Paid Public Holidays and Vacation/Vacation Pay

1. What are the paid public holidays in New Brunswick?

There are eight paid public holidays in New Brunswick, which are:

- New Year's Day
- Family Day (3rd Monday in February)
- Good Friday
- Canada Day
- New Brunswick Day
- Labour Day
- Remembrance Day
- Christmas Day

2. How does an employee qualify for a paid public holiday?

To qualify, an employee must:

- be employed by the employer for at least 90 calendar days (not only work days) during the 12 months before the public holiday;
- have worked his scheduled regular day of work before and after the holiday (this is not necessarily the day immediately before or after the holiday), unless there is a good reason for not doing so (most reasons related to illness are considered acceptable);
- If he has agreed to work on the public holiday report for work and work his scheduled shift unless there is a good reason for not doing so;
- not be employed under an arrangement where he can decide when to work or not to work; and
- not be employed in specific occupations exempted by regulation.

3. What must employers pay their employees for a paid public holiday?

All employees are entitled to receive one and one-half time their regular wage rate for each hour worked on a paid public holiday.

An employee who *qualifies and works* on the public holiday must receive his regular day's pay plus one and one-half times his regular wage rate for the hours worked on that day.

An employee who *qualifies and does not work* on the public holiday must receive his regular day's pay for that day.

Employee	Does not work	Works
Qualifies	Regular day's pay	Regular day's pay + 1.5 times regular wages for hours worked
Does not qualify	No wages	1.5 times regular wages for hours worked

4. What happens if the holiday falls on a non-working day or during an employee's vacation?

When the holiday falls on a non-working day or during an employee's vacation, the employee who qualifies must receive another working day off with pay in lieu of the holiday, or if the employee agrees, a regular day's pay for that day.

5. When the employee's wages vary from day to day how does an employer calculate a regular day's pay?

The employee shall be paid based on an average day's pay. This calculation takes into account all hours worked (excluding overtime) in the 30 days immediately before the holiday.

For example, for the July 1st holiday where an employee has worked a total of 20 days between June 1st and June 30th for a total of 135 hours the employee is entitled to 6.75 hours (135 hours divided by 20 days) times the employee's regular rate of pay.

6. Does the employer have another option than that of paying the employee a regular day's pay when he qualifies for a paid public holiday?

Yes. Instead of paying the employee a regular day's pay for the public holiday, the employer has the option of paying the employee an additional four percent of all of the employee's gross wages starting on the employee's first day of employment.

In addition to paying the 4% of the employee's wages, when the *employee works* on a paid public holiday, the employer must also pay him one and one-half times his regular rate of pay for the hours worked on each holiday.

7. Can an employer and an employee make an agreement whereby another working day off is provided to the employee in lieu of a paid public holiday?

Yes, an employer and an employee can make such an agreement. However, the substituted day must be taken by the employee no later than the employee's next vacation period.

Where the business is a hotel, motel, a tourist resort, tavern, restaurant or considered to be a "continuous operation", the employer has the following options:

1. Substitute without agreement: if using this option, the substituted day off with pay must be the first working day immediately after the employee's next vacation period. OR
2. Substitute with agreement: if not using option 1, the substituted day off with pay can be any working day, provided the day is agreed upon with the employee.

If using either option 1 or 2, the employee is to be paid their regular wages for time worked on the day of the public holiday and must also be paid a regular day's pay or 4% on all wages which covers the substituted public holiday.

The employer must record the substituted day and also maintain documentation of any agreement with the employee.

8. Do all employees qualify to receive pay for a public holiday?

No. Employees in certain occupations (e.g. professionals, house and car salesmen) do not qualify to receive pay for a public holiday. For more information regarding the list of occupations, please contact the Employment Standards Branch.

9. Where an employee has an arrangement with an employer whereby the employee has the right to determine when he works, is the employee eligible to receive pay for a public holiday?

No. This "elect to work" arrangement may be formal or informal. In either case the employee must have complete discretion as to whether he will work when requested to do so. If the employee's failure to work when requested may result in a loss of employment, loss of future referral for work or any other form of disciplinary or discriminating action, the arrangement may not be considered an elect to work arrangement.

Vacation and Vacation Pay

1. Are employees entitled to an annual vacation?

Yes. Employers are required to give all their employees an annual vacation leave with vacation pay dependent on each individual employee's years of service.

2. How much vacation are employees entitled to receive?

An employee who has *less than eight years* of employment with the employer is entitled to a vacation leave of the lesser of the following two options:

- at least one day for each month worked, or
- at least two weeks of vacation per vacation year.

An employee who has more *than eight years* of employment with the employer is entitled to a vacation leave for the lesser of the following two options:

- at least one and one-quarter day for each month worked, or
- at least three weeks of vacation per vacation year.

3. What amount is the employee entitled to for vacation pay?

An employee who has *less than eight* years of employment with the employer is entitled to receive a vacation pay equal to *four percent* of his gross wages (before deductions).

An employee who has *eight or more years* of employment with the employer is entitled to receive a vacation pay equal to *six percent* of his gross wages (before deductions).

In both cases, the employee must receive all his accumulated vacation pay at least one day before his vacation begins.

Period of employment	Vacation time (whichever is less)	Vacation pay
Less than 8 years	1 day for each month worked, or 2 weeks of vacation per vacation year	4% of gross wages
8 years or more	1.25 day for each month worked, or 3 weeks of vacation per vacation year	6% of gross wages

4. When can an employee take vacation?

An employee is entitled to take vacation after completing one year of service with the same employer. The employer must give the employee his vacation no later than four months after earning the vacation time.

Employers and their employees can agree on when vacation should be taken. If an agreement cannot be reached, the employer can decide when the employee's vacation will begin as long as he provides the employee at least one week notice prior to the vacation start date.

5. What happens where an employee is terminated or quits before taking vacation time?

An employee who is terminated or quits before taking vacation time is entitled to receive all outstanding vacation pay when the employment ceases. Payment must be made when the employee receives his final pay cheque.

Employers and employees may enter into an agreement for greater benefits than provided for in the *Employment Standards Act*. Such agreements shall be respected and enforced by the Employment Standards Branch.

This is a guide only. For interpretation and application purposes, please refer to the *Employment Standards Act*, its regulations and amendments.