

What's New in 2012

Changes to the Employment Standards Code effective January 2012 Recent changes made to the Employment Standards Code are effective January 1, 2012. There are changes in 4 areas.

They are:

1. Allowing Employment Standards to consider applications for Averaging Permits from all industries
2. Allowing employees and employers to enter into individual flex-time agreements
3. Allowing compensatory time off for General Holidays in climate-controlled agricultural operations
4. Changing the exceptions for notice on termination from Wilful Misconduct to Just Cause

This fact sheet provides information on these changes.

What is an averaging permit?

An averaging permit changes the standard hours of work for a workplace or part of a workplace. Usually the standard hours of work are eight (8) hours in a day and forty (40) hours in a week and employees who work longer than that are entitled to overtime pay.

An averaging permit allows the employer to schedule longer shifts for each day, but employees get the benefit of working fewer shifts over the period of the permit. For example, a simple averaging permit might allow for shifts of 10 hours in a day and no more than 80 hours in a two week period. This allows an employer to schedule 8 shifts of 10 hours each in a 2 week period without overtime. Without an averaging permit, that employer would have to pay overtime for 2 hours every day which might make them decide not to use that schedule

An employer must have an averaging permit from Employment Standards before workers can work the new shifts without being owed overtime wages. To get a permit, the employer must have written agreement from the employees that will be working the proposed hours and submit it with an application to Employment Standards. Employment Standards will review the application and consider:

- if the employer has a good history of following employment standards laws,
- the effect the new schedule will have on the safety and health of the workplace and general public the support of the employees who will be affected

How will averaging permits change in 2012?

Starting January 1, 2012, Employment Standards will require 75% of the affected employees to agree to the new schedule before considering it for approval. In addition, the old requirement to consider the customs and practices of an industry has been removed. This means that employers in industries like retail and hospitality, will now be considered for averaging permits.

Where can I find more information about Overtime and Averaging Permits?

More information about how to calculate overtime can be found on the [Overtime Fact Sheet](#)

More information about Averaging Permits, including a draft employee agreement form, can be found on our [Averaging Permit Fact Sheet](#). Both fact sheets can be found at our website www.manitoba.ca/labour/standards

What is an individual flex–time agreement?

An individual flex–time agreement is a written agreement between the employer and employee that changes the standard hours of work for that individual employee.

Who can enter into an individual flex–time agreement?

Starting in 2012, an employee who works more than 35 hours a week, with the same employer, can request an individual flex–time agreement. The employer will then decide if they wish to enter into an agreement.

Can an employer force an employee into a flex–time agreement?

No, employers cannot make an employee ask for an individual flex–time agreement, or make it a condition of the job. It is the employees decision to ask the employer. Employers can not start the process, or insist that other employees in the workplace follow the same schedule.

Is there a limit to what the employee and employer can agree to?

Yes, individual flex–time agreements allow the employee and employer to increase the standard hours of work up to 10 hours a day without paying overtime. The agreement cannot increase the standard hours of work beyond 40 hours per week. The written agreement must also state that either party can end the agreement with 14 days notice.

Can the agreement change?

Yes, when requested by an employee changes can be made to the agreement. Employers and employees can end an agreement with 14 days notice.

Does Employment Standards need to see the agreement before it starts?

No, the employee and the employer can agree to the new standard hours of work without permission from Employment Standards. However Employment Standards can prevent employers from entering into these agreements, or end agreements that are already in place.

Why would Employment Standards prevent an employer from entering into an individual flex-time agreement?

Employment Standards will prevent an employer from forcing an employee to agree to a flex-time agreement. A flex-time agreement must be requested by an individual employee, it cannot be forced on them as a condition of getting the job.

Does the agreement need to be in writing?

Yes

Where can I get more information regarding Individual Flex-time Agreements?

Call Employment Standards at 1-800-821-4307 or 204-945-3352. You can also visit www.manitoba.ca/labour/standards for more information

What will change for climate-controlled agricultural businesses when calculating pay for General Holidays in 2012?

Effective January 1, 2012, employers in climate-controlled agricultural businesses can choose to pay regular wages for hours worked on a General Holiday, and give the employee another day off with General Holiday pay. The day off must be within 30 days, or if the employee agrees, at any time before the employee's next vacation.

This method of paying for General Holidays was only available to employers operating a gas station, hospital, hotel, restaurant, place of amusement, continuously operating plant, or a seasonal industry (excluding construction) or those employing domestic workers. Starting on January 1, 2012, it is also available to employers operating a climate-controlled agricultural business.

Where can I get more information regarding General Holidays?

You can find more information on our [General Holidays](#) fact sheet and more information about employment standards in agriculture on our [Agriculture](#) fact sheet. Both can be found at www.manitoba.ca/labour/standards or call Employment Standards at 1-800-821-4307 or 204-945-3352

How do the rules for terminating employees change in 2012?

The rules for terminating an employee do not change. An employer can terminate an employee at any time if they provide notice to that employee. Employers should be aware that there are special rules for employees who are on protected leave such as maternity leave or compassionate care leave.

What changes on January 1, 2012, is one of the exceptions that allow an employer to terminate an employee without notice.

What is the exception that will change on January 1, 2012?

Before January 1, 2012, one of the times an employer does not need to provide notice of termination is if an employee acts,

in a manner that is not condoned by the employer and that

(i) constitutes wilful misconduct, disobedience or wilful neglect of duty, or

(ii) is violent in the workplace, or

(iii) is dishonest in the course of employment;

After January 1, 2012, that is replaced with

when the employment of the employee is terminated for just cause

Does this change mean an employer needs to have just cause to terminate an employee?

No, an employer can still terminate an employee at any time if they provide the proper amount of notice. The new rule only states that if an employer does have just cause and terminates the employee, they do not need to give proper notice.

Employers do not need to give a reason for ending an employees employment, unless they claim they do not need to give notice because of one of the exceptions.

Where can I find more information about Termination of Employment?

You can find more information on our Termination of Employment fact sheet at www.manitoba.ca/labour/standards or call Employment Standards at 1-800-821-4307 or 204-945-3352

For more information contact the Employment Standards Branch:

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* and *The Worker Recruitment and Protection Act*, or contact the Employment Standards Branch to ask for advice.

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