

Rural Municipal Administrators' of Saskatchewan Growing Through Virtuality

May 19, 2021

Employment Standards Division,
Ministry of Labour Relations and Workplace Safety

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About this Presentation

- Presentation length - 45-50 minutes
- Questions – 10 -15 minutes

Topics

- Overview
- Salaried Employees
- Manager Overtime Exemption
- Professional Overtime Exemption
- Discriminatory Action
- Employment Leaves
- Layoff and Termination
- RM Overtime Exemption
- Public Holiday Pay for Construction Employees
- Resources
- Questions

OVERVIEW

*The
Saskatchewan
Employment
Act*
(Known as “The SEA”)

being

Chapter S-15.1* of the *Statutes of Saskatchewan, 2013* (effective April 23, 2014), as amended by the *Statutes of Saskatchewan, 2014*, c.E-13, and c.27.

*NOTE Pursuant to section 33(1) of *The Interpretation Act, 1999*, the Consequential Amendment sections, schedules and/or tables which the Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Act. Please refer to the separate Chapter to obtain consequential amendment detail and specific.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and to original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Part II: Employment Standards

Part III: Occupational Health and Safety

Part VI: Labour Relations

Employment Standards and Salaried Employees

Salaried Employees Paid By the Month

Some employers and employees assume that:

- Salaried employees are exempt from the hours of work and overtime rules which apply to employees paid by the hour.
- Salaried employees who work on a public holiday earn one day off at regular pay for the public holiday.
- Salaried employees who work on a public holiday receive extra pay for working on the public holiday but do not earn public holiday pay as well.

Salaried and Non-Salaried Employees

Employees paid monthly

- Employees can only be paid by the month if they are on a monthly salary.
- Employees paid for work extending beyond a month must be paid at least once a month.

Employees not paid by salary should be paid

- At least twice per month or
- Bi-weekly - every 14 days.

Monthly Salaried Employees

Monthly salaried employees must be paid at least the minimum wage. At the current rate of \$11.45 per hour this means at least \$1984.67 per month

Salaried employees earn:

- Overtime after eight or 10 hours (if regular daily hours are 10) each day and 40 hours/week (7 days in a row).
- Overtime after working more than 32 hours in a week with a public holiday.
- Public holiday pay based on 5% of their regular pay in the 28 days immediately before the public holiday, not including overtime pay.
- 1.5 times their hourly pay rate for all hours worked on a public holiday.
- Reporting for duty pay (Minimum of three hours at their hourly rate of pay).
- Vacation pay based on years 3/52's of total annual wages during the first 9 years of employment and 4/52's of total annual wages after completing 10 years of employment.

Providing Salaried Employees Paid Time-off when they work on a Public Holiday

- Extra pay for each hour worked on a public holiday is 1.5 times the employee's regular hourly wage rate.
- If an employer provides time-off at their regular pay rate the employee must receive at least 1.5 days off.
- Payments should be identified on pay stubs and records.

Managerial Exemption

- *The Employment Standards Regulations* exempt employees who “*perform services that are entirely of a managerial character*” from the minimum standards for hours of work and overtime including:
 - Work schedules, overtime hours and overtime pay after 8 and 40 hours, modified work arrangements, required period of rest and meal breaks.
- These exemptions only apply to employees who’s jobs require them to regularly perform services of a managerial character.

Definition of “Manager”

- The term “manager” is not defined in the legislation.
- The definition of “employer” in section 2-1(g) of the Act includes *“every...manager...who has control or direction of one or more employees...or is responsible...for the payment of wages...”*
- In other words, “employer” equals “manager.”
- The definition of employer includes “managers” because they represent the employer or the owner of the business.

Managerial Employees

Managerial employees are entitled to be paid:

- their total wages in accordance with the employee's employment contract or if applicable, their collective agreement,
- an amount at least equivalent to the current minimum wage; and
- reporting for duty pay of a minimum of three hours at their regular hourly rate of pay for reporting for work

Managerial positions typically:

- Supervise, controls and directs work of others.
- Discipline subordinates, individually or as part of a management team.
- Evaluate subordinate's performance.
- Hire and promote subordinate staff.
- Assign work and duties with some independence and discretion.
- Supervise a collective agreement, where the workplace is unionized.
- Negotiate their own remuneration individually rather than collectively.
- Have significantly greater level of remuneration, vis-à-vis, non-managerial staff.
- Participate in carrying out the employer's budgets and performance requirements.

