

Access PEI Locations and Briefing Sessions

Copies of the *Employment Standards Act* and complaint forms are available from:

Employment Standards Branch
161 St Peters Road, 2nd floor
PO Box 2000, Charlottetown, PEI C1A 7N8
<https://www.princeedwardisland.ca>
www.peiemploymentstandards.com
Tel: 1-800-333-4362 or (902) 368-5550 or Fax: (902) 368-5476

Access Alberton
116 Dufferin Street, PO Box 39
Alberton, PE C0B 1B0
accesspeialberton@gov.pe.ca
Tel: (902) 853-8622 or Fax: (902) 853-8625

Access Charlottetown
33 Riverside Drive, PO Box 2000
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Tel: (902) 368-5200 or Fax: (902) 569-7560

Access Montague
41 Wood Island Hill, PO Box 1500
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Tel: (902) 838-0600 or Fax: (902) 838-0610

Access O'Leary
45 East Drive, PO Box 8
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accesspeioley@gov.pe.ca
Tel: (902) 859-8800 or Fax: (902) 859-8709

Access Souris
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15 Green Street, PO Box 550
Souris, PE C0A 2B0
accesspeisouris@gov.pe.ca
Tel: (902) 687-7000 or Fax: (902) 697-7091

Access Summerside
120 Harbour Drive, PO Box 263
Summerside, PE C1N 5L2
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Tel: (902) 888-8000 or Fax: (902) 888-8306

Access Tignish
103 School Street, PO Box 450
Tignish, PE C0B 2B0
accesspeitignish@gov.pe.ca
Tel: (902) 882-7351 or Fax: (902) 882-7362

Access Wellington
48 Mill Road, PO Box 58
Wellington, PE C0B 2E0
accesspeiwellington@gov.pe.ca
Tel: (902) 854-7250 or Fax: (902) 854-7255

Briefing Sessions

Group seminars, conducted by staff from the Employment Standards Branch, are available to parties wanting further clarification of the act.

New employers are encouraged to arrange an individualized seminar or briefing session for their personnel/payroll staff.

For further information or to schedule a briefing, contact the Employment Standards Branch at 902-368-5550 or 1-800-333-4362.



Introduction

The Guide to Employment Standards in Prince Edward Island was developed to help the employer and employee better understand the intent of the employment standards legislation.

Legislation cannot cover every possible conflict which may occur in the work place; for this reason, the Employment Standards Branch has developed policies to help resolve matters in a reasonable and fair manner.

The *Employment Standards Act* is the main reference throughout this guide. Other acts and regulations include: *Workers Compensation Act*, *Youth Employment Act*, *Retail Business Holidays Act*, *Labour Act*, *Human Rights Act* and the Standard Work Week Exemption Order. Copies of all provincial acts and regulations are available online at www.princeedwardisland.ca or at Access PEI Centres across the province.

Please Note

This handbook is meant to serve as a guide only and is not a legal document. The reader is strongly advised to consult the appropriate provincial act. Neither the authors nor the Province of Prince Edward Island are bound by statements made herein. Where any difference exists between this guide and the appropriate provincial act, the act will be considered correct.



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Application

The *Employment Standards Act* applies to all employers and employees with the following exceptions:

1. Only sections of the act pertaining to payment and protection of pay, complaints and enforcement, protection of complainants and offences and penalties apply to:
 - a) salespersons whose income is derived primarily from commission on sales; and
 - b) farm labourers (this does not include employees in an undertaking that in the opinion of the board is a commercial undertaking).
2. Sections 5 and 5.1 of the act, dealing with minimum wage, and Sections 15 and 15.1, dealing with hours of work, do not apply to:
 - a) persons employed for the sole purpose of protecting and caring for children, handicapped or aged persons in private homes; and
 - b) employees of a non-profit organization who are required by terms of their employment to live-in at a facility operated by the organization.
3. For employees covered by a collective agreement, only the provisions of the act relating to parental, maternity and adoption leave; compassionate care leave; reservist leave; sexual harassment; paid holidays; payment and protection of pay; protection of complainants and complaints and enforcement apply.
4. A provision in an employment agreement is void and of no effect if it provides a lesser benefit to the employee than what the legislation would otherwise provide. A provision in an agreement that provides a greater benefit to the employee will prevail over the legislation.

Reference: Section 2
Employment Standards Act

Banking of Overtime

Employers are required to pay employees for hours worked in excess of the standard work week (Section 15.1)

However, an employee can choose, instead, to accumulate or “bank” hours worked in excess of the standard work week to be taken later as paid time off if:

1. the employer agrees to the employee’s written request to have such hours accumulated; and
2. the paid time off is taken by the employee within three months of the work week in which the overtime was earned.

An employer must compensate an employee at the rate of 1.5 hours of paid time off at the employee’s regular rate of pay for every hour of accumulated overtime used up by the employee.

An employee with accumulated overtime hours remaining after employment ends must be compensated by the employer at the rate of 1.5 times the employee’s regular rate of pay for every one hour of overtime accumulated in excess of the standard work week.

It is the employer’s responsibility to keep complete and accurate records of any overtime that is accumulated and used up by the employee.

Reference: Sections 15, 15.1
Employment Standards Act

Commission Salespersons

Salespersons who derive their primary source of income from commission on sales are considered exempt from the act except, generally, for the right to a wage, a pay statement and payment on a timely basis.

Individuals whose wages are comprised of salary plus commission are considered to be employees under the act if salary represents the majority of their wages.

Reference: Section 2
Employment Standards Act

Continuity of Employment

When an employee continues to work for a business that has been sold, transferred or leased, the employee's employment is not considered to be terminated. An employee's period of continuous employment with the seller is to be added to the employee's period of employment with the purchaser for determining the employee's overall length of service with the purchaser of the business. Overall length of service can be used to determine the employee's entitlement to notice of termination, paid vacation, sick, family, maternity, parental or adoption leaves.

