

CONTRACT INTERPRETATION MANUAL

Article 45 LEAVE - VACATION

Interpretation Guidelines

General Comments

There are 2 factors addressed by vacation provisions, they are:

1. Vacation entitlement; and
2. Application of vacation entitlement.

Article 45.01 (A) - Vacation Entitlement

All regular employees and casuals in temporary positions under Article 17.02 (B) and temporary appointments pursuant to Article 11.04 (G) (5) are entitled to time away from work for vacation leave.

Vacation is based on the regular employee's length of service as a regular employee.

Vacation entitlement is based on a 7.5 hour day.

Article 45.01 (B) - Cut-Off Date

Vacation is accrued from July 1 to June 30 of the following year.

Employees accrue vacation in one year and take it in the next calendar year. For example, an employee accrues 20 days vacation between June 30, 2019 and July 1, 2020 and takes it between January 1, 2020 and December 31, 2020.

Article 45.01 (C) - RFT Employees

A RFT employee receives their regular pay during their vacation based on their continuous service with the Employer reached before July 1 of a calendar year.

Continuous service applies to:

1. Regular employees who transfer from one PCA Employer to another through the portability provisions of Article 51.02 (C); or
2. Regular employees who change status from RFT to RPT.

Periods of time working as a casual do not count in the calculation of continuous service for the purpose of vacation entitlement. If an employee transfers from regular to casual status, and then transfers back to regular status, all time worked as a regular both pre and post casual status counts towards accrual of vacation entitlement.

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Article 45.01 (D) - RPT Employees

RPT employees are entitled to vacation leave on a prorated basis. Entitlement to vacation is calculated from July 1 to June 30 of the following year.

Vacation entitlement is calculated based on all days paid during the accrual period including extra shifts in addition to the base FTE but excluding OT and uses a formula to provide them with the number of regularly scheduled days away from work appropriate to their length of service. For example, a regular employee who has completed 12 years of service:

1. A RFT employee is entitled to 28 vacation days or 210 hours of vacation; or
2. A RPT employee working a 0.75 rotation (based on days paid) is entitled to 21 vacation days based on: $28 \times 0.75 = 21$ days or 157.50 hours vacation.

A RPT employee can only schedule vacation according to their FTE. Extra shifts worked above FTE are banked and paid out. For example:

1. A RPT employee scheduled to work 0.75 FTE calculates vacation entitlement as 21 scheduled work days away from work ($28 \text{ days} \times 0.75 = 21$ scheduled work days);
2. If the RPT employee picks up extra shifts to increase the FTE to 0.9 FTE during the accrual period their vacation pay is calculated as 25.2 days ($28 \times 0.9 = 25.2$ days of vacation pay); and
3. The employee only gets to take 21 scheduled work days away from work based on their normal work schedule, but gets vacation pay top up to account for additional days of vacation earned for that time period (i.e. 25.2 days) (Royal Columbian Hospital and BCNU, February 17, 1989 (Hope)).

Many Employers balance the extra vacation pay at year-end along with the part days of vacation entitlement. However total entitlement can be requested under Article 45.06 Vacation Pay Advance.

Article 45.01 (E) - Employees with Less than One Year's Service by July 1 Cut-Off

For employees hired after July 1 but before June 30 of the following year, vacation entitlement is calculated using the formula in the PCA.

This partial year's entitlement must be taken before December 31 of the calendar year.

Any fraction of a day is given as paid time off at a mutually agreed to time. The Employer is required to pay out the remaining vacation by December 31 of that year if a mutually agreed time cannot be determined during the calendar year.

Article 45.02 - Terminating Employees

Applies to regular employees who terminate employment with the Employer for any reason (this includes being terminated for cause).

An employee with more than 12 months service receives pay for vacation entitlement accrued to the date of termination less any vacation paid, in accordance with the formula in the PCA.

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Regular employees may be able to “port” their years of service to other PCA Employers for the purpose of calculating vacation entitlement.

Article 45.03 - Supplementary Vacation

This applies to regular employees who reach a minimum anniversary of 25 years of continuous service.

RPT employees have their supplementary vacation time prorated but the proration has to consider the number of years the RPT employee might have worked full-time.

1. In Royal Columbian and BCNU, October 17, 1994 (Morrison), the Arbitrator wrote: “A reading of the entire collective agreement, together with the Memorandum of Agreement, established that a part-time employee was not entitled to receive superior benefits to a full-time employee. Supplementary vacations being a benefit fell within Article 11.03 (B), which stated that “regular part-time employees were entitled to all benefits of the agreement on a proportionate basis”. A result which gave part-time employees the same supplementary vacation as a full-time employee, when the full-time employee had worked twice as long, was unfair, and could not be accepted.”
2. The Arbitrator went on to say “It is not inconsistent, however, to calculate the entitlement for part-time employees on a proportionate basis by considering the number of years a part-time employee had worked full-time in order to calculate her proportionate share of the additional hours of supplementary vacation.”