* For case law, see *Westfair Foods Ltd. v. Saskatchewan (Director of Labour Standards)* [1995] S.J. No. 620 Q.B. No. 3984 of 1994 J.C.S.

Who is not a “Manager”

- A “manager” is not an employee who:
 - is a lead hand or team leader whose supervisory duties are ancillary to the work he or she performs; or
 - acts in the manager’s absence on a temporary basis.

All other Employment Standards Apply to Managers

- Managers are only exempt from the hours of work and overtime rules.

For example, they are entitled to:

- the minimum wage or greater for all hours worked;
- vacations and vacation pay;
- public holiday pay (often a day off at regular pay);
- pay at 1.5 times their regular rate for hours worked on a public holiday;
- notice or pay instead of notice when laid off or terminated and;
- reporting for duty pay.

“Professional” Employees

- “Professional” is not defined in the legislation.
- A “professional” is someone who:
 - requires a specific education and professional designation;
 - works under an Act, meaning a regulated profession;
 - works under the direction of a self-governing body; and
 - can go into business independently.
 - Examples: Engineers, lawyers, accountants, medical doctors, K-12 teachers, etc.

Professionals Exemption

The Employment Standards Regulations exempts professional practitioners registered or licensed in accordance with any Act as well as medical interns, students of law and accountancy and other trainees and students from:

- Overtime hours
- Overtime pay after 8 and 40 hours
- Modified work arrangements

Section 2-1(d) of the SEA:

EMPLOYEE PROTECTION AGAINST “DISCRIMINATORY ACTION”

The SEA provides protection from Discriminatory Action when the Employee requests the Act be applied

When an employee:

- requests or requires the employer to comply with any right or benefit, restriction or prohibition under employment standards

Examples

- Employee requests an employer to comply with the rules set out for the calculation of public holiday pay.
- Employee asks the employer for one day-off in seven or to provide a pay record.

“Discriminatory Action” defined.

- Refers to any action or threat of action by an employer that does or would adversely affect an employee with respect to any:
- terms or conditions of employment or
- opportunity for promotion.

Protections From Discriminatory Action

An employer cannot take discriminatory action against an employee because the employee:

Examples:

- is pregnant or is temporarily disabled because of pregnancy;
- has applied for or taken an employment leave or is otherwise absent from the workplace as allowed by the legislation; or
- has requested a modification of the employee's duties or a reassignment to other duties because of a disability, including a temporary disability due to pregnancy.

If Discriminatory Action is taken for one of the Protected Reasons

- If an employer is found to have taken discriminatory action, the employer must:
 - reinstate the employee;
 - pay back lost wages; and
 - remove any record relating to the matter from the employee's file.

Examples

The Division has investigated several cases where employees have been terminated because they:

- were on a job-protected leave or off the job because of illness or injury;
- required an accommodation due to disability; or
- were in a protected category under human rights.

Equal Pay

- Employees doing similar work are protected against being paid differently because of their gender or any other protected ground under *The Saskatchewan Human Right Code*.
 - ...unless there is a formal seniority or merit system that explains the difference.

Protected Categories in the Human Rights Code

The Saskatchewan Human Rights Code prohibits discrimination based on the following grounds:

- Religion or creed,
- Being single or married,
- Having or not having children,
- Sex or sexual orientation,
- Pregnancy or related illness,
- Gender identity,
- Disability
- Age
- Colour, ancestry, nationality
- Birth place, race or perceived race, receiving social assistance

Division 2, subdivisions 10 and 11 of of Part II of *The Saskatchewan Employment Act*

EMPLOYMENT LEAVES

Employment Leaves

Family Leave

- Maternity, adoption, parental
- Bereavement
- Crime related child death or child disappearance

Medical Leave

- Organ donation
- Critically ill adult care
- Critically ill child care
- Compassionate care

Service Leave

- Reserve force
- Nomination/ election leave, candidate/ public office
- Citizenship ceremony

Other Leaves

- Public Health Emergency
- Interpersonal Violence

Subdivisions 10 and 11 of Division 2 of Part II of *The Saskatchewan Employment Act*

COMMON RULES FOR ALL EMPLOYMENT LEAVES

General Rules for Employment Leaves

Employee qualifying period	More than 13 continuous weeks of employment with exception of some leave i.e. Public Health Emergency Leave
Employee notice to employer	Four weeks in most cases; otherwise – as far as possible in advance
Medical Doctor/Nurse Practitioner note or other proof (e.g. adoption documents)	Where required by legislation