The purchaser of the business is not required to recognize the employee's period of employment with the seller if the purchaser hires the employee more than 13 weeks after the date of sale of the business or the last day of the employee's employment with the seller – whichever occurs first.

Reference: Section 28.1
Employment Standards Act

Contract Employees

A person hired to perform a specific amount of work for an agreed-upon price must be made aware by their employer that they have been hired as a self-employed person. It is the responsibility of the employer to confirm with an Employment Standards Branch inspector that the contract employee was made aware they were hired as a self-employed person, that the amount agreed upon is all monies to be paid and that the employer has no further obligations under the act, i.e., vacation pay, paid holidays, etc.

Deductions From Employee's Pay

Cash Shortages

Employers cannot make any deduction from an employee's pay to cover cash shortages if the employee does not have sole control of the cash and the cash cannot be secured by the employee when it is necessary to leave it unattended.

If a cash shortage occurs, the employer must advise the employee at the end of the employee's shift and permit the employee the opportunity to explain or find the shortage. If an employer can verify to the satisfaction of an inspector that an employee is responsible for a cash shortage before the end of the employee's pay period during which the cash shortage occurred, the employer may deduct the amount of the cash shortage from the employee's pay.

Reference: Section 5.5
Employment Standards Act

Pay Deductions

Employers can only make a deduction from an employee's pay when the deduction is:

1. required or authorized by statute;
2. agreed in writing by the employer and the employee;
3. ordered by a court;
4. the result of a previous advance of pay to the employee;
5. a group benefit plan that the employee participates;
6. an employee-requested contribution towards a savings plan; or
7. authorized by the Minimum Wage Order.

Employers cannot deduct from an employee's pay in the following situations:

1. when a customer of the employer receives a service or product without paying for it; or
2. for faulty work done by the employee or damage done to the property of the employer by the employee.

Reference: Section 5.5
Employment Standards Act

Uniforms

Employers cannot deduct pay from an employee for uniforms or footwear supplied or required by the employer and which are unique to the employer's business. An employer may require a deposit of up to 25 percent of the cost of a corporately identified uniform. The deposit must be reimbursed when employment ends and the uniform is returned to the employer. Employers should have employees sign for receipt of various items of the uniform.

Reference: Section 5.5
Employment Standards Act

Directors' Liability

Directors of a for-profit corporation including a co-operative association are individually and collectively liable along with the corporation to an employee for unpaid pay up to a maximum amount of six months pay that becomes payable during the period they were directors. This liability can arise if:

1. the corporation is insolvent and an employee's claim filed with a receiver or trustee has not been paid; or
2. the Employment Standards Branch or Employment Standards Board has issued an order to the corporation and the corporation has failed to comply with the order for payment of pay within 30 days of its issue.

A director will not be liable for unpaid pay if the director has exercised the degree of care, diligence and skill of a reasonable person to ensure that pay owing to an employee was paid. Directors of non-profit corporations are not subject to this liability.

Reference: Section 5.7
Employment Standards Act

Discrimination Against a Complainant

An employer cannot discriminate against an employee because the employee has made a complaint under this act or has testified or is about to testify in any proceedings relative to enforcement of this act.

Reference: Section 35
Employment Standards Act

The Employment Standards Board

The Employment Standards Board is the independent and impartial tribunal responsible for the day-to-day application and interpretation of the Prince Edward Island employment standards legislation. The board consists of eight members, three representing employees, three representing employers and a neutral chair and vice-chair. The Board has the authority to hold hearings, issue decisions and remedy any conduct found to be contrary to the act.

The board meets at least once a year to review the Minimum Wage Order and has the authority to specify when and under what conditions deductions may be made from the wages of an employee and what notification the employee should be given prior to such deduction.

Board Hearings

When a formal complaint is received by the Employment Standards Branch, an inspector investigates the complaint and issues a decision to the complainant. Where the employer or employee feels the inspector has erred in their decision, either party may appeal to the Employment Standards Board for a final resolution of the matter.

Board hearings are less formal than a court trial and any affected party may bring their own witnesses. Hearings are usually held in Charlottetown. During the board's proceedings, only those directly affected by the matter, or their representatives, may participate. The board's rulings are final and binding. All board decisions can be filed in court, if need be; and once filed, can be enforced as a court order.

While there is no appeal from board decisions, the court does have the power to review those decisions and set them aside if they exceed board powers under the act or involve an interpretation of the law that is obviously unreasonable. The board also has the power to reconsider any of its own decisions. The circumstances under which the board will do so are limited.

The board does not deal with employers and employees whose terms and conditions of work are established by a collective agreement pursuant to the *Labour Act* except for provisions relating to maternity, parental and adoption leave, compassionate care leave, reservist leave, sexual harassment, paid holidays and those provisions relating to pay and protection of pay, protection of complainants, and complaints and enforcement as found in this guide.

Reference: Section 4 and 5
Employment Standards Act

Employment Records

An employer must make and keep in Prince Edward Island, for a period of 36 months after work is performed by an employee, complete and accurate records pertaining to the employee.

Pay records must include the following information:

1. employees name, date of birth, address and social insurance number;
2. wage rate;
3. gross pay and net pay per pay period;
4. hours worked in each day and week;
5. deductions from gross earnings and the nature of each deduction;
6. start and end date of employment;
7. type of work performed by the employee;
8. period of paid vacation or any vacation pay due to be paid to the employee;
9. any paid holiday pay due or paid to the employee;
10. number of overtime hours the employee has accumulated and used;
11. period of a leave of absence and the reason for the absence; and
12. dates of any suspensions, dismissals or layoffs including dates of all notices.

