

# Unemployment Insurance (EI) Vacation Pay

Revised March 20, 2020

As of now, there have been no changes to the EI Regular Benefits or Vacation Pay. The response to COVID-19 has been evolving at a rapid pace and you are advised check the COVID-19 Service Canada website for updates.

<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html>

## *Vacation Pay*

Vacation Pay is employment income and is earnings when it is paid or payable. There is, however, an exception when the vacation pay constitutes savings rather than earnings. This is the case when an employer, union or agency acts in trust and the vacation pay is credited to an employee and accumulated in a trust account.

Allocation of vacation pay depends on the reason for which it is paid and not the date upon which the payment is made. Vacation pay can be paid or payable:

1. By reason of a lay-off or separation;
2. For a specific vacation period;
3. For a specific vacation period that coincides with other circumstances;
4. On an anniversary date;
5. Included on each pay check;
6. At the employee's request.

- 1) When vacation pay is paid by reason of a lay-off or separation, the amount is allocated, based on the **normal weekly earnings**, to consecutive weeks from the week when the person was laid off or separated from employment. When the amount of the last week of work is less than the normal weekly earnings, the allocation of the vacation pay can start in that week and be added to the earnings for the last week worked to bring them to the normal weekly earnings.

### Example 1.1

Your employment ends on September 9 due to a work shortage. On September 14, you file a claim for regular benefits. Your normal weekly earnings are \$500. For your last week, you earned \$300. Your employer paid you a vacation pay of \$756.

Your vacation pay will be allocated as follows:

September 7 to 12: \$300 salary and \$200 vacation pay  
September 13 to 19: \$500 vacation pay  
September 20 to 26: \$56 vacation pay

In this example, a portion of the vacation pay is added to the amount of earnings in the last week worked to bring the earnings in that week to the normal weekly earnings of \$500.

- 2) When the vacation pay is paid for a specific vacation period, it is allocated solely to that vacation period, based on the **normal weekly earnings**. The date that the vacation pay was actually paid is not taken into consideration when allocating this vacation pay to a specific vacation period. For instance, when a workplace closes every year for a general vacation period, that period is considered to be the vacation period unless otherwise indicated.

### Example 2.1

On June 5, , your employer paid you a vacation pay of \$1,520 due to the plant closing for the general vacation during the period from June 14 to 20, . Your salary for your last week of work from June 7 to 13 is \$650; your normal weekly earnings are \$650. You returned to work on June 29,

The vacation pay is allocated as follows:

June 7 to 13: \$650 salary  
June 14 to 20, general vacation period: \$650 vacation pay  
June 21 to 27, general vacation period: \$650 vacation pay  
June 28 to July 4: Return to work

In this example, although the vacation pay was paid a week before the plant's planned shutdown for vacation, it was paid for the general vacation period, and as a result, the date on which the vacation pay was paid is not taken into consideration in allocating the vacation pay.

In fact, because the vacation pay is allocated based on normal weekly earnings of \$650, to the specific

vacation period of June 14 to 27, the balance of \$220 as vacation pay is ignored, meaning  $\$1,520 - \$1,300 = \$220$ , as the amount can only be allocated over the actual specific vacation period.

- 3)** When the specific vacation period coincides with other circumstances, such as **lay-off** or **separation** or an **anniversary date**, the following 3 criteria must be met in order for the vacation pay to be allocated solely to the specific vacation period:
- The vacation period must have been scheduled by agreement between the employer and employee;
  - There must be a link between the payment of the vacation pay and the right to a period of time off for a vacation;
  - The individual must be considered an employee during the vacation period.

### Example 3.1

On April 24, anniversary date, your employer pays you a vacation pay of \$850. You have already agreed with your employer to take your vacation from May 10 to 23, and are considered to be employed during the vacation period. Your salary for your last week of work from May 3 to 9 is \$425 and your normal weekly earnings are \$425.

