

# Substitute Holidays in Canada: What to Do When a Holiday Falls on a Weekend

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Canada Day is approaching. The holiday, celebrated on July 1, commemorates Canadian Confederation and the enactment of the British North America Act, 1867 (which is now known as the Constitution Act, 1867), that formally established the Dominion of Canada. Canada Day was known as Dominion Day until 1982.

Like the Fourth of July holiday in the United States, Canada Day is seen as commemorating the birth of Canada as an independent nation. This year is particularly important, as Canada will celebrate the 150<sup>th</sup> anniversary of Confederation.

This year, Canada Day falls on a Saturday, which poses an interesting question for employers that operate from Monday to Friday: On which day should employers celebrate the holiday (i.e., should our employees receive a day off on the Friday before or the Monday after Canada Day)? As with most issues in Canadian employment law, the answer depends on the jurisdiction.

Every province (and for the federal sector, the Canada Labour Code) has detailed rules on what happens when a holiday falls on a day that is not a regular working day for an employee:

- In many provinces, the employee should, by default, be provided a substitute holiday with holiday pay. Such a day must be scheduled on a day the employee regularly works, within a certain time frame. For example, in Ontario, substitute holidays must be scheduled within 3 months of the date of the holiday (except where an employee agrees in writing to it being scheduled within 12 months).
  - Most Ontario employers will simply recognize the day before or the day after a holiday that falls on a weekend as being the substitute holiday. Ontario law permits the substitute holiday to be observed either before or after the public holiday.
- Some provinces, such as Manitoba and Nova Scotia, specify the day on which the substitute holiday is to be observed if the holiday falls on a non-working day. In Manitoba, if a holiday falls on a Saturday or Sunday that is not a working day, the employee must receive the next regularly scheduled workday (usually Monday) as a substitute holiday. A similar rule applies in Nova Scotia.

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- For federally-regulated employers, the Canada Labour Code specifies that when New Year's Day, Canada Day, Remembrance Day, Christmas Day, or Boxing Day are on a Saturday or Sunday, employees must receive either the working day immediately preceding the holiday or immediately following it as a substitute holiday; for other holidays that fall on a non-working day, a substitute holiday with pay may be provided on any day that is mutually convenient for the employer and employee (or the day may be added to the employee's annual vacation).
  - Even where an employee does not receive a substitute holiday, most provinces still require that the employee receive holiday pay, which is generally calculated based on the employee's average earnings during a recent period of employment. In Ontario, the amount is calculated using the employee's regular wages during the 4 weeks prior to the workweek in which the public holiday fell, divided by 20 (though the Ontario government has recently announced its intention to simplify this calculation as part of its [recently proposed changes to the Employment Standards Act, 2000](#)). For an employee with regular earnings (such as a fixed salary paid for a set number of hours per day), this would result in the employee receiving a day's pay for the holiday even if he or she did not work on the holiday.
  - Not all provinces require that an employer provide a substitute holiday with pay or holiday pay in lieu. Alberta does not require either when a holiday falls on a day that is not normally a working day for an employee and the employee does not work on that day.
  - In some provinces, a substitute holiday with pay must be provided if the holiday falls during the employee's vacation. In Quebec, for example, even though a substitute holiday is not required for most holidays that fall on a non-working day, the employer and employee must agree on a substitute holiday if the public holiday occurs during the employee's vacation.

In some cases, the day the holiday is legally celebrated will actually change when it is scheduled on a weekend. Under the federal Holidays Act, when July 1 is a Sunday, Canada Day is deemed to be celebrated on July 2 (i.e., the following Monday), meaning that employers do not need to determine whether they need to provide a substitute holiday. Some holidays are defined in law to always fall on a weekday (e.g., Victoria Day, which always falls on the last Monday preceding May 25), which ensures the holiday falls on a working day for the vast majority of employees.

In some provinces, other holidays (such as Christmas Day) are designated to be celebrated on Monday if they happen to fall on Sunday, but in most provinces and for most holidays, the holiday is celebrated on the same day regardless of whether it is a regular work day or not.

Employers may want to review their policies to ensure they're paying the correct amount of holiday pay whether or not the holiday is on a weekend or a working day, and that employees who are required to work on the holiday receive the appropriate premium pay. Along with overtime and vacation pay, holiday pay is a subject of interest to ministry of labour inspectors during audits, so employers may want to pay particular attention to proper payment, documentation, and recordkeeping for all statutory holidays.

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