General Rules for Employment Leave

Benefit participation	Subject to the provisions of the benefit plan, an employee continues to participate in the prescribed benefit plan for the length of the leave or leaves, if the employee pays the contributions required
Seniority accrual	Yes, up to 78 weeks
Employee notice of return to work	Four weeks in most cases
Reinstatement	Same job if leave is 60 days or less; or comparable job if leave is longer than 60 days
Wage protection while on leave	Yes, but time off work is unpaid in most cases

Public Health Emergency Leave

This leave protects jobs when employees have been directed to self-isolate or to care for their child or an adult family member who has been affected by an order or direction from:

- Their employer;
- The government;
- Their doctor; or
- The chief medical health officer of the province.

Public Health Emergency Leave

- Employees are entitled to the length of leave determined by the order or direction;
- Leave is unpaid unless the employer authorizes the employee to work from home;
- Employees don't have to work for a minimum number of weeks or provide a doctor's note to access this leave;
- Employees are not required to give notice but are encouraged to be in regular contact with their employer;
- Employees who have been informed by their employer they are needed to critical public health and safety services are not eligible for this leave, although they may be directed by a doctor, the Government, or the chief medical officer to isolate and may then access the leave.

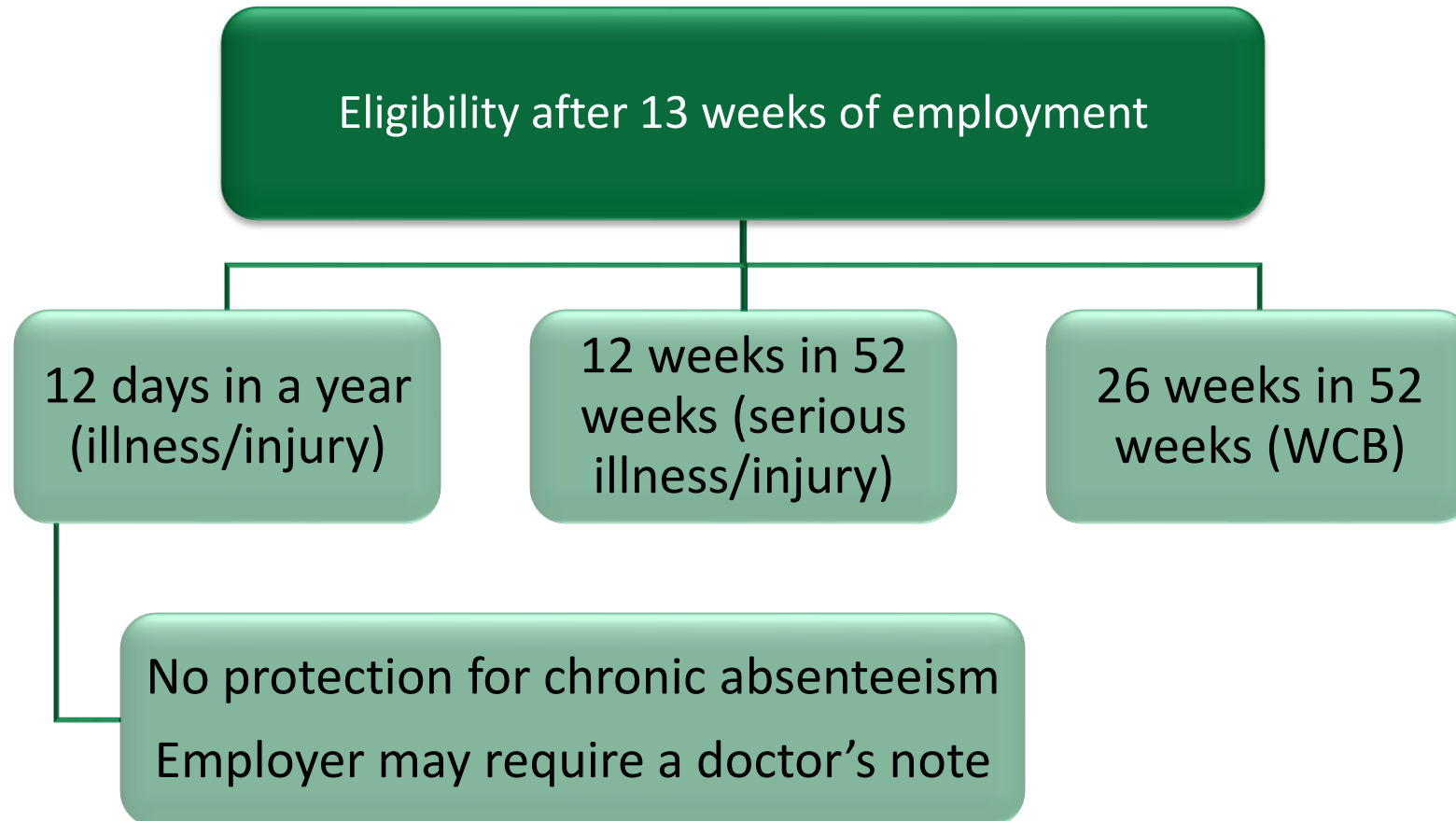
Employee Entitlements on Approved Leaves