An employer who fails to keep records or keep them up to date and who fails to give information or provides false or misleading information to the inspector may be guilty of an offence and subject to penalties under Section 38 of the act.

Reference: Sections 5.6 and 38
Employment Standards Act

Farm Labourers

In general, agricultural workers are entitled under the act to:

1. wages;
2. pay statement; and
3. payment on a timely basis.

However, agricultural employees are subject fully to the act if they transport, process or package raw product on a farm considered to be a commercial undertaking.

A commercial undertaking is a farm that:

- a) purchases raw product from other sources for the purpose of processing or packaging; and
- b) at least half of the amount of raw product it processes or packages was purchased.

Filing a Complaint

You may feel that your employer/employee has acted in a manner that violates the *Employment Standards Act*. If this happens, you can file a complaint with the Employment Standards Branch. Complaint forms are available at all Access PEI Centres or our office in Charlottetown or online at www.peiemploymentstandards.com.

The complainant is expected to file all documentation and information in their possession relevant to the complaint. The complainant is expected to have attempted to resolve the matter with their employer/employee **prior to filing a complaint**.

When an inspector begins to investigate a complaint, they will talk to the person who made the complaint to clarify all issues in dispute. If the inspector finds the respondent has violated the *Employment Standards Act*, the inspector will talk to the respondent about the problem and how to correct it. Correcting it may mean: keeping better payroll records, compliance with specific sections of the act or paying money that the inspector has determined the respondent owes.

If the respondent does not agree with the inspector, the inspector may issue an order that states what the respondent must do to ensure that the *Employment Standards Act* is followed. The order also gives the respondent a chance to appeal the decision to the Employment Standards Board. The respondent has 10 working days from the day they received notice of the decision to file an appeal. Failure to respond within the 10-day time limit will result with a judgment being filed in the Supreme Court of Prince Edward Island.

Reference: Section 30
 Employment Standards Act

Full-time, Part-time and Casual Designation

In general, the *Employment Standards Act* and Regulations make no distinction between an employee's work classification.

The employer has the right to schedule all hours of work and overtime as long as it complies with the requirements of the act.

Reference: Section 15
 Employment Standards Act

Hiring An Employee

An employer should clearly define the conditions of employment at the time of hiring. It is in everyone's best interest to do so and, when possible, the conditions of employment should be in writing.

The employer should deal with the following issues at the time of hiring:

1. inform the employee about the organization and the main tasks they will be performing;
2. the wage rate and method of payment (cheque, direct deposit, cash – if cash is the method of payment, the employer must obtain signed receipts);
3. any deductions from the pay cheque aside from the statutory deductions;
4. where applicable, the sum charged for room and board or the sum withheld for a uniform;
5. the employee's work schedule;
6. the normal work week;
7. the payment of overtime;
8. the duration and time of the meal and rest period (paid or unpaid);
9. insurance plans;
10. coffee breaks;
11. ensure all company policies and rules are explained to the employee or signed by the employee;
12. sexual harassment policy; and
13. explain to the employee how and when gratuities will be distributed, if you collect them on the employee's behalf.

Home Care Service

Persons employed to care for individuals in private homes are subject to the legislation except for minimum wage and overtime pay. When hiring an employee for health care, whose service is not provided by a health care organization, it is important that both parties are aware of duties expected and benefits to be provided. The agreed-upon arrangements should be documented and signed by both parties.

Persons who employ the services of a home-care worker, without utilizing the services of a hiring agency, should contact:

Canada Revenue Agency, Business Services (Source Deductions)
Toll-free 1-800-959-5525

for confirmation of the employer/employee relationship and the financial obligations that may apply.

Meal and Rest Periods

An employee is entitled to a one half-hour unpaid break every five consecutive hours. This half-hour break cannot unreasonably be denied. Occasions do arise in certain circumstances where employees do not get the full half-hour break at one time; and in such circumstances, the employer must pay for the half hour.

An employee is not required to remain on the premises of the employer during the half-hour unpaid break.

Every employee is entitled to a rest period of at least 24 consecutive hours in every seven-day period and whenever possible the rest period shall include Sunday.

Reference: Sections 16(1) 16(2) and 16(3)
Employment Standards Act

Notice of Termination

The first six months of employment is considered a probationary period. During this period, the employer may terminate an employee without any requirement for notice or compensation. The employee, likewise, can terminate their employment without any requirement for notice or penalty.

An employer cannot reduce the hours of work, rate of pay or benefits of the employee during the notice period. The employer cannot consider vacation time as part of the notice period.

	Notice Required for an Employer to Terminate Employment Relationship Without Just Cause	Notice Required for an Employee to Terminate Employment Relationship
less than 6 months continuous employment	no notice required	no notice required
6 months to 5 years continuous employment	2 weeks' notice or pay in lieu of notice	1 weeks' notice
5 years to 10 years continuous employment	4 weeks' notice or pay in lieu of notice	2 weeks' notice
10 to 15 years continuous employment	6 weeks' notice or pay in lieu of notice	2 weeks' notice
more than 15 years continuous employment	8 weeks' notice or pay in lieu of notice	2 weeks' notice

The act requires that both parties provide written notice but situations can arise where this does not happen. When the inspector can confirm verbal notice was provided by either party, in order to resolve the matter in a fair and reasonable manner, will allow such notice.

An employee who receives a written notice of termination but continues to work for the employer for one month or more beyond the notice period can only be terminated if the employer provides a new written notice.

In order to end an employee's job without notice or pay in lieu of notice, the employer must show that they have just cause.

Example: The employer has made their expectations clear to the employee and has warned them that not improving their behaviour could lead to their being dismissed.

