



Employer Best Practices: Have You Figured Out the Holidays?

November 2022 Employer Alert

If you have not taken a peek at December in your calendar yet, Christmas Day and New Year's Day will be falling on Sundays. As a result, some employers in Canada will need to schedule two lieu holidays. In contrast, other employers in Canada will not have to schedule lieu holidays or even pay out holiday pay. It is important that you determine your holiday obligations and plan accordingly.

Your employees' statutory holiday entitlements and how non-workday holidays are dealt with, vary by jurisdiction. Jurisdiction is determined based on: i) whether your sector is federally or provincially regulated; and ii) if you are provincially regulated, what province(s) your workplace(s) are located in. For the most part, aside from a few sectors (e.g. aviation, banking, radio, etc.), statutory holiday entitlements are determined by the province(s) in which the workplace(s) are located.

For provincially regulated employers in Ontario, s. 29 of the *Employment Standards Act*, provides that where a public holiday falls on a non-workday (e.g. the weekend), you must schedule a substitute holiday and pay the employees' their holiday pay. The employees must be notified of this lieu holiday in writing and the date must be scheduled within 3 months after the public holiday. Alternative, an employee may agree in writing to: i) have the lieu holiday be scheduled within 12 months after the holiday; or ii) forego their lieu holiday entitlement, but still be paid their holiday pay. As such, for Ontario employers, you may decide to schedule

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the Christmas Day and New Year's Day holidays in March and pay out holiday pay at that time. Or you may enter into a written agreement with your employees to not provide Christmas Day and New Year's Day lieu holidays.

For provincially regulated employers in British Columbia, under Part 5 of the *Employment Standard Act*, if an employee does not normally work on a Sunday and does not work on the holidays, then you do not need to schedule lieu holidays. You do, however, still need to pay them their minimum statutory holiday pay, which is calculated based on their recent wages.

For provincially regulated employers in Alberta, under Division 5 of the *Employment Standards Code*, if an employee does not normally work on a Sunday and does not work on the holidays, then, for Christmas Day 2022 or New Year's Day 2023, they will not be entitled to a lieu holiday and they will not be entitled to holiday pay.

For Federal regulated employers, under the *Canada Labour Code*, if an employee does not normally work on a Sunday, then you must schedule a substitute holiday on the first working day before or after the holiday and pay them their holiday pay. As such, for federally regulated employers who are normally closed on Sundays, they will need to schedule a lieu-Christmas Day on December 23rd or 27th and a lieu-New Year's Day on December 30th or January 2nd.

Of course, the above are the statutory minimum entitlements, for those jurisdictions. As an employer, you may opt to provide a greater entitlement. Indeed, for multi-jurisdictional companies, to simplify matters, you may decide to provide a greater entitlement, such as everyone gets December 27th and January 2nd off from work and everyone gets holiday pay for these days.

For more information or for assistance with handling your holiday obligations, please contact [our firm](#).

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