Employee entitlements continue to accrue while the employee is on an approved leave:

Examples:

- Seniority accrual and wage protection
- Vacation entitlements
- Benefit plans (Plans may require the employee to pay the premiums).

Job Protection for Ill, Injured, or Disabled Employees



See section 2-40 of SEA.

Protection to Access Federal Recovery Benefits

- Employees are protected from discriminatory action by their employer if they are away from work to access the Canada Recovery Sickness Benefit or the Canada Recovery Caregiving Benefit.
- Employees are not required to provide proof they have applied for the federal benefit or a medical note from their doctor.
- Employees are required to provide as much notice as possible to their employer of their absence and return to work.

Duty to Accommodate Disabled Employees

- An employer is required to modify an employee's duties or re-assign the employee to other duties if the employee becomes disabled.
- Accommodation will typically require participation by both the employer and employee.

Protection Covers Employees Who Must Take Leave From Work To Care For Immediate Family Members

“Immediate family” means:

- (i) the employee’s spouse, parent, grandparent, child, grandchild, brother or sister or the spouse of the brother or sister; or
- (ii) the employee’s spouse’s parent, grandparent, child, grandchild, brother or sister or the spouse of the brother or sister.

Division 2, Subdivision 12 of Part II of *The Saskatchewan Employment Act*

LAYOFF AND TERMINATION

Rules for Ending Employment

The Saskatchewan Employment Act provides the minimum requirements employers must follow when laying off and terminating employees.

Rules for Ending Employment

Employers can let an employee go for any lawful reason, providing the applicable notice period or pay instead of notice is provided.

Definitions for Layoff and Termination

Layoff	Notice and Pay Instead of Notice	Termination
A interruption of services for longer than six work days or shifts in a row, with the intention of returning to work.	Employees who have more than 13 weeks of employment with the employer must be provided notice or pay instead of notice before a lay-off or termination.	Defined by the courts to be a: <ul style="list-style-type: none">• Dismissal by the employer

Notice and Pay Instead of Notice

Notice

- Means the required number of weeks the employee can work before the job ends.
- The format for a written notice is not regulated, however it requires the employer to make the employee aware of the clear date of when employment ends.

Pay Instead of Notice

- Means the employee's normal wages for the required notice period.
- Provided where the employer does not want the employee to work for the notice period.

Minimum Notice Periods (Act, 2-60)

Period of Employment	Notice or Pay Instead of Notice
More than 13 consecutive weeks but one year or less	One week
More than one year but three years or less	Two weeks
More than three years but five years or less	Four weeks
More than five years but 10 years or less	Six weeks
More than 10 years	Eight weeks

When is Notice is Not Required

Notice or pay instead of notice is not required if the employee:

- has less than 13 consecutive weeks of service with the employer;
- refuses to work out a notice period, or otherwise voluntarily resigns;
- provides just cause for immediate dismissal; or
- is working under a contract with a definite end date, such as a seasonal employment contract.

Breaks in Service

Break in service

- A break in service longer than 14 days followed by a rehiring resets the right to notice or pay instead of notice to zero.
- Employee must work for more than 13 weeks to re-qualify for entitlement to notice.

Absences that are not breaks

- Apprenticeship training
- Approved vacation
- Job-protected leave e.g. maternity
- Absence approved by employer

Group Termination

- Group termination occurs when an employer terminates 10 or more employees in one community within a four-week period.
- This includes a layoff that has no recall date or that is longer than 26 weeks. The employer must give notice of group termination using the following criteria:
 - 10 – 49 employees - 4 weeks
 - 50 – 99 employees – 8 weeks
 - 100 or more employees – 12 weeks

Group Termination

Notice must be in writing and given to:

- The Minister of Labour Relations and Workplace Safety;
- Each employee whose employment will be terminated;
- Any union representing the employee.