There are situations, such as theft, where the above criteria would not apply. The employer, however, must be able to confirm their allegation of theft or must have initiated prosecution proceedings at which time the inspector will suspend further proceedings until the court or police have concluded their findings.

Employers should consider the implementation of a progressive discipline policy which could involve a verbal warning, written warning, a suspension then termination of the employee. The discipline should depend on the severity of the situation.

Condonation becomes an issue when the employer has not corrected a past behaviour, ignores an employee's poor performance at work and then finally dismisses the employee for the same poor behaviour. An employee has to be told that the employer will no longer tolerate the poor performance. The employee must understand the consequences if their performance does not improve.

There are certain circumstances where the employer does not have to provide notice of termination such as,

1. complete or partial destruction of the place of employment;
2. destruction or breakdown of machinery or equipment;
3. inability to obtain supplies or materials; or
4. cancellation, suspension, or inability to obtain orders for the products of the employer if the employer has exercised enough care to foresee and avoid the cause of termination or layoff.

An employer is also not required to provide notice prior to termination:

1. if an employee is terminated or laid off because of labour disputes, weather conditions or actions of any governmental authority that directly affect the operations of the employer;
2. if an employee was hired to do a specific task for a period of 12 months or less;
3. when an employee is offered reasonable other employment by the employer; or
4. when an employee is laid off due to lack of work for a period of six consecutive days or less.

Any agreement made between the parties which provide for more notice of termination than that provided for in the act, prevails over the act.

Prior to terminating long-term employees, it is advisable for the employer to seek legal advice on what would constitute appropriate compensation.

Shortage of work does not justify termination without notice unless it meets the criteria in Section 29.

Reference: Section 29
 Employment Standards Act

Orientation / Training

In certain instances the employer may request that a new employee participate in a short orientation period without pay to become familiar with the organization and learn the techniques involved with the job. This arrangement is allowed provided the individual agrees to the orientation period and the individual **does not physically perform work for the employer which would provide financial gain or would otherwise be performed by another employee.**

Overtime

The standard work week in Prince Edward Island is 48 hours. Each hour of work performed by an employee beyond 48 hours in any given week is considered an overtime hour. Each overtime hour is subject to overtime pay. Overtime pay shall be paid at time and one-half of the employee's regular rate of pay.

Banking of Overtime

See Banking of Overtime, page 2

Exceptions to Standard Work Week

Due to down time, the seasonal nature and the effect weather conditions have on certain industries, the Employment Standards Board has issued an Exemption Order extending overtime hours to specific industries. Please contact the Branch for details about these industries.

Reference: Section 15 , 15.1
 Employment Standards Act
 Standard Work Week Exemption Order

Paid Holidays (Statutory Holidays)

The *Employment Standards Act* gives employees who qualify, eight paid holidays per year. The holidays are New Year's Day, Islander Day, Good Friday, Canada Day, Labour Day, National Day for Truth and Reconciliation, Remembrance Day and Christmas Day.

In order to qualify for these holidays an employee must:

1. be employed at least 30 calendar days prior to the holiday;
2. have earned pay on at least 15 of the 30 calendar days prior to the holiday;
and
3. have worked their **last scheduled shift** prior to the holiday and **first scheduled shift** after the holiday.

An employee who qualifies for the paid holiday but does not work on that day is entitled to the day off with the employee's regular day of pay.

An employee who qualifies for the paid holiday but does not work on that day because the paid holiday falls on a day that is not the employee's normal work day is entitled to another day off with the employee's regular day of pay. The employer can grant the paid holiday to the employee on either:

1. the working day immediately following the paid holiday; or
2. the day immediately following the employee's paid vacation; or
3. on another day agreed upon by the employer and employee before the employee's next paid vacation.

An employee who qualifies for the paid holiday and who also works on that day must be paid either:

1. the equivalent of a regular day's pay plus 1.5 times the employee's regular rate of pay for the hours worked on the paid holiday; **or**
2. regular pay for the hours worked on the paid holiday plus another day off with a regular day's pay in lieu of the holiday on a date agreed upon by both the employer and the employee before the employee's next paid vacation.

An employee employed under an arrangement whereby they may elect to work or not to work when requested to do so **does not qualify** for the paid holiday.

Likewise, an employee who agrees to work

1. on a paid holiday; or
2. on the last scheduled shift before the paid holiday or the first scheduled shift after the paid holiday

but who does not have a good reason for failing to report to work is not entitled to the paid holiday. An employee on paid vacation leave may qualify for the paid holiday.

To calculate the paid holiday pay owing to an employee with varying work hours, the employer must total the number of hours the employee worked in the 30 calendar days prior to the paid holiday and divide the total hours by the number of days worked in that same 30-day period.

Example: If an employee worked a total of 80 hours in the 30 calendar-day period prior to the holiday and it took 20 days to work the 80 hours, the employee would be entitled to four hours pay for the holiday.

Reference: Sections 6, 7, 8 and 9
Employment Standards Act

Pay

In general, an employee subject to the act must receive at least the minimum rate of hourly pay or equivalent. Contact the Branch at www.peiemploymentstandards.com or telephone (902) 368-5550 for details on the current minimum wage rate.

An employee must be paid either in lawful currency of Canada, by a cheque drawn upon a financial institution and honoured by that institution or by direct deposit into an account of the employee in a financial institution.

An employer must give notice to an employee of any reduction in the employee's regular rate of pay at least one pay period before the start of the pay period in which the reduction is to take place.

The Employment Standards Branch might not accept a complaint about unpaid pay if the employee has sued the employer in court or if the employer has taken a court action against the employee for theft or unpaid monies. Any action by the branch may be delayed until after final disposition by the court.

