



# July 1st a Sunday? Holidays Act “Bumps” Canada Day to July 2nd

June 26, 2018

The federal *Holidays Act* provides that July 1st is a legal holiday, kept and observed under the name “Canada Day”. This year July 1st falls on a Sunday which, for most employees, would not be a regular working day. As a result, Canada Day is “bumped” to July 2nd. This can lead to some confusion on the parts of both employers and employees as to what holiday benefits employees are entitled to and on which day.

## When July 1st is a Sunday

As noted above, the *Holidays Act* states that July 1st is the legal holiday known as Canada Day. However, the Act specifically addresses the instances where July 1st falls on a Sunday. Subsection 2(2) states:

*When July 1 is a Sunday*

*(2) When July 1 is a Sunday, July 2 is a legal holiday and shall be kept and observed as such throughout Canada under the name of “Canada Day”.*

As a result, for the year 2018, Monday, July 2nd, will be observed as Canada Day. The Ontario *Employment Standards Act* (the “ESA”) sets out the holiday entitlements of employees for public holidays such as Canada Day.

## When a public holiday is a working day

For most employees Monday, July 2nd would be a regular working day. Section 26 of the ESA provides:

*Public holiday ordinarily a working day*

*26. (1) If a public holiday falls on a day that would ordinarily be a working day for an employee and the employee is not on vacation that day, the employer shall give the employee the day off work and pay him or her public holiday pay for that day.*

As readers of Focus will know, effective July 1, 2018, the calculation of public holiday pay reverts to the former formula that was in place prior to the Bill 148 changes to the ESA (*Ontario government announces that public holiday pay calculations will change (again) effective July 1, 2018*). An employee’s public holiday pay will be equal to *the total amount of the regular wages earned and vacation pay payable to the employee in the four weeks before the work week in which the public holiday occurred, divided by 20*. This formula is in place until December 31, 2019 while the



government conducts a review of the rules in relation to public holiday pay.

### **The “last and first” rule**

An employee’s entitlement to time-off with holiday pay is subject to what is known as the “Last and First” rule. This rule is derived from subsection 26(2) of the ESA which states that an employee is not entitled to holiday pay if the employee fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the holiday, and all of his or her first regularly scheduled day of work after the public holiday. Employees who fail to satisfy the Last and First rule are not entitled to the public holiday entitlement. If such an employee nevertheless works on the public holiday, generally they will be entitled to premium pay for every hour worked.

### **Agreement to work on public holiday**

The ESA also provides that an employer and an employee may agree that the employee will work on a public holiday that would normally be a working day for that employee. If such an agreement is made, the employer must pay the employee at his or her regular rate and, within three months (or, if the parties agree, within 12 months), provide a substitute day off of work with holiday pay. Alternatively, the parties may agree that the employer will pay the employee public holiday pay, plus premium pay for each hour worked on that day. The ESA provides that premium pay is equal to one and one-half times the employee’s regular salary.

Where a substitute day is provided, the employer is required to provide the employee with a written statement, before the public holiday, that sets out (a) the public holiday on which the employee will work; (b) the date of the day of that is substituted for a public holiday and (c) the date on which the statement is provided to the employee.

### **Employees required to work**

For certain operations (such as hospitals, hotels, motels, resorts, restaurants or bars) an employer may require an employee to work on the public holiday if it falls on a normal working day for the employee. In such cases, the ESA requires the employer to pay the employee at their regular rate for the hours worked and provide a substitute day off with public holiday pay. Alternatively, the employer may pay the employee public holiday pay plus premium pay for each hour worked that day.

### **Where a public holiday is not ordinarily a working day**

For certain employees, Monday, July 2nd, may not be a day they would ordinarily work. For example, an employee may not work Mondays, or may be on vacation on July 2nd. In such cases, section 29 of the ESA requires an employer to substitute another working day for the employee to take off work. In such a case the employee would receive public holiday pay as if the substituted day was the public holiday.



If July 2nd is not ordinarily a working day for an employee, and the employee agrees with the employer that he or she shall work on the public holiday, section 30 of the ESA requires the employer to either pay the employee at his regular rate and provide a substitute day off with public holiday pay, or, if the parties agree, to pay the employee public holiday pay for the day, plus premium pay for each hour worked.

### **In our view**

Employers engaged in retail operations in Ontario should refer to the *Retail Business Holidays Act* which sets out what retail establishments can and cannot be open on public holidays including Canada Day. The *Retail Business Holidays Act* generally provides that certain small retail business may open on Canada Day. Gas stations, pharmacies and nurseries are also permitted to remain open. In addition, businesses may also remain open in locations established as tourist areas by specific municipal by-laws.

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