Notice must include:

- The number of employees being terminated or laid off;
- The effective dates of the termination or layoff;
- The reasons for the termination or layoff.

Exceptions

Employers are not required to give notice of group termination if the employees are:

- working on an on-call basis;
- employed for a definite period;
- employed on a project for a period that is foreseeable;
- offered and refuse reasonable alternate work;
- employed on a seasonal basis;
- laid off for a period of less than 26 weeks; and
- unable to work because of an unpredictable event;
- employees are laid off during a public health emergency period.

Public Emergency Layoff Provisions

- Employers do not have to provide notice or pay instead of notice for temporary layoffs during a public health emergency order of the chief medical health officer or an emergency declaration of the Government of Saskatchewan;
- Employers do not have to provide notice or pay instead of notice for layoffs during and up to two weeks after a public health emergency period;
- The additional two weeks are intended to provide employers and employees time to prepare for the return to work;
- Employees are to be scheduled to return to work on or before the end of the two weeks; otherwise, their employment is considered to be terminated and pay instead of notice is due.

Public Emergency Layoff

- During the layoff, employees are still considered employees but are able to immediately access supports provided through provincial and federal programs.
- Time on layoff is included in the period of employment used to calculate pay instead of notice, as well as wages prior to layoff.

Group termination During a Public Emergency

- Employers are not required to give group termination notice to employees or their union during a public health emergency period.
- However, employers are required to notify the Minister of Labour Relations and Workplace Safety as soon as possible after termination.

IMMEDIATE DISMISSAL (WITHOUT NOTICE) WITH JUST CAUSE

Just Cause

- Employment Standards regulates notice and pay-instead of notice.
- “Just cause’ is determined in Common Law by judges in courts
- Some examples of just cause are:
 - serious misconduct;
 - absenteeism, and
 - insubordination
 - failure to meet performance expectations

Termination for Just Cause

Just Cause

- In a just cause dismissal, notice or pay instead of notice is not required and the employer only needs to pay the employee up to the last day of work.

However

- Documentation/justification will be required if there is an investigation.
- The employer's actions will be assessed against:
 - objectivity;
 - proportionality;
 - burden of proof; and
 - documentation

Termination of Employees in Protected Categories

- Terminating or laying off employees in protected categories could constitute discriminatory action ***unless*** it is for “good and sufficient cause” unrelated to the protected grounds.
- Employees in protected categories include:
 - employees on job protected leaves;
 - ill, injured, or disabled employees;
 - whistleblowers;
 - employees requesting modified duties or reassignment as an accommodation.
- See section 2-8 of the SEA.

Example

- An employee complains to her employer that her manager is not following the correct rules for an application of maternity leave.
- The manager terminates the employee without notice or pay-instead of notice, claiming poor work performance.
- The employee files a complaint with Employment Standards.
- The employer will be required to establish that the reason for the termination was unrelated to the complaint about the incorrect application of maternity leave rules.

The Employer must prove...

- The employer has the onus to prove just cause exists.
- If the employer doesn't show just cause, notice or pay instead of notice is required.
- Employee has a right to independent legal representation and may alternatively take court action.
- Employers may want to consider legal advice before a decision to terminate.

Payment of Final Wages

- Departing employees must be paid out within 14 days of leaving the job.
- If a payday falls within the 14 days, the employee must be paid for the pay period on that day.
- All remaining wages must be paid out within 14 days of employees last day of work.
- Sections 2-33(3) and 2-33(4) of the SEA.

Reminders

- Banked overtime cannot replace a notice period.
- Vacation days cannot replace a notice period.
- Banked overtime payouts cannot replace pay instead of notice.
- Vacation pay cannot replace pay instead of notice.

Section 14(1)(b) of *The Employment Standards Regulations*

HOURS OF WORK AND OVERTIME EXEMPTION RURAL MUNICIPAL ROAD CONSTRUCTION WORKERS

Overtime and Hours of Work Exemption For Rural Municipal Road Construction Workers

- *The Employment Standards Regulations* exempts:
 - *employees of a rural municipality who are engaged in road construction or maintenance or any duties in connection with the servicing or repair of road construction or maintenance equipment done on the job...*

...From the rules governing maximum hours of work in a week, overtime hours, and overtime pay.