Pay Stubs

Every employer must furnish to every employee, at the time wages are being paid, a statement in writing, showing the following:

1. name and address of the employer and name of the employee;
2. the period of time or the work for which the employee is being paid;
3. the rate of wages to which the employee is entitled and the number of hours worked;
4. the gross amount of wages to which an employee is entitled;
5. the gross amount of any vacation pay being paid to the employee;
6. the gross amount of any pay in lieu of notice of termination being paid to the employee;
7. the amount and purpose of each deduction;
8. any bonus, gratuity, living allowance or other payment to which the employee is entitled; and
9. the net amount of money being paid to the employee.

Electronic Pay Stubs

An employer may provide a pay statement to an employee electronically if the employer provides to the employee, through the employee's place of employment:

1. confidential access to the electronic pay statement; and
2. a means of making a paper copy of the electronic pay statement.

Reference: Section 5.3
Employment Standards Act

Pay Transparency (Effective June 1, 2022)

New Pay Transparency provisions have been introduced into the *Employment Standards Act*.

In brief, the new rules for Pay Transparency are:

- No employer shall seek pay history information from a job applicant
- Employers who publish publicly advertised job postings must include information about the expected pay for the positions or the range of expected pay for the positions
- No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so because the employee has:
 - made inquiries to the employer about the employee's pay, or made inquiries or requested information relating to the employer's pay policies,
 - disclosed the employee's pay to another employee,
 - given information about the employer's compliance or non-compliance with the requirements of the Pay Transparency provisions to the Inspector or other Department staff, or
 - asked the employer to comply with the Pay Transparency provisions.

Reference: Sections 5.8, 5.9 and 5.10
Employment Standards Act

Pay Periods

An employee's pay period must not exceed 16 days. In the event that employment is terminated, an employee must be paid no later than the next regular pay period after the one in which their employment ceased.

All pay earned by an employee during a particular pay period must be paid to an employee on a pay day that is no more than five working days from the close of that pay period.

Reference: Section 5.2
Employment Standards Act

Piece Work

Some employers pay employees by the amount they produce and not by the hour. This arrangement is called "piece work." An employer cannot pay an employee less for piece work than the employee would have earned at the minimum wage for the number of hours worked.

Policy and Procedures Manuals

When an employer has an established policy which provides a greater benefit to the employee than that derived under the *Employment Standards Act*, the employer is required to honour that policy.

Powers of the Inspector

To ensure that the provisions of the act are complied with, an inspector may enter premises where a person is or has been employed at any reasonable time for the purpose of inspection, investigation or examination of conditions of employment. The inspector may inspect, examine and take extracts from all books, payrolls and other records of an employer that in any way relate to conditions of employment affecting any of the employer's employees.

Reference: Section 3(2)
Employment Standards Act

Records of Employment (ROE)

The Employment Standards Branch does not recover records of employment. The record of employment is a federal document over which the Employment Standards Branch has no control.

For further information, contact Service Canada at 1-800-OCANADA (622-6232)

The only time an inspector will deal with an ROE is during the investigation of a complaint filed under the *Employment Standards Act*.

Reporting Pay

A work shift must not be scheduled for less than three hours. Each time an employee is required to report to work, or for a work-related activity, they must be paid for at least three hours.

Staff meetings or other similar call-ins which are **optional** do not have to be paid for by the employer; but to encourage attendance, the employer has the option of paying the employee their regular rate of pay for the meeting period.

Staff meetings or call-ins which are **mandatory** must be compensated at no less than three hours.

The responsibility lies with the employer to effectively schedule their employees to avoid unnecessary call-ins and staff meetings.

Reference: Section 17
Employment Standards Act

Right to Return to Work

If a non-construction worker has been employed for a continuous twelve month period and is injured at work, their employer cannot dismiss, suspend, lay-off, penalize, discipline or discriminate against the worker because the worker suffered personal injury by accident provided the worker is entitled to compensation under the *Workers' Compensation Act*.

The employer is required to hold the employee's position, or an equivalent position, with no decrease in pay and with no loss of seniority or benefits accrued up to the commencement of that period, for the duration of two years.

Where a construction worker suffers an injury by accident to which the worker was entitled to compensation and in opinion of the Workers' Compensation Board is able to resume work, the employer shall permit the worker to resume work in the position

the worker held immediately before the commencement of the period in which the worker was entitled to compensation.

The construction project and position must exist at the time the worker is able to resume work.

For further information, contact the Workers Compensation Board at 902-368-5680 or 1-800-237-5049

Reference: Section 86
Workers Compensation Act

Sexual Harassment

Every employee is entitled to employment free from sexual harassment. The employer has an obligation to ensure that no employee is subjected to sexual harassment. Every employer has an **obligation to have a sexual harassment policy posted on their premises** where it is readily available to all employees. All employees must be made aware of the policy and its requirements. Employers may utilize the following generic policy established by the Employment Standards Branch.

- Sexual Harassment means any conduct, comment, gesture or contact of a sexual nature:
 - a) that is likely to cause offense or humiliation to any employee; or
 - b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.
- Every employee is entitled to employment free of sexual harassment.
- The employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment.
- The employer will take appropriate disciplinary measures against any person under its direction who subjects an employee to sexual harassment.
- Complaints of sexual harassment may be made to the employer or the supervisor. The supervisor to whom a complaint is made will ensure that it is brought to the attention of the employer.
- The employer will not disclose the identity of a complainant except where disclosure is necessary for the purposes of investigating a complaint or taking disciplinary measures in relation to a complaint.
- Employees are advised that the *Human Rights Act* (RSPEI 1988, Cap. H-12) prohibits discrimination on the basis of sex which has been interpreted as including sexual harassment. Any person alleging discrimination has a right to file a complaint with the PEI Human Rights Commission under the act. For further information, contact the Human Rights Commission at 902-368-4180 or 1-800-237-5031.

