavement leave tell their employer?

Employees must tell their employer, as soon as possible, which days they will need off. Employers can request reasonable verification that the leave is needed.

What is reasonable verification?

Employers can request reasonable verification of the need for the leave. Reasonable verification for bereavement leave might be an obituary from a local newspaper, for example.

Can employees take part of a day as bereavement leave?

When an employee takes part of a day for bereavement leave, the employer may count that as a full day of the leave. Employers do not have to accommodate an employee taking the leave in part days, as long as they allow the employee to take the leave.

Can employees be fired or laid off because they take bereavement leave?

No. Employers cannot terminate or lay off employees because they have taken or are planning to take a leave.

What happens when the leave ends?

Employees must be allowed to return to their job, or a comparable job with the same or greater benefits and pay, when they return from leave. Employers may not discriminate or attempt to punish employees for taking a leave.

Can employers give paid leave or more time off?

Yes. Employers can, and often do, give greater benefits than those provided for in the legislation. Many employers provide more days or will pay employees for their leave.

For more information contact Employment Standards:

Phone: 204-945-3352 or toll free in Canada 1-800-821-4307

Fax: 204-948-3046

E-mail: employmentstandards@gov.mb.ca

Website: www.manitoba.ca/labour/standards

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including *The Employment Standards Code*, *The Construction Industry Wages Act*, *The Worker Recruitment and Protection Act*, or contact Employment Standards.

What is termination of employment?

Termination of employment is when the employment relationship is ended by either the employer or employee.

Common expressions for termination of employment include:

- Fired
- Quit
- Let go
- Discharged
- Dismissed
- Permanently laid off
- Terminated

Is a layoff the same as termination?

No. A layoff is a **temporary** break in employment where employees are likely to return to work. Employers do not need to provide notice to employees that they are being laid off. However, if the layoff is longer than 8 weeks in a 16 week period, the layoff becomes a termination and notice is required. Temporary help employees are subject to additional rules when determining a layoff period, see [Temporary Help Agency](#) fact sheet.

Do employees need to give notice of termination?

Yes. The amount of notice depends on how long the employee has been employed by the same employer:

<i>Period of Employment</i>	<i>Notice Period</i>
At least 30 days but less than one year	One week
At least one year	Two weeks

Do employers need to give notice of termination?

Yes. The amount of notice depends on how long the employee has worked for the same employer.

<i>Period of employment</i>	<i>Notice period</i>
At least thirty days but less than one year	One week
At least one year and less than three years	Two weeks
At least three years and less than five years	Four weeks
At least five years and less than ten years	Six weeks
At least ten years	Eight weeks

Employers can either allow the employee to work out this notice period, or pay wages in lieu of notice for the same number of weeks, or a combination of both.

How much notice of termination must employers give to their employees?

The amount of notice employers must provide employees depends on the length of time that employee has worked for them.

<i>Period of Employment</i>	<i>Notice Period</i>
At least thirty days but less than one year	One week
At least one year and less than three years	Two weeks
At least three years and less than five years	Four weeks
At least five years and less than ten years	Six weeks
At least ten years	Eight weeks

Employers can still either allow the employee to work out this notice period, or pay wages in lieu of notice, for the same number of weeks, or a combination of both.

What is a period of employment?

The length of time from when an employee starts working for an employer until the day the employment ends.

The period of employment also includes periods of temporary interruption in employment (a layoff, an unpaid leave) seasonal employment, and when an employee returns to work for the same employer after a break of less than two months. Employees who work in a seasonal industry and return to work with the same employer each season have continuous service. Each consecutive season they return adds one more year of service to their total period of employment.

Can employers pay wages instead of providing notice of termination?

Employers can pay the amount of wages employees would otherwise have received had they worked out the notice period (often called wages in lieu of notice). Employers can also allow employees to work for part of the notice period and pay wages in lieu of notice for the remainder.

