

Conifer

Circular

CR No. 02/23

RE: NATIONAL DAY FOR TRUTH AND RECONCILIATION GUIDELINES
JULY 4, 2023

(VIA E-MAIL)

TO: All Member Companies,

BACKGROUND:

This Circular is being provided to assist member Companies in the administration of obligations regarding the National Day for Truth and Reconciliation (NDTR) Statutory Holiday. The target audience for this circular is member Company senior management, HR staff, and payroll administration. Given the technical nature of content, broader circulation is not recommended.

In brief, Bill 24, *Miscellaneous Statutes Amendment Act (No.2)*, 2023, received royal assent on May 11, 2023.

This provincial legislation, simplistically stated, included an amendment to the *Employment Standards Act* (ESA) which results in an absolute obligation for all employers in BC to comply with the NDTR statutory holiday (September 30) **in accordance with the specific statutory requirements outlined under Part 5 of the ESA.** Please be aware these statutory requirements result in different implications/obligations on the employer relative to the statutory holidays otherwise listed under CONIFER member collective agreements. The NDTR is NOT listed as a statutory holiday under the collective agreement.

ADMINISTRATIVE GUIDELINES:

This section is designed to provide a point of reference for practical administration of the requirements under Part 5 of the ESA. Part 5 includes sections 44 through 48 inclusive.

Section 44: Entitlement to Statutory Holiday

44 An employer must comply with section 45 or 46 in respect of an employee who has been employed by the employer for at least 30 calendar days before the statutory holiday and has

(a) worked or earned wages for 15 of the 30 calendar days preceding the statutory holiday, or

(b) worked under an averaging agreement under section 37 at any time within that 30 calendar day period.

(underlining for emphasis)

The point to emphasize here is that the entitlement criteria outlined under Section 44 are slightly different than as outlined under Article XI, Section 2: e) of most CONIFER member Collective Agreements (again, which are not applicable to NDTR).

Our advice is to determine entitlement specifically in accordance with Section 44.

Section 45: Statutory Holiday Pay

We do not re-produce Section 45: Statutory Holiday Pay in this Circular in the interest of avoiding confusion.

Our advice is to apply a practical approach to statutory holiday pay and therefore pay an eligible employee in the same manner you do for statutory holidays listed under the collective agreement. (“...paid for the holiday at their regular job rate of pay for their regular rate work schedule.”)

For example, an employee with a regular schedule of eight (8) hours duration will receive eight (8) hours statutory holiday pay.

For example, an employee with a regular schedule of ten (10) hours duration will receive ten (10) hours statutory holiday pay.

Section 46: If an employee is required to work on statutory holiday

- 46 An employee who works on a statutory holiday must be paid for that day
- (a) 1 1/2 times the employee's regular wage for the time worked up to 12 hours,
 - (b) double the employee's regular wage for any time worked over 12 hours, and
 - (c) *(excluded to avoid confusion given advice under Section 45)*

Our advice is to apply the specific content of Section 46 to relevant circumstances accordingly.

Section 47: (repealed) No advice or guidelines necessary.

Section 48: Substituting another day for a statutory holiday

- 48 (1) An employer **may** for one or more employees at a workplace **substitute another day off for a statutory holiday if the employer and the employee or a majority of those employees, as the case may be, agree to the substitution.**
- (2) Any employees affected by the substitution of another day for a statutory holiday have the same rights under this Act and their employer has the same duties under this Act as if the other day were a statutory holiday.
- (3) An employer must retain for 4 years records of agreements made under subsection (1).

(underlining and bolding for emphasis)

This is a very important section and the distinction between Section 48 and statutory holiday obligations under the collective agreement requires clear emphasis.

Section 48 does not create an obligation to move the observance of a statutory holiday simply by virtue of it falling on a certain day of the week . The essence of Section 48 is that the statutory holiday will simply be observed on the day that it occurs. Another day “may” be substituted, **at the discretion of the employer**, and then only contingent on agreement by the majority of employees as outlined under 48(1).

Our advice is to apply Section 48 to NDTR specifically as outlined in Section 48.

To elaborate:

- NDTR falls on September 30, 2023 (a Saturday)
- There is NO obligation or requirement on the Company to move the observance to Friday or Monday (as would be the case if listed under Article XI of the collective agreement)
- You “may” at your discretion, and only upon agreement with the employee or a majority of employees as outlined under section 48(1), substitute another day for observance of NDTR. This is not recommended given the specific nature and intended purpose of NDTR.

The subject of NDTR, and the way it was incorporated under the ESA, is complex in nature. We strongly encourage member companies to contact the Staff of CONIFER at 250-564-5166 should you have any questions on the applicability of the advice contained in this Circular, or on any aspect of this subject in general.



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