Reference: Sections 24 to 28
Employment Standards Act

Section 1(1)(d)
Human Rights Act

Special Leaves

1. Bereavement Leave
2. Compassionate Care Leave
3. Court Leave
4. Critically Ill Child
5. Crime Related Disappearance or Death of a Child
6. Domestic Violence / Intimate Partner Violence / Sexual Violence Leave
7. Emergency Leave
8. Family Leave
9. Maternity, Parental and Adoption Leave
10. Reservist's Leave
11. Sick Leave

The condition of special leave is that the employer-employee relationship remains in effect and the employee is guaranteed the right to return to work.

For the purposes of “special leave”, immediate family includes spouse, common law spouse, child, parent, brother or sister of the employee; extended family includes grandparent, grandchild, aunt, uncle, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law or daughter-in-law of the employee.

Bereavement Leave

a) An employee is entitled to a leave of absence of up to one day of paid leave and up to two consecutive days of unpaid leave on the death of member of the employee's immediate family member or in the event of a pre-natal pregnancy loss. The paid day of bereavement leave is calculated at the employee's regular rate of pay. When the paid day of bereavement occurs during an employee's paid vacation, the vacation is extended by one working day.

b) An employee is entitled to an unpaid leave of absence of up to three consecutive days on the death of a member of the employee's extended family.

An employee must begin bereavement leave no later than the day of the funeral or the memorial service.

Reference: Sections 23
Employment Standards Act

Compassionate Care Leave

An employee is entitled to an unpaid leave of absence of up to 28 weeks to provide care and support to a member of the immediate or extended family or to any person whom the employee considers to be like a family member. The person who is receiving care and support must have been diagnosed with a serious medical condition carrying with it a significant risk of death within 26 weeks.

If the employer requests it in writing, the employee must provide a certificate from a qualified medical practitioner.

This leave must be taken in at least one week intervals. The leave will begin on the first day of the week in which the leave commenced and will end on the last day of the week in which the family member dies or at the end of 28 weeks.

Reference: Sections 22.3
Employment Standards Act

Court Leave

Court leave is an unpaid leave of absence granted to an employee as a result of being summoned or selected to serve on a jury or required to attend as a witness at a hearing, application or a proceeding. The employer-employee relationship remains in effect during this leave and the employee is guaranteed the right to return to work.

Reference: Section 23.1
Employment Standards Act

Leave for a Crime-Related Disappearance or Death of a Child

An employee is entitled to an unpaid leave of absence of up to 52 weeks if the employee's child disappears as a probable result of a crime. If an employee's child dies as a probable result of a crime, an employee is entitled to an unpaid leave of absence of up to 104 weeks. A child is someone who is under the age of 18 years.

To be eligible for the leave, an employee must be:

- a) employed for a continuous period of at least three months by the same employer; and
- b) is a parent of the child. A parent includes someone who is an adoptive / foster parent; a guardian or a spouse of a parent of the child.

The leave begins on the first day of the work week when either the child disappears or dies as a probable result of a crime. An employee must take the leave in intervals of at least one week. An employee is not entitled to this leave if the employee is charged with a crime related to the disappearance or death of their child.

In the event of the child's disappearance, the leave ends on the last day of the work week after:

- a) 14 days have past since the child is found alive;
- b) 14 days have past since circumstances have changed and it no longer seems probable the child's disappearance was the result of a crime;
- c) 52 weeks have past since the first day of work week when the child disappeared; or
- d) the child is found dead.

In the event of the child's death, the leave ends on the last day of the work week after:

- a) 14 days have past since circumstances have changed when it no longer seems probable the child's death was the result of a crime; or
- b) 104 weeks have past since the first day of work week when the child was found dead.

The total amount of unpaid leave taken by two or more employees cannot exceed 52 weeks if the child has disappeared and 104 weeks if the child has died.

When an employee returns to work following the end of the leave, the employee must be accepted back into the same position or a comparable one with no loss of wages or benefits.

An employee must provide reasonable documentation to show entitlement to the leave if the employer makes a written request.

Reference: Section 22.12
Employment Standards Act

Leave for a Critically Ill Child

An employee is entitled to an unpaid leave of absence of up to 37 weeks within a 52-week period to provide care and support to a critically ill child. A critically ill child is someone under 18 years of age whose life is at risk as a result of an illness or an injury.

To be eligible for the leave, an employee must be:

- a) employed for a continuous period of at least three months by the same employer; and
- b) is a parent of the child. A parent includes someone who is an adoptive / foster parent; a guardian or a spouse of a parent of the child.

An employee must take the leave of absence in intervals of at least one week within the 52-week period. The leave begins on the first day of the work week when either a medical practitioner issues a certificate regarding the critically ill child or the employee begins the leave before the certificate is issued. The leave ends when either the child dies or the employee has taken 37 weeks of leave within the period of 52 weeks. The total amount of unpaid leave taken by two or more employees cannot exceed 37 weeks.

When an employee is a parent of two or more critically ill children, the leave begins on the first day of the work week when either a medical practitioner issues the first certificate regarding any of the critically ill children or the employee begins the leave before the certificate is issued. The leave ends when either the last of the critically ill children dies or the employee has taken 37 weeks of leave within the period of 52 weeks.

An employee must provide a copy of the medical certificate if the employer makes a written request. When an employee returns to work following the end of the leave, the employee must be accepted back into the same position or a comparable one with no loss of wages or benefits.

Reference: Section 22.11
Employment Standards Act

Domestic Violence / Intimate Partner Violence / Sexual Violence Leave

An employee who has been employed for a continuous period of three months or more is entitled to up to three days of paid leave and up to seven additional days of unpaid leave for domestic violence, intimate partner violence or sexual violence leave. The leave must be taken within a 12-calendar month period. At the employee's discretion the leave can be taken a day at a time or in one continuous period.

