

To: Nova Scotia Automobile Dealers Association
From: Daniel M. Campbell
Date: January 7, 2014
Re: Holiday/Closing Day Obligations
File No. 1177/21

In its short session in December, the Nova Scotia Legislature adopted the *February Holiday Act*, which the Liberals had promised during the election campaign. Although the new holiday comes into effect only in February of 2015, it may be useful to review the employer's statutory obligations for holidays in Nova Scotia. A table summarizing the obligations of auto dealers in Nova Scotia is attached.

The obligations to close businesses and to provide holiday benefits to employees arise under two different statutes – the *Labour Standards Code* and the *Retail Business Designated Day Closing Act*. In addition, the *Remembrance Day Act* covers the November 11 holiday and the *Civil Holiday By-law* made under the *Halifax Regional Municipality Charter* governs Natal Day, the first Monday in August. Note that in some cases the business is obliged to close, but there is no obligation to pay employees. In these cases (Halifax Natal Day, Thanksgiving, Boxing Day, Remembrance Day) and on traditional holidays that are not mandatory closing days (Victoria Day), most employers do, in fact, provide holiday pay.

Obligations to employees

For the six days designated as “public holidays” under the *Labour Standards Code*, employers must pay additional compensation to “qualifying employees” who work on that day. A “qualifying employee” is an employee who:

- either receives pay or is entitled to receive pay for at least 15 of the 30 calendar days before the holiday, and
- worked on their last scheduled shift before the holiday and on the first scheduled shift after the holiday (because the requirement is that the employee receive pay or be entitled to receive pay, an employee who was on paid sick leave or paid vacation could qualify). The *Labour Standards Code* deals only with employee entitlement to pay – it does not impose any closing obligation.

Obligation to close business

The closing obligation arises under the *Retail Business Designated Day Closing Act*, which provides that no one may, on a “designated day” sell or offer for sale any goods or services by retail, or admit the public into any premises where a retail business is carried on. A number of exceptions are provided, but the only ones that might have application to automobile dealers are:

- the operation of certain businesses ancillary to the auto dealership, such as a retail gas station or restaurant, or
- the provision of goods or services on an emergency basis (such as towing or emergency repairs).

The *Remembrance Day Act* provides that no one may “engage as employer or employee in any industry”. It applies only on November 11, and does not move to another day if November 11 falls on Sunday. There is no entitlement to holiday pay, and employees in exempt industries who are required to work are entitled to time off in lieu.

The HRM *Civic Holiday By-law* requires closure of places where goods are offered for sale by retail. We are polling the other municipalities in Nova Scotia to identify which of them has a legal civic holiday on which closing of businesses is mandatory. We will provide that when we have their responses.

Holidays in other provinces

We attach a table summarizing the holidays under the laws of eastern Canadian provinces. This is based on a review of their published laws, and may not be complete; in particular it is difficult to identify all municipal holidays.

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Automobile Dealers: Holiday Obligations and Entitlements in Nova Scotia

Holiday	Mandatory Close	Right to Refuse	Holiday Pay
New Year's Day	A	B	C
February Holiday ¹	A	B	C
Good Friday	A	B	C
Easter Monday ²			
Victoria Day ³			
Canada Day	A	B	C
Civic Holiday ⁴	E		
Labour Day	A	B	C
Thanksgiving Day	A	B	
Remembrance Day	D	D	
Christmas Day	A	B	C
Boxing Day	A	B	
Sunday		B	

Explanations:

"Mandatory Close" means that retail businesses must close on the day. There are exceptions, not including automobile dealers.

"Right to refuse" means that employees have the right to refuse to work on the designated day without adverse consequences. For automobile dealers, this applies only on Sundays; mandatory closure applies on the other right-to-refuse holidays.

"Holiday Pay" means that employees are entitled to be paid for the holiday. This applies to salaried employees and to hourly employees who worked 15 days in the last 30 calendar days, if they worked their scheduled day immediately preceding the holiday. **Automobile salespersons are specifically excluded from this provision, and have no entitlement to holiday pay.** Hourly employees are entitled to be paid their regular rate for normal hours of work. (Generally, this is done by averaging hours for the past 30 days.) Although there is no entitlement to holiday pay for Boxing Day, Thanksgiving Monday, or Remembrance Day (mandatory closing days), most employers pay for those dates. Victoria Day is a Federal holiday, but not a mandatory close day in Nova Scotia. Natal Day is a mandatory close day in HRM; we have not checked by-laws of other municipalities.

Individual employment contracts or collective agreements frequently govern employee rights to holidays and to holiday pay. They can add to the entitlement under statute, but cannot reduce it.

