

Article 39

Article 39 - Leave - Paid Holidays

Related Articles: 11.04 (G) (2), 27.05 (C), 29.04 (B), Extended Hours Memorandum

Interpretation Guidelines:

Article 39.01 - Paid Holiday Entitlement

Regular full-time and regular part-time employees are entitled to a day off "on or for" the 11 paid statutory holidays each year.

Article 39.02 - Payment for Paid Holidays

1. Regular full-time employees are paid regular pay for each day off listed in 39.01 as a paid holiday.
2. Regular part-time employees receive regular pay for each day off listed in Article 39.01 either as 4.2% of straight time pay on each paycheque or as calculated using the formula set out in Article 32.09 (B).
3. Casual employees receive 4.2% pay in lieu as per Article 11.04 (G) (2).
4. Please Note: Work schedules should have the days off "on or for" each of the paid holidays marked in the schedule.
 - These stat days are numbered from 1 to 11 and generally evenly distributed over the course of a year resulting in stat days being identified about every 5 weeks.
 - Employees called in to work on these designated "stat days off" are paid at the appropriate overtime rate set out in Articles 27.05 (C) and 29.04 (B).
 - The Employer is required to give 14 days notice of changes to the schedule which result in the employee being required to work on a stat day or a day designated as a "stat day off".
 - Overtime rates apply to changes of schedule with less than 14 days notice [See: Articles 27.05 (C) and 29.04 (B)].
5. Paid leave does not include premiums paid only when an employee works, such as shift and weekend differential or overtime. In addition it does not include qualification differential.

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Article 39.03 - Work on a Paid Holiday

1. A regular or casual employee who works on one of the 8 regular stat holidays listed in Article 39.03 (A) (1) is paid 2x their regular rate of pay.
 - An employee working a standard (7.2/7.5 hour) shift gets paid the premium rate for all hours of work in the shift when a minimum of ½ of the hours fall within 0001 and 2400 hrs on the paid holiday.
 - An employee working an EWD shift gets paid the premium rate for all hours of work within 0001 and 2400 hrs on the paid holiday (see Article 39.03 (A) (1) in the EWD Memorandum).
2. A regular or casual employee who works on one of the 3 super stat holidays listed in Article 39.03 (A) (2) is paid 2.5 x their regular rate of pay.
 - An employee working a standard (7.2/7.5 hour) shift gets paid the super stat rate for all hours of work in the shift when a minimum of ½ of the hours fall within 0001 and 2400 hrs on the paid holiday.
 - An employee working an EWD shift gets paid the super stat rate for all hours of work within 0001 and 2400 hrs on the paid holiday (see Article 39.03 (A) (2) in the EWD Memorandum).
3. Employees who are working on one of the stat holidays as set out above and required to be available during their meal break(s) receive the appropriate premium pay for the stat holiday for their meal break(s) [See *Arbitration Award: Powell River General Hospital and BCNU, November 4, 1991 (Munroe)*].
4. Regular employees are entitled to receive a paid day off in lieu of the 11 stat holidays (See Article 39.02 above).
5. Casual employees are not entitled to receive a paid day off in lieu of the 11 stat holidays because they receive 4.2% pay in lieu on each pay cheque [See Article 11.04 (G) (2)].

Article 39.04 - Premium Rates of Pay

a) Overtime

When an employee works overtime on a stat holiday, the overtime is payable at 1.5 x the appropriate holiday rate for all overtime hours worked. That is: 1.5 x 2x rate = 3 x rate on regular stat holidays and 1.5 x 2.5x rate = 3.75 x rate on all super stats [Also see Article 27.05 (C)].

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b) Call-Back

1. Where a regular employee is on-call and called back to work on a day off identified in their work schedule as a paid holiday, the call-back rate of pay is 1.5x the appropriate stat holiday rate for all hours worked with a minimum pay of 2 hours for each separate call-back.
2. Where a regular or casual employee is on-call and called back to work on one of the named stat holidays, they are entitled to the overtime rate for all hours worked as set out in Article 29.04 (B) with a minimum pay of 2 hours for each separate call-back. That is:
 - Stat holiday rateeither 2x or 2.5 x
 - Appropriate overtime rate..... 1.5x for the first 2 hours and 2x for all overtime hours after

For example: employee works a 7.2 hour shift on a regular stat holiday and is called back to work for an additional 4 hours they receive: for the first 2 hours $1.5 \times 2 \times \text{rate} = 3x$ and then for the next 2 hours the employee receives $2 \times 2x \text{ rate} = 4x$.

c) Three Different Shifts Worked in any 7 Consecutive Days

- This provision only applies to regular full-time employees.
- If the employee is required by the Employer to work 3 different shifts in 7 consecutive days and the 3rd shift change is a paid holiday, the employee receives 1.5x the appropriate stat holiday rate for that day.

d) Changes in Schedule with Insufficient Notice

- Employee's schedule is changed without 14 days notice; and
- Employee is required to work on either a stat holiday or a day previously scheduled as a stat holiday; then
- The employee is entitled to be paid the appropriate overtime rates for all hours worked and the paid holiday must be rescheduled with pay.