Domestic Violence, Intimate Partner Violence, and Sexual Violence Leave

Regulations set out the purposes for which the leave can be taken, calculation of the leave, the requirement for confidentiality of information related to an employee's request for leave, and the employer's ability to request written evidence respecting the employee's need for the leave from certain specified persons.

Reference: Section 22.4
Employment Standards Act
Employment Standards Act Regulations

Emergency Leave

This is an unpaid leave of absence from work, which continues for as long as an employee cannot perform their work duties because of a public emergency. This leave only applies when a government agency declares an emergency, for example because of a natural disaster or public health emergency. The leave does not apply to personal emergencies or illnesses that are not part of a declared emergency.

The leave is also available for employees who must care for a family member that is directly affected by a public emergency. To qualify for the leave for emergencies affecting family members **all** of the following conditions must be met:

1. A declaration, direction, order or other circumstance directly applies to the family member of the employee;
2. The family member of the employee requires care or assistance;
3. The employee is the only person reasonably available to provide the care or assistance; and
4. Providing the care or assistance prevents the employee from performing their work-duties.

The emergency leave ends when the employee:

1. is no longer unable to work because of the emergency, or
2. no longer needs to care for a family member affected by the emergency, or
3. when the emergency ends.

When the emergency leave ends, employees are to resume work in the position they held before the leave began. Where their original position no longer exists, the employer is responsible to put the employee into a comparable position, with the same wages and benefits.

An employee needs to give their employer notice as soon as possible that they intend to use this leave. The notice should be given before the leave begins. Where this is not possible, the notice should be given as soon as possible after the emergency leave begins. An employer can request evidence that supports

the employee's need to take the leave. The evidence must be reasonable in the circumstances and the employer cannot demand an employee produce a medical certificate to use this leave.

Family Leave

After six months continuous employment with an employer, an employee is entitled to unpaid leaves of absence of up to three days during a twelve-month period to meet immediate and extended family responsibilities.

Reference: Section 22.1
Employment Standards Act

Maternity, Parental and Adoption Leave

Maternity leave is an unpaid leave of absence granted to pregnant employees, which can last up to 17 weeks. The employee can start the leave up to 13 weeks before the expected date of delivery and may take leave up to six weeks after the date of delivery. Employees who have worked for the same employer for at least 20 weeks in the 52 weeks prior to the start date of the leave; and who are currently employed by the same employer are eligible for this leave.

An employer can require that an employee take an unpaid leave of absence up to three months if her pregnancy interferes with her work.

The *Employment Standards Act* also allows parents to take **parental leave** to care for their newborn children. To qualify, an employee must have worked for the same employer for at least 20 weeks in the 52 weeks prior to the start date of the leave and must also be currently employed by the same employer. Unpaid leave can be taken for up to 62 weeks. The total leave for both parental and maternity leave cannot exceed 78 weeks.

Adoption leave provides for 62 weeks leave. To qualify, an employee must have worked for the same employer at least 20 weeks in the 52 weeks prior to the start date of the leave and must also be currently employed by the same employer. The combined adoption leave for both parents cannot exceed 62 weeks.

To take maternity/parental/adoption leave, an employee must give the employer at least four weeks written notice of both the date on which they will be going on leave and the date they plan to return to work.

If an employee is taking both maternity and parental leave, she must take them consecutively and cannot return to work between the two leaves.

The employer may allow the employee to return to work early from parental or adoption leave if the employee provides the employer with two weeks written notice of the intended date of return.

When an employee returns from maternity/parental/adoption leave, he or she must be accepted back into the same position or a comparable one with no loss of pay, seniority or benefits.

Extended Leave

An employee can extend their maternity, parental or adoption leave by an additional five consecutive weeks if the child has a physical, psychological or emotional condition requiring additional parental care. This additional leave must begin immediately following the end of the maternity, parental or adoption leave.

To extend the leave, an employee must provide at least one week's notice to the employer before the employee's current leave expires. If requested by the employer, the employee must provide a certificate from a qualified medical practitioner verifying the child's condition.

Option to Maintain Benefits During Maternity/Parental/Adoption Leave

An employer is not obliged to provide benefit plan coverage to employees. However, if an employer does provide benefit plan coverage in the workplace then the employer must notify the employee in writing of the date beyond which the option to continue coverage can no longer be exercised by the employee for a maternity, parental or adoption leave. The written notice must be provided to the employee at least 10 days before the date in which the option to continue coverage can no longer be exercised. Examples of benefit plans include life insurance, accidental death, extended health and dental.

An employee who chooses in writing to continue coverage of a benefit plan during a leave must arrange to pay the costs required to maintain the plan — including the employer's share. The employer must process the documentation and payments as arranged.

Reference: Sections 18 to 22.01
Employment Standards Act

Reservist's Leave

An employee who is also a member of the Canadian Forces Reserves is entitled to an unpaid period of absence if that employee:

- a) has been employed by the same civilian employer for at least six consecutive months; and
- b) is required to be absent from work for the purpose of training or active duty.

The employee must provide as much notice to the employer as is reasonable in the circumstances including the anticipated start and end date of the leave. Such notice must be in writing.

If the employer requests it, the employee must provide verification of the need and duration of the period of service for the purpose of training or active duty.

When an employee returns from reservist leave, he or she must be accepted back into the same position or a comparable one with no loss of pay, seniority or benefits.