Vacation wages and overtime wages are not added to wages paid in lieu of notice.

Employees who work the same hours every week receive their regular earnings for wages in lieu of notice. For employees who work varying hours every week, wages in lieu are based on an average of the regular weekly hours worked over the last 6 month period.

Can employers keep employees' wages if employees terminate without notice?

No. Employers must pay out all wages the employee has earned up until the last day worked. Employers must pay employees all earned wages within 10 business days of the last day of work. An employer can pursue any lost money through civil court.

Is there a period when no notice is needed?

Yes. Employers and employees do not need to give notice of termination when the employee has been employed for less than 30 days. Employers are not allowed to extend or change this period unless it is negotiated in a collective agreement with a union.

Can employers have notice policies for their businesses that are different from the legislation?

No. Employers cannot have a notice policy that differs from the requirements of the legislation. The only exclusion is a unionized workplace, where a collective agreement specifies different notice requirements.

Are there situations when employers or employees do not need to give notice of termination?

The following are some cases where notice of termination is not required:

- When employees are placed on a temporary layoff period of no more than 8 weeks in a 16 week period. There are additional considerations for determining the layoff period for temporary help employees. See [Temporary Help Agency](#) fact sheet.
- When the employee works in the construction industry
- When the employer can prove just cause, see [Just Cause](#) fact sheet
- When employment is for a specific length of time or a specific task or job
- When the employee has substantial control over whether or not to accept work and is not penalized by the employer for choosing not to work, except for temporary help employees who are entitled to notice if they regularly work more than 12 hours per week
- If the employer acts in a manner that is improper or violent toward the employee
- Under *The Elections Act*, election workers can be terminated for specific reasons by the person who appointed them. The worker can appeal to the Legislative Assembly

Employers must consider each situation on a case by case basis if deciding not to provide a notice period to an employee.

Do employers need just cause to terminate employees?

Under *The Employment Standards Code*, employees and employers can terminate employment without any reason, but are required to give proper notice of the termination. Employers who believe they have good reason (just cause) to terminate an employee without notice must be able to show sufficient evidence. Employment Standards investigates complaints related to whether the employee should have been provided a notice period.

Do other laws affect termination?

Employers are not allowed to terminate employees because they have taken or requested a legislated leave of absence from work. More information can be found on the [Unpaid Leaves](#) fact sheet.

The Human Rights Code, *The Workplace Safety and Health Act*, and *The Labour Relations Act* all deal with issues around ending employment. More information about other government departments can be found on the [Other Government Support](#) page.

There is also civil employment law covering termination issues. Employers and employees should consult a lawyer if they have questions about civil law.

Do notice provisions cover construction?

No. Employees who work in the construction industry are excluded from notice of termination requirements. For more information, see the [Construction Industry](#) page.

How much notice must employers give to terminate a large group of employees?

Employers who intend to terminate a group of 50 or more employees within four weeks must notify the Minister of Labour and Immigration and provide more notice than for an individual termination..

Number of Employees	Notice Required
50 to 100	10 weeks
101 to 299	14 weeks
300 or more	18 weeks

How is a period of employment calculated?

In most cases, it is the length of time from when employees start with employers, until the day the employment ends.

In situations where employees leave an employer for a short period of time and return to work for the same employer later, the employment is considered continuous when the break is less than two months, or if the job is seasonal and repeats year after year.

Do parental leaves or other leaves of absence affect notice?

No, employment is considered continuous during statutory leaves like parental, maternity or compassionate care leave. It is also considered continuous during non–statutory leaves, like an educational leave, if the leave was approved by the employer.

Who do employers and employees contact with concerns about safety in the workplace?

Workplace Safety and Health is responsible for protecting the health and safety of workers on the job.

Workplace Safety and Health focuses on preventing workplace and public hazards through education, training, working with employers and employees, and inspections and investigations.