Supplemental vacation may be used anytime during the 5 years, and may be split between the years, before the next supplemental vacation entitlement occurs. Supplemental vacation must be booked and taken it cannot be paid out.

Article 45.04 - Scheduling of Vacation

Vacation can be taken any time during the year. Operational requirements apply. Employers have policies limiting the number of employees who can be off at one time. The test of reasonableness applies to these policies.

The selection and posting of approved vacation must be completed by December 31 of the preceding calendar year unless there is a mutual agreement at the worksite on another date. It is recommended that employees use the date in the PCA as that is more easily enforced. Any Worksite agreements to vary the date need to be in writing and filed at the Union office so they can be enforced if disputes arise.

New in 2019 an employee may hold back up to one block of work from the scheduling process in each calendar year. The amount of time is laid out in the regular day and extended day memorandum, it is up to 37.5 hours for nurses working the 7.5 hour day and up to 45 hours for those working an extended hour day. This hold back time must be scheduled and approved by August 1 of that Calendar year, any vacation not scheduled by the employee following the timelines, may be scheduled for the employee by the Employer.

Vacation may be divided, and employees may request to have it scheduled by seniority or on a rotating basis. Where a consensus cannot be reached, seniority will prevail.

1. An employee who splits their vacation time does not receive their choice of when they wish to take the remainder of their vacation until all the others have made their first choice.

The interpretations in this manual are provided on a *without prejudice, errors and omissions basis* to any position Unions in the Nurses' Association of Bargaining Agents may take in any arbitral proceeding or any other forum.

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2. Employees who do not exercise their rights within the selection time are deemed to have forfeited their seniority rights regarding choice of vacation time.

Vacation entitlement accrued to June 30 must be taken before January 1 of the following year unless operational requirements interfere.

The Employer may be required to pay out vacation, where an employee is absent from work on WSBC, and cannot take their vacation before the end of the calendar year (Cowichan District Hospital and BCNU, July 5, 1989 (Hope)).

Employees cannot be required by the Employer to change their vacation as Article 45.05(D) specifically requires that once posted, vacations can only be changed by mutual agreement. Where an Employer directs an employee to work their vacation or attempts to convince an employee to work during their previously scheduled vacation, this could be considered a breach of the PCA and grieved seeking payment of overtime rates at a minimum.

Where an Employer cancels an employee's vacation due to operational requirements, the employee may carry over up to 7 days of vacation to be used by no later than June 30 in the following year.

Employees should ask for the rationale for the cancellation.

Article 45.04 (D) – Vacation Hold Back

Employees now have the option to set aside up to 37.5 hours or 45 hours, depending on their shift length, out of the total number of vacation leave hours they are entitled to each year. These hours must be scheduled by August 1 and are subject to the operational requirements.

For those employees who choose to hold back vacation hours, it is important to remember that all requests made after December 31, including those pertaining to this block of time, are not required to be approved in order of seniority.

Hours set aside as 'vacation hold back' are not the same as hours that are 'carried over' into the following year.

Article 45.04 (F) – Vacation Carry Over

All unused vacation hours from the year prior will be paid out at the employee's straight-time rate of pay by the last pay period of the following February. Employees may only carry over unused vacation hours at the end of the calendar year in the following circumstances:

1. When the vacation is cancelled due to operational requirements, an employee can carry over up to seven (7) days of vacation to be used no later than June 30; or
2. When an employee is on a maternity leave (Article 38.06 (B)), they have the option of carrying over vacation hours accrued during the leave.

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Article 45.05 - Vacation Entitlement Earned During Vacation

This clarifies that vacation is earned during vacation periods, except for accrued entitlement paid on termination.

Article 45.06 - Vacation Pay Advance

The Employer is required to make vacation pay available to an employee at least 7 days before the start of their vacation when the employee has given 14 days written advance notice.

Arbitration Awards

1. Royal Columbian Hospital and BCNU, February 17, 1989 (Hope). RPT employees cannot schedule more vacation time away from work than a RFT employee. In other words, a RPT employee is not entitled to receive superior benefits to a RFT employee.
2. Cowichan District Hospital and BCNU, July 5, 1989 (Hope). The Employer may be required to pay out vacation, where an employee is absent from work on WCB, and cannot take their vacation before the end of the calendar year.
3. Royal Columbian Hospital and BCNU, October 17, 1994 (Morrison). Dealt with calculation of supplementary vacation entitlement for RPT employees. The ruling was that it was prorated for RPT employees but any previous service as RFT employees needed to be part of the calculation.
4. HEABC and BCNU, October 15, 1999 (Ready). Dealt with vacation entitlement for employees standardized to the PCA as of April 1, 1999. Union's grievance upheld that employees are entitled to their full vacation and supplementary vacation entitlement for 1999 as set out in Article 45, not a prorated amount.

Additional Resources

Legislation

1. Employment Standards Act – Part 7

Footnotes

Article	45
Sub-Article	45.01, 45.02, 45.03, 45.04, 45.05, 45.06
Last Update	31-03-21
Related Articles	11, 51, Extended Work Day Memorandum