Sick Leave

After three months continuous service with an employer, an employee is entitled to unpaid leaves of absence of up to three days for sick leave during a twelve-month period. Paid sick leave is available to employees who have:

- 12 months continuous service, 1 paid day and 3 unpaid days per twelve-month period.
- 24 months continuous service, 2 paid days and 3 unpaid days per twelve-month period.
- 36 months continuous service, 3 paid days and 3 unpaid days per twelve-month period.

A paid day of sick leave is calculated at the employee's regular rate of pay.

Employees who qualify for paid sick days should receive them before the entitled unpaid sick days.

Reference: Section 22.2
 Employment Standards Act

Sunday Employment

If an employee began working with a retailer prior to March 17, 2007, he/she can refuse to work on any or all Sundays; if an employee began working with a retailer between March 17, 2007 and December 15, 2010, he/she can refuse to work on any or all Sundays between Christmas Day and the Friday before Victoria Day; if an employee began working with a retailer after December 15, 2010, he/she does not have the right to refuse to work on Sunday.

The employee must give the employer verbal or written notice of the refusal at least seven days before any Sunday to which the refusal applies.

Employees who are eligible to refuse to work on Sundays and who exercise this right can not be dismissed, suspended, laid off, penalized, disciplined or discriminated against by their employer.

Questions about the Retail Business Holidays Act can be directed to the Office of the Attorney General at (902) 368-5653.

Reference: Section 16.1
 Employment Standards Act

 Sections 1, 2 and 3
 Retail Business Holidays Act

Tips and Gratuities

Tips and gratuities are the property of the employee who earned them and no employer can require an employee to share a tip or gratuity with that employer. In addition, an employer can not pass on any administrative charges to an employee.

An employer, however, can adopt a policy of pooling tips and gratuities for the benefit of employees and must advise an employee in writing at the time of hiring that this policy is in effect.

Reference: Section 17.1

Employment Standards Act

Vacation Leave / Vacation Pay

An employee who works continuously for eight years or less with the same employer is entitled to an unbroken paid vacation of at least two weeks after working for 12 continuous months. An employee who works continuously for more than eight years with the same employer is entitled to an unbroken paid vacation of at least three weeks after working for 12 continuous months.

Pay for two weeks of vacation is calculated at four per cent of an employee's gross earnings; pay for three weeks of vacation is calculated at six per cent. Paid vacation leave must be given to the employee no later than four months after completion of the 12-month period (This four-month period can be varied if the employer and employee agree).

The employee must be given advance notice of one week when their vacation is to begin. At least one day before the employee's vacation begins, the employee – depending upon length of continuous employment with that employer – must be paid either four or six percent of the employee's wages for the 12-month period the employee earned the vacation.

In the event that employment is terminated and the employee has worked less than 12 continuous months from the time the employee was last eligible for a paid vacation, the employee is entitled to:

1. four percent of gross earnings as vacation pay if the employee has worked for eight continuous years or less for the employer; or
2. six percent of gross earnings as vacation pay if the employee has worked for more than eight continuous years for the employer. The employee must receive the vacation pay before the end of the next regular pay period after their employment ceases.

Part-time, Year-round Employment

An employee who works for an employer:

1. for 12 continuous months; and
2. works for less than 90 per cent of the employer's normal working hours

can request vacation pay instead of vacation time.

An employee can request vacation pay without taking vacation time by providing written notice to the employer before the end of the 12-month period of employment. The employer, upon receipt of the notice, must pay vacation pay to the employee no later than one month after the end of the employee's 12-month period.

Seasonal Employment

For seasonal and short-term employees, an employer may include vacation pay on an employee's pay provided:

1. the employer can provide proof that the employee knows the vacation pay is included with his/her pay;
2. the employer's payroll records show that vacation pay was included in the employee's pay; and
3. the employee's pay statement shows that vacation was included in his/her pay.

If the above-noted criteria are not maintained, the inspector may deem vacation pay unpaid and order payment.

Any vacation pay agreement between an employer and employee which is better than that provided by the act takes precedent.

When a paid holiday occurs during the employee's vacation period, the employee's vacation shall be lengthened by one working day and the employee paid for that day.

Statutory deductions apply to vacation pay.

Sick leave with pay cannot be considered as vacation with pay or pay in lieu of vacation.

Reference: Sections 11 and 11.1
 Employment Standards Act

Wait Time

An employer **who asks or tells an employee to wait at the place of work** must consider that time as work time. This means that the employer must pay the employee for all hours **including waiting time**.

Work Periods

It is not unreasonable for an employer to request an employee to be on the work premises 15 minutes early to confirm they are ready for their shift. If an employee commences work in that 15 minutes, they must be paid for the time worked.

Employees working scheduled shifts cannot be required to work beyond the shift for no pay.

Youth Employment Act

The *Youth Employment Act* governs when and under what circumstances young persons may be employed in Prince Edward Island. The laws about young persons' employment do not apply to people who are 16 years and over.

No one is to employ a young person under the age of 16 in any work that risks the young person's well-being. **No employer is allowed to employ a young person in construction.**

In general, no employer can employ a young person:

1. between 11 pm and 7 a.m.;
2. during normal school hours except for recognized vocational training or an apprenticeship program;
3. for more than
 - a) three hours on a school day
 - b) for more than eight hours on a non-school day; or
 - c) for more than 40 hours on a non-school week.

An inspector may enter any premises in which a young person is employed to ensure compliance with the *Employment Standards Act*.

An employer who employs a young person is required to:

1. act reasonably in assigning duties, taking into account the age, knowledge, education and work experience of the young person;
2. identify any potential danger to health and safety and give appropriate instruction to the young person;
3. personally supervise the work of the young person or ensure that at all times the work of the young person is supervised by an adult who has experience of the work; and
4. provide adequate training and courses of instruction before authorizing the young person to perform unsupervised work.

Reference: Sections 4, 5, 6, and 8
Youth Employment Act