Workplace Safety and Health
200–401 York Avenue
Winnipeg, MB R3C 0P8
Phone: 204–945–3446
Toll free 1–800–282–8069
Web: www.gov.mb.ca/labour/safety/

Who do employers or employees contact when someone is hurt at work?

Whenever necessary, appropriate medical attention should be called for immediately. The injury should also be reported to the Workers Compensation Board (WCB). The WCB is an insurance program paid for by employers that provides benefits for workplace injuries or illnesses.

The Workers Compensation Board of Manitoba
333 Broadway
Winnipeg, MB R3C 4W3
Phone: 204–954–4321
Toll free in Canada 1–800 362–3340
E-mail wcb@wcb.mb.ca
Web: www.wcb.mb.ca

Who do employees contact for help to appeal a decision by the Workers Compensation Board?

The Worker Advisor Office provides free, confidential advice, help, and in some cases, representation to workers and/or their dependants who have claims with the Workers Compensation Board. The Worker Advisor Office is not part of WCB.

Worker Advisor Office
Room 406 – 401 York Avenue
Winnipeg, MB R3C 0P8
Phone: 204–945–5787
Toll free in Manitoba 1–800–282–8069
Web: www.gov.mb.ca/labour/standards/wao/

Who do employers or employees contact with questions about discrimination or human rights?

The Manitoba Human Rights Commission protects people in Manitoba from discrimination in various areas, including the workplace. The Human Rights Code has regulations that prevent people from being discriminated against on the basis of certain characteristics, including family status, source of income, sexual orientation, race, gender, age, disability, or religion.

Manitoba Human Rights Commission
7th Floor–175 Hargrave Street
Winnipeg, MB R3C 3R8
Phone: 204–945–3007
Toll free 1–888–884–8681
E-mail: hrc@gov.mb.ca
Web: www.gov.mb.ca/hrc/

Who do employers or employees contact about collective bargaining, unfair labour practices or lack of union representation?

The Manitoba Labour Board settles labour relations disputes between employers, employees and unions, helping them communicate and work toward agreement. The board is also the final level of appeal for decisions made by Employment Standards. The board tries to mediate disputes, but also has a formal process similar to a court, where it hears arguments from the employers, employees, or unions. Generally, the board's decision is the final level of appeal.

Manitoba Labour Board
500 – 175 Hargrave Street
Winnipeg, Manitoba R3C 3R8
Phone: 204–945–3783
E-mail mlb@gov.mb.ca
Web: www.gov.mb.ca/labour/labbrd/

Who do employers and employees working under federal jurisdiction contact about employment standards?

There are some workplaces that fall under the jurisdiction of the federal government. For more information see the [Who is Covered by Employment Standards](#) page. Federal employment standards legislation is enforced by the Canada Labour Program.

Canada Labour Program
Phone: 204–983–6375
Toll free 1–800–641–4049
Web: <http://www.hrsdc.gc.ca/eng/labour/index.shtml>

Who do employers and employees contact about employment insurance and records of employment?

Employment Insurance (EI) provides temporary financial assistance to unemployed Canadians while they look for work or upgrade their skills. EI benefits may also be available to Canadians who are sick, pregnant, or caring for a newborn or adopted child, as well as those who must care for a family member who is seriously ill with a significant risk of death.

For information about records of employment or EI benefits, contact:

Employment Insurance
Unit 122, 393 Portage Avenue
Winnipeg, Manitoba R3B 3H6
Toll free: 1-800-206-7218
Web: <http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

What is the difference between compassionate care leave and family leave?

Compassionate Care Leave provides employees the opportunity to assist a family member who is critically ill and requires care and support for up to 28 weeks.

Family Leave is a short leave to take care of the needs of the employees family or a personal illness.

How long is family leave?

The legislation provides three unpaid days per year as family leave. Many employers give greater benefits than those provided for in the legislation, such as more days off or paid leave.

Who can take family leave?

All employees employed for at least 30 days with the same employer are entitled to this leave.

