

Article 45

Article 45 - Leave - Vacation

Related Articles: 11.04 (G) (2), 11.04 (G) (5), 51.02 (C), Extended Work Day Memorandum

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:

1. All regular employees and casual employees in temporary appointments pursuant to Article 11.04 (G) (5) are entitled to time away from work for vacation leave.
2. Vacation is based on the regular employee's length of service as a regular employee.
3. Vacation entitlement is based on a 7.2 hour day.

Article 45.01 (B) - Cut-Off Date

1. Vacation is accrued from July 1st to June 30th of the following year.
2. Under this system employees accrue vacation in one year and take it in the next calendar year. For example: Employee accrues 20 days vacation between June 30th 2004 and July 1st 2005 and takes it between January 1, 2005 and December 31, 2005.

Article 45.01 (C) - Regular Full-Time Employees

1. A regular full-time employee receives their regular pay during their vacation based on their continuous service with the Employer reached before July 1st of a calendar year.
2. Continuous service applies to:
 - Regular employees who transfer from one PCA Employer to another through the portability provisions of Article 51.02 (C)
 - Regular employees who change status from regular full-time to regular part-time.

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3. Periods of time working as a casual do not count in the calculation of continuous service for the purpose of vacation entitlement.

Article 45.01 (D) - Regular Part-Time Employees

1. Regular part-time employees are entitled to vacation leave on a pro-rated basis. Entitlement to vacation is calculated from July 1st to June 30th of the following year.
2. Vacation entitlement is calculated **based on all days paid** during the accrual period **including extra shifts** in addition to the base FTE but **excluding overtime** 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:
 - A full-time employee is entitled to 28 vacation days or 201.6 hours of vacation.
 - A part-time employee working a .75 rotation (based on days paid) is entitled to 21 vacation days based on: $28 \times .75 = 21$ days or 151.2 hours vacation.
3. **Regular part-time employees cannot schedule more vacation time away from work than a full-time employee. For example:**
 - A RPT employee scheduled to work .75 FTE calculates vacation entitlement as 21 scheduled work days away from work ($28 \text{ days} \times .75 = 21$ scheduled work days)
 - A RPT employee who actually worked .9 FTE during the accrual period calculates vacation pay as 25.2 days ($28 \times .9 = 25.2$ days of vacation pay)
 - The employee only gets to take 21 scheduled work days away from work based on her normal work schedule, but gets 25.2 days of vacation pay for that time period.

[See Arbitration Award: *Royal Columbian Hospital and BCNU*, February 17, 1989 (Hope)].

4. 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.
5. An employee who transfers from full-time to part-time during the year is entitled to pay related to time worked (i.e. vacation entitlement would be calculated based on the percentage of time scheduled during the accrual period).

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

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

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2. This partial year's entitlement must be taken before December 31st of the calendar year.
3. 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 31st of that year if a mutually agreed time cannot be determined during the calendar year.

Article 45.02 - Terminating Employees

1. Applies to regular employees who terminate employment with the Employer for any reason (this includes being terminated for cause).
2. 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.
3. Regular employees "port" their years of service to other PCA Employers for the purpose of calculating vacation entitlement.

Article 45.03 - Supplementary Vacation

1. This applies to regular employees who reach a minimum anniversary of 25 years of continuous service.
2. RPT employees have their supplementary vacation time pro-rated but the pro-ration has to consider the number of years the RPT employee might have worked full-time [See Arbitration Award: *Royal Columbian and BCNU*, October 17, 1994 (Morrison) - where 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.*"

She 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.*"

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Article 45.04 - Scheduling of Vacation

1. **Vacation can be taken any time during the year.** Operational requirements apply. Typically Employers have policies limiting the number of employees who can be off at one time. The test of reasonableness applies to these policies.
2. The selection and posting of approved vacation must be completed by December 31st of the preceding calendar year, unless there is a mutual agreement at the worksite on another date. Note: It is recommended that employees stick with the date in the PCA as that is more easily enforced. However, 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.
3. 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.
4. Employees who don't exercise their rights within the selection time are deemed to have forfeited their seniority rights regarding choice of vacation time.
5. 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.
6. Vacation entitlement accrued to June 30th must be taken before January 1st of the following year, unless operational requirements interfere.
7. The Employer may be required to pay out vacation, where an employee is absent from work on WCB, and can't take their vacation before the end of the calendar year [See *Arbitration Award: Cowichan District Hospital and BCNU*, July 5, 1989 (Hope)]
8. 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 a nurse to work her/his vacation or uses improper pressure to convince a nurse to work during her/his previously scheduled vacation, then this could be considered a breach of the collective agreement and grieved seeking payment of overtime rates at a minimum.
9. **New in 2006:** Employees who have their vacation cancelled by the Employer due to operational requirements may carry over up to 7 days of vacation to be used by no later than June 30th in the following year.

Article 45.05 - Vacation Entitlement Earned During Vacation

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

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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.

Article 45.07 - Transfer from Other Vacation Accrual Dates

This applied to employees who were covered by a collective agreement that operated on a calendar year accrual system before July 1, 1997.

For these employees the transfer to July 1st accrual system meant that vacation entitlement for 1998 was only based on accrual for 6 months. However Employers agreed to give employees vacation based on 12 months accrual by July 1st on the understanding that it would be repaid when the employee resigned their employment or retired. **Please note:** Not all nurses will be in a situation where they "owe" vacation reimbursement to the employer. It will depend on what point during the calendar year the nurse terminates employment and how many vacation days the nurse has taken by that point in time compared to how many days the nurse has accrued.

Casual employees:

Normally casual employees receive vacation pay of 8% of straight time pay. However if a casual employee posts into a temporary appointment she/he is entitled take vacation in accordance with Article 45 [See Article 11.04 (G) (5)].

The casual employee has to advise the Employer in advance that they wish their 8% vacation pay to be transferred into vacation days away from work.

Additional References:

Arbitration Awards:

Royal Columbian Hospital and BCNU, February 17, 1989 (Hope) - Regular part-time employees cannot schedule more vacation time away from work than a full-time employee. In other words, a part-time employee is not entitled to receive superior benefits to a full-time employee.

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 can't take their vacation before the end of the calendar year

Royal Columbian Hospital and BCNU, October 17, 1994 (Morrison) - Dealt with calculation of supplementary vacation entitlement for regular part-time employees. The ruling was that it was pro-rated for part-time employees but any previous service as full-time employees needed to be part of the calculation.

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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 pro-rated amount.

Legislation:

Employment Standards Act - Part 7 (Check website for more information:
www.labour.gov.bc.ca/esb/esaguide)