References:

- A. *Retail Business Designated Day Closing Act*
- B. *Labour Standards Code*, s 30(1) – refers to *Retail Business Uniform Closing Day Act* (includes Sunday)
- C. *Labour Standards Code*, s. 37 – refers to specified holidays
- D. *Remembrance Day Act* – specifies closing obligation and a right holiday pay rights
- E. *HRM Charter and Civic Holiday By-law* requires "shops" ("places where goods are offered for sale") to close, except between noon and 6:00 pm

¹ Effective February 2015

² Easter Monday is a holiday for some federally-regulated businesses, but not provincially-regulated businesses.

³ Victoria Day is a Federal holiday, but not a mandatory close day in Nova Scotia.

⁴ Natal Day in HRM; similar civic holidays in other municipalities

Comparison of Nova Scotia Holidays with Atlantic Provinces, Ontario, Quebec and Federal Sector

	Nova Scotia	New Brunswick	Nfld. & Labrador	P.E.I.	Ontario	Quebec	Federal
New Year's Day	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• holiday pay
January 2	none	none	none	none	none	• close^	none
February Holiday	• To be named • close • holiday pay	none	none	• "Islander Day" • close • holiday pay	• "Family Day" • close • holiday pay	none	none
St. Patrick's Day	none	none	• traditional	none	none	none	none
Good Friday	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• holiday pay (or Easter Monday at option of employer)	• holiday pay
Easter Sunday	• close	• traditional	• close	none	• close	• close	none
Easter Monday	none	none	none	• optional holiday	none	• see Easter	none
Victoria Day (last Monday before May 25)	• traditional	• close	• close	• traditional	• close • holiday pay	• "Jour des Patriots" • holiday pay	• holiday pay
June 24	none	none	none	none	none	• "Fête Nationale" • close • holiday pay	none
Canada Day (July 1)	• close • holiday pay	• close • holiday pay	• "Memorial Day" • close • holiday pay	• traditional • holiday pay	• close • holiday pay	• close • holiday pay	• holiday pay
Orangemen's Day	none	none	• traditional	none	none	none	none
Civic Holiday (1 st Monday in Aug)	• "Natal Day" in HRM and some other municipalities close except 12-6	• "New Brunswick Day" • close • holiday pay	• Royal St. John's Regatta, usually on first Wed in Aug (St. John's & Harbour Grace only)	• optional holiday • Gold Cup Parade Day (third Friday in Aug) mainly in Charlottetown	• traditional in many areas, but no mandatory close, no holiday pay	none	none
Labour Day (1 st Monday in Sept)	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• holiday pay
Thanksgiving Day (2 nd Monday in Oct)	• close	• close	• close	• close	• close • holiday pay	• traditional • holiday pay	• holiday pay
Remembrance Day	• close	• close • holiday pay	• close • holiday pay	• close • holiday pay	none	none	• holiday pay
Christmas Day	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• close • holiday pay	• holiday pay
Boxing Day	• close	• close	• close	• close	• holiday pay	none	• holiday pay
Total closing days	10 mandatory close 1 traditional	10 mandatory close	10 mandatory close 2 traditional	8 mandatory close 2 traditional	8 mandatory close 1 traditional	8 mandatory close 1 traditional	

	Nova Scotia	New Brunswick	Nfld. & Labrador	P.E.I.	Ontario	Quebec	Federal
Applicable Statutes	<i>Labour Standards Code, s. 37</i> <i>Remembrance Day Act</i> <i>Retail Business Designated Day Closing Act, ss. 2 & 3</i>	<i>Employment Standards Act, ss. 1, 18 & 19</i> <i>Days of Rest Act, ss. 1 & 4</i>	<i>Labour Standards Act, ss. 14 & 15</i> <i>Shops Closing Act, ss. 4 & 5</i>	<i>Employment Standards Act, s. 6</i> <i>Retail Business Holidays Act, ss. 1 & 2</i>	<i>Employment Standards Act, ss. 1 & 26</i> <i>Retail Business Holidays Act, ss. 1 & 2</i>	<i>Act Respecting Labour Standards, ss. 60 & 62</i> <i>National Holiday Act, s. 2</i> <i>Act Respecting Hours and Days of Admission to Commercial Establishments, s. 3</i>	<i>Canada Labour Code, ss. 166 & 192</i>

"Holiday pay" means an employee is entitled to the day off and to be paid their regular wages, or if the employee works, to be paid their regular wages plus one-and-a-half times their regular rate of wages for the actual time worked, with the exception of Newfoundland & Labrador, where an employee is entitled to twice their regular wage. Alternatively, in most provinces an employer and employee may agree (or the employer may decide) to substitute a public holiday for another day off with pay.