Are employees paid while on family leave?

No. The legislation only requires employers to provide time off and allow employees to return to their job when the leave has ended. Employers are not required to pay wages during the leave. Employers can, and often do, give greater benefits than those provided for in the legislation.

When can employees take family leave?

Employees can take family leave to deal with personal illness or the needs of their family. In some situations, this can be arranged in advance, but in others, that is not possible.

Employees must provide their employer with as much notice as reasonable and practical. They must also provide reasonable verification the leave is necessary if requested by the employer.

What is reasonable verification for family leave?

Reasonable verification will be different from case to case. For example, a doctor's note may be needed in some cases, but not in others. The intent is to reasonably confirm the employee is dealing with their own illness or the needs of their family during the leave.

Can employees who do not take any family leave this year, use six days next year?

No. Each year employees are eligible for three days of leave but it does not carry over to future years.

Can employees take part of a day as family leave?

When an employee takes part of a day for family leave, the employer may count that as a full day of the leave. Employers do not have to accommodate an employee taking the leave in part days, as long as they allow the employee to take the leave.

Can employees be terminated or laid off because they take a leave?

No. Employers cannot terminate or lay off employees because they took or requested a leave.

What is the difference between maternity leave and parental leave?

Maternity Leave is an unpaid leave, taken by mothers near the end of a pregnancy or immediately afterwards.

Parental Leave is taken by fathers and mothers to care for a child after birth or adoption.

Who qualifies for maternity leave?

Employees who have worked with the same employer for at least seven consecutive months and are expecting to give birth to a child are entitled to take maternity leave.

How long is maternity leave?

The leave is up to 17 weeks long.

Does the employer need to pay during the leave?

Only Domestic Violence Leave has a paid portion. Employers are not required to pay wages during any other protected leave, although may choose to provide greater standards or wages than those set out in the legislation. For all leaves, employers must provide the time off and allow employees to return to their job when the leave has ended.

Are there programs to pay employees while on leave?

The federal government has income support programs to cover certain types of leave. To learn more, call Service Canada toll-free at 1 800 O-Canada (1-800-622-6232).

When can an employee start her maternity leave?

Maternity leave can begin up to 17 weeks before the expected date of the birth.

When must employees end maternity leave?

Generally, the leave will end 17 weeks after it began. The latest that a leave can last is 17 weeks after the birth.

What if employees have started their leave and the birth is after the expected due date?

Employees are entitled to more maternity leave equal to the number of days between the expected date and the birth. For example, if the birth is 14 days after the estimated date of delivery, the mother would receive an additional 14 days of maternity leave.

How do employees start the maternity leave?

Employees requesting maternity leave must give their employers at least four weeks' written notice before the leave. They must also provide a medical certificate indicating the estimated date of delivery.

What if employees do not give the required notice?

Expectant mothers are still entitled to maternity leave if they fail to give four weeks' written notice. Within two weeks of stopping work, employers must receive a medical certificate stating the expected date of delivery and noting any dates employees were unable to work because of the pregnancy in the 17 weeks before the expected date of birth. This time missed from work can be included in the maternity leave.

What happens when maternity leave ends?

Employees, who have taken maternity leave and also wish to take parental leave, must do so immediately following the maternity leave, unless the employer agrees to a different arrangement.

How do employees start parental leave after maternity leave?

Employees wanting to take parental leave must give employers notice in writing at least four weeks before the leave. More information can be found on the [Parental Leave](#) fact sheet.

What if employees want to end their Maternity or Parental Leave early?

Employees who want to return to work before their leave has ended must give their employers notice in writing, at least two weeks or one pay period, whichever is longer, before returning to work.

What if the employee's job is no longer available?

Employees must be given a position that is comparable with the same pay and benefits if the job they were doing prior to the leave is no longer available. There may be some circumstances where employers do not have a position available for reasons completely unrelated to the leave. For example, employees who are on unpaid leave would not necessarily be protected from losing their jobs if the employer shut down part of their operations and reduced their workforce based on a seniority system.