Your vacation pay is allocated as follows:

April 19 to April 25: \$425 salary  
April 26 to May 2: \$425 salary  
May 3 to 9: \$425 salary  
May 10 to 16, vacation period: \$425 vacation pay  
May 17 to 23, vacation period: \$425 vacation pay

In this example, although your employer paid your vacation pay on April 24, on the anniversary date, it is allocated to your specific vacation period, which you had scheduled with your employer, and you were considered to be an employee during that period.

### Example 3.2

During your employment, you agree with your employer to take your vacation from June 14, to June 27. However, on May 22, you are laid off due to a work shortage and your employer pays you your outstanding vacation pay of \$956. Your salary for your last week of work from May 17 to 23 is \$425 and your normal weekly earnings are \$425.

Your vacation pay is allocated as follows:

May 17 to 23: \$425 salary  
May 24 to 31: \$425 vacation pay  
May 31 to 7: \$425 vacation pay  
June 8 to 14: \$106 balance of vacation pay

In this example, you were laid off prior to the expected date of the vacation. Consequently, you are no longer considered an employee during the planned vacation period. The vacation pay is therefore considered to be earnings paid as result of the lay-off.

- 4) Vacation pay paid on an anniversary date is allocated based on your **normal weekly earnings**, from the week of the anniversary date so that the vacation pay earnings in each week are equal to your normal weekly earnings. In allocating these earnings, other earnings, such as salary, are not taken into account.

#### Example 4.1

Your employer pays the vacation pay May 1st of each year. On May 1st, you are working full time and have not planned any vacation time when your employer pays you your vacation pay of \$1,000. Your normal weekly earnings are \$625.

Your vacation pay is allocated as follows:

April 26 to May 2: \$625 vacation pay and \$625 salary  
May 3 to 9: \$375 vacation pay and \$625 salary

In this example, the only reason for payment of the vacation pay is the anniversary date; consequently, it is allocated from the week of payment. The salary earned is not considered in the allocation of the vacation pay paid under this circumstance.

- 5) Vacation pay paid with each pay cheque is allocated over the period in which the vacation pay is earned. Generally, vacation pay is a percentage of salary and is part of the employee's **normal weekly earnings**.

#### Example 5.1

You work 40 hours per week at \$14.00 per hour. On each pay, your employer pays you 6.5% of your salary as vacation pay. On September 11, you are laid off. For your last week of work from September 7 to 13, you earned \$477.12, meaning \$448 salary + \$29.12 vacation pay. Your normal weekly earnings are \$596.40, meaning \$560 salary + 36.40 vacation pay. On the Record of Employment, your employer indicates vacation pay of \$36.40, paid each week.

Your vacation pay is allocated as follows:

August 30 to September 5: \$560 salary + \$36.40 vacation pay  
September 6 to 12: \$448 salary + \$29.12 vacation pay

In this example, the vacation pay is allocated over the period in which it was earned.

- 6) Vacation pay paid at the employee's request is allocated based on the **normal weekly earnings**, from the week in which the employee asked that it be paid. The date on which the employer pays the vacation pay is not taken into consideration. Other earnings are not taken into account, including salary, when allocating this type of vacation pay.

### Example 6.1

You are working full time, earning \$500 per week. Your collective agreement allows you to request your vacation pay without any requirement to take time off for vacation. On August 5, you ask that your employer pay your vacation pay. On August 14, your employer pays you a vacation pay of \$1,410.

You are still working full time.

Your vacation pay is allocated as follows:

August 2 to 8, you request your vacation pay: \$500 vacation pay and \$500 salary

August 9 to 15, your employer pays your vacation pay: \$500 vacation pay and \$500 salary

August 16 to 22: \$410 vacation pay and \$500 salary

In this example, your vacation pay is paid because of your request and not by reason of a lay-off or separation or specific vacation period. As a result; it is allocated from the week in which you requested it as this was the date that the vacation pay became payable, and the date that the payment was actually made is not important. The salary earned is not considered in the allocation of the vacation pay paid under these circumstances.

***\*\*On a temporary layoff Service Canada does not require a claimant to take their vacation entitlement before applying for Employment Insurance.***