“Road Construction and Maintenance”

- Includes:
 - road and bridge construction, maintenance, and repair; and
 - related services, such as working on culverts, hauling gravel, cutting grass along roadways, and dealing with signage.

Overtime and Hours of Work Rules Affecting RM Road Construction Workers

- Under the exemption, RM road construction workers doing road construction or maintenance work:
 - can be required to work more than 44 hours in a regular work week or 36 hours in a week with a public holiday;
 - are not entitled to daily or weekly overtime pay; and
 - cannot be covered by a Modified Work Arrangement or a Time Bank.

Work Time Covered by the Overtime Rules

Regular hours of work and pay rules apply to:

Employees who are engaged in any duties in connection with the storage, servicing or repair of road construction or maintenance equipment that is done in the municipality's repair shop or warehouse.

Exempt and Non-exempt Work

Examples of Exempt Work

- Road construction or maintenance;
- Working on road signage and culverts; and
- Servicing or repairing road construction or maintenance equipment in the field.

Examples of Work Covered by Overtime

- Storing, servicing or repairing road construction or maintenance equipment in the warehouse or repair shop of the rural municipality;
- Taking garbage at the municipal landfill;
- Clearing sidewalks in resort communities governed by the RM;
- Delivering pest control products to farmers; and
- Mowing grass in cemeteries and vacant lots.

Overtime Depends on Where the Job Ends

Example #1 – Overtime Exempt

- Employee works four hours in the shop and then eight hours in road construction.
- The employee has worked 12 hours.
- The employee earns regular wages for the extra 4 hours because overtime was earned during road construction.

Example #2 - Covered by Overtime Rules

- Employee works eight hours in road construction and then four hours in the shop servicing equipment.
- The employee has worked for 12 hours.
- The employee earns four hours of daily overtime because the overtime threshold was crossed in the shop.

RM Road Construction Workers are Covered by the Rest of Part II of the SEA

- For example, they must receive:
 - reporting for duty pay;
 - at least the minimum wage for each hour worked;
 - work schedules and notice of a change to a schedule seven days in advance;
 - a 30-minute unpaid meal break within every five hours of work;
 - at least eight consecutive hours of rest in every 24-hour period;
 - at least one day off in every seven;
 - vacations and vacation pay; and
 - notice or pay instead of notice.

Overtime Exemption only applies to Road Construction Workers

- Regular overtime rules apply to RM employees not performing road construction or maintenance.
- For example, employees who work in the office, in building construction, water treatment, information technology work, etc.

Averaging Hours Permits

- Employers must apply to the Director of Employment Standards for permission to average the hours of work.
- Unionized workplaces must obtain written agreement of the trade union representing the employees affected by the permit.
- Authorization of permits require approval of the majority of employees affected.
- <https://www.saskatchewan.ca/business/employment-standards/work-schedules-permits-and-modified-work-arrangements/permits>

Public Holiday Pay For Hourly Paid Construction Work

Public Holiday Pay

- Four per cent of gross wages in a calendar year (excluding overtime and vacation pay)
- Must be paid by December 31st
- Can be paid on each cheque
- See section 25(2) of *The Employment Standards Regulations*

Other Pay - Applicable

- Overtime in the week of the public holiday
- Extra pay for working on the public holiday

Public holiday pay for office employees and others who are not hourly paid construction workers is five per cent of regular wages in the 28 days before the public holiday.

“Construction”

- Regarding public holiday pay “construction” includes:
 - the construction, reconstruction, remodeling, repair, renovating, decoration or demolition of any building;
 - the construction, reconstruction or repair of:
 - any sewer, drain or gas work;
 - any electrical, plumbing or heating undertaking;
 - **any road or highway or part of a road or highway; or**
 - any other work of construction; and includes services and undertakings that are incidental to the activities described in clauses (a) and (b).

RESOURCES

Contacts and Resources

- Employment Standards Division 1-800-667-1783
- Eight district offices across the province
- employmentstandards@gov.sk.ca
- saskatchewan.ca/business/employment-standards
- [Employment Standards Training Page](#)
- www.publications.gov.sk.ca

Understanding Employment Standards in Saskatchewan Know Your Rights and Responsibilities



Part II of *The Saskatchewan Employment Act*: Employment Standards

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