Employers must show the leave has no impact on the decision to lay-off or terminate the employment.

What if the employer refuses to bring the employee back to work?

Employees must be allowed to return to their job, or a comparable job, with the same or greater benefits and pay when they return from leave. Employers may not discriminate or attempt to punish employees for taking a leave.

How does an unpaid leave affect vacations?

Employment is considered continuous during a legislated or approved leave of absence from work. This means that an employee is still employed, though not earning wages for the period of the leave. The leave does not affect an employee's right to take vacation time; it only affects the amount of vacation wages earned. See the [Vacations & Vacation Pay](#) page for details on earning and paying vacation.

Who qualifies for parental leave?

Employees who have worked with the same employer for at least seven consecutive months and have become a parent by birth or adoption are entitled to the leave.

How long is parental leave?

Parental leave is up to 37 weeks long and must be taken in one continuous period.

How does an employee start parental leave?

Parental leave can begin up to one year after the birth or adoption of a child. Employees requesting parental leave must give the employer at least four weeks written notice before the leave.

Employees who have taken maternity leave and also wish to take parental leave must do so immediately following the maternity leave, unless the employer agrees to a different arrangement.

What if employees don't give notice?

Employees are still entitled to parental leave if they do not give four weeks written notice. If an employee does not give notice, the leave can be shortened by the amount of notice not given. For example, an employee who only gives two weeks written notice would be entitled to 35 weeks leave instead of the full 37 weeks.

What happens when the leave ends?

Employees must be allowed to return to their job, or a comparable job, with the same or greater benefits and pay, when they return from leave. Employers may not discriminate or attempt to punish employees for taking a leave.

Who qualifies for Compassionate Care Leave?

Employees who have worked with the same employer for at least 90 days qualify for this leave. Employees must provide a certificate from a doctor indicating a family member has a serious medical condition, has a significant risk of death within the next 26 weeks, and needs care and support.

How long is the leave?

The leave is up to 28 weeks. Employees can take the leave in one or two periods that must be at least one week long.

How do employees start the leave?

The need for this type of leave is unpredictable. When possible, employees must give at least one pay period of notice before the leave and provide their employer with a doctor's certificate as soon as possible.

What if an employee cannot give notice?

Employees are still entitled to compassionate care leave even if they are unable to give notice.

What leaves are available to employees?

There are twelve protected leave options for employees:

<i>Type of leave</i>	<i>Length of leave</i>	<i>Purpose of leave</i>
<u>Maternity Leave</u>	17 weeks	For an employee expecting to give birth to a child
<u>Parental Leave</u>	37 weeks	For parents to care for their new child
<u>Family Leave</u>	3 days	For an employee to deal with family responsibilities or personal illness
<u>Compassionate Care Leave</u>	28 weeks	For an employee to care for a very ill family member
<u>Long-Term Leave for Serious Injury or Illness</u>	17 weeks	For an employee who has a long-term serious injury or illness.
<u>Domestic Violence Leave</u>	10 Days and 17 Weeks	For an employee to address a situation of violence in the home.
<u>Leave for Organ Donation</u>	13 weeks	For an employee to donate an organ or tissue
<u>Bereavement Leave</u>	3 days	For an employee to deal with the death of a family member
<u>Leave for Reservists</u>	When needed for service	For an employee in the Canadian Forces Reserve who needs time to serve
<u>Leave for Citizenship Ceremony</u>	4 hours	For a new Canadian to receive their certificate of citizenship
<u>Leave Related to the Death or Disappearance of a Child</u> If the child has disappeared If the child has died	52 weeks 104 weeks	For parents dealing with the death or disappearance of a child that occurred as a result of a crime
<u>Leave Related to Critical Illness of a Child</u>	37 weeks	For parents to provide care and support to a critically ill child

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