Note: In the Arbitration Award: HEABC (Vancouver Hospital and Health Sciences Centre) and BCNU, April 24, 1998 (Kinzie) - Dismissed the grievance where an employee grieved the fact that the Employer changed the work schedule and as a result the employee was no longer scheduled to work Labour Day (a super stat), stating that there was no violation of the PCA.

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Article 39.05 - Paid Holiday Coinciding with a Rest Day

1. Where a stat holiday falls on the regular employee's day off, the employee receives an additional day off in lieu. This provision applies particularly to employees working a Monday to Friday schedule who are not usually scheduled to work on the stat holidays.
2. Scheduling of this additional day off in lieu is to be mutually agreed between the employee and Employer and is subject to operational requirements. However the Employer has to demonstrate they have been reasonable. Note: while the Union recommends these days off in lieu of stats be worked into the schedule in advance, banking of stats is still possible under this provision.

Article 39.06 - Paid Holiday Coinciding with Vacation

1. Where a paid holiday falls within a regular employee's vacation, the employee receives an additional day off in lieu.
2. Scheduling of this additional day off in lieu is to be mutually agreed between the employee and Employer and is subject to operational requirements. However the Employer has to demonstrate they have been reasonable. Note: while the Union recommends these days off in lieu of stats be worked into the schedule in advance, banking of stats is still possible under this provision.

Article 39.07 - Scheduling of Paid Holidays

A. Application

1. The "stat days off" may be scheduled on the actual stat holiday or on any other scheduled work day. All "stat days off" should be marked in the Master Work Schedule [See HEABC/BCNU Shift Rotation Manual (2003)].
2. The scheduling is subject to mutual agreement and operational requirements, reasonably applied.
3. With the exception of Christmas Day and New Year's Day [See Article 39.07(B) below], there is no requirement in the PCA that work schedules be altered to allow employees to use seniority rights so they work on the actual stat holiday in order to receive premium pay.
4. The Holidays Act provides Canada Day to be observed on July 1st, unless it falls on a Sunday, in which case it is to be observed on July 2nd. If Canada Day falls on a Sunday, the premium pay is applied to employees who have worked July 2nd instead of July 1st. (See *Arbitration Award: Salvation Army Grace Hospital and ONA*, (1990), 15 LAC (4th) 126 (Stanley).

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B. Christmas or New Year's Day

1. Where a worksite operates on Christmas and New Year's Day, a regular employee must receive either Christmas or New Year's Day off, unless the employee requests to work both days and the Employer agrees.
2. There is no requirement in the PCA to use seniority to determine who works each of these days.
3. The request should be in writing to ensure you have a record of your wishes.
4. We recommend that employees at the worksite come to mutual agreement with the Employer to rotate who works Christmas and New Year's Day from year to year.

C. Sick Leave

1. An employee may apply sick leave credits to a paid holiday where they have been on sick leave immediately before and after the scheduled paid holiday.
2. In this case, the paid holiday would be paid using sick leave credits and the paid holiday would need to be rescheduled at a mutually agreeable time between the employee and Employer.

Additional References:

Legislation:

Holidays Act: (R.S. 1985, c.H-5) can access a version at [http://laws.justicegc.ca/en/H-51](http://laws.justice.gc.ca/en/H-51)

Employment Standards Act, Part 5

Arbitration Awards:

Salvation Army Grace Hospital and ONA, (1990), 15 LAC (4th) 126 (Stanley) - The employee working July 2nd receives the stat holiday pay when Canada Day falls on July 2nd pursuant to the Holidays Act.

Cranbrook and District Hospital and BCNU, January 17, 1986 (Thompson) - the provisions of the collective agreement to the granting of a paid day off nor do the specific provisions regarding call-backs contain any exclusions to the general rules.

Powell River General Hospital and BCNU, November 4, 1991 (Munroe) - employees working on a stat holiday and scheduled to be available during their meal break(s) are entitled to receive the appropriate premium rate for their meal break(s).

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(Vancouver Hospital and Health Sciences Centre) and BCNU, April 24, 1998 (Kinzie) - grievance alleging the Employer breached the collective agreement by rescheduling an employee who was previously scheduled to work on a super stat holiday was dismissed.

Other Resources:

HEABC/BCNU Shift Rotation Manual (2003)