

# News Release

## **\$80 million class action lawsuit alleges RBC and Aviva insurance companies short changed employees on commissions**

**TORONTO, ON – TUESDAY, APRIL 23, 2019** — Monkhouse Law has filed for an order to certify an \$80-million class action lawsuit against [RBC Insurance Agency Ltd.](#) and [Aviva General Insurance Company](#). The employee class action lawsuit seeks to have the class action time period run from 1993, when RBC insurance was founded. Aviva purchased RBC Insurance in January 2016.

The employee class action lawsuit alleges that the company's practice of [calculating vacation](#) and [public holiday pay](#) for Singh and other commissioned salespeople at RBC Insurance/Aviva violated the [Employment Standards Act](#) (ESA). Here is the [full statement of claim](#).

The class action was filed on behalf of Kabir Singh, the proposed representative Plaintiff, who was an insurance advisor at RBC for three years, from 2016 to April 2019. Allegations in the statement of claim must still be proven in court.

Specifically, the employee class action lawsuit alleges that commissioned salespeople were short changed by the two companies because the vacation and public holiday pay that was paid to employees was based solely on their base salary and not total compensation. As a result, those employees are owed substantial back pay. This is the first class action relating to vacation pay and public holiday pay short changing that has been filed in Canada.

For instance using a mathematically easy example if the employee's base pay was \$52,000 per year, but they received \$48,000 in commissions for a total compensation of \$100,000 per year. A 6 year employee would be owed 3 weeks vacation. The employee would be given 3 weeks paid vacation pay, totaling \$3,000 (\$1,000 per week), however, under the ESA the employee would be owed 6% of total compensation, an amount of \$6,000. Therefore, the employee would have been underpaid by \$3,000 per year for vacation pay alone.

"These companies have been paying vacation pay only on base salary on the presumption that they can say their commissions are all inclusive of vacation and public holiday pay," said Andrew Monkhouse, founder of Monkhouse Law.

"This practice undercompensates these employees and deprives them of having real vacations. These actions undermine the rationale behind providing paid vacation pay in the first place," he added.

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**IMPORTANT - No action is required by employees to join this class action. In Ontario, class action lawsuits are an “opt out” system, so if this class action lawsuit is certified, all employees who fall under the class action definition will be members of the class unless they opt out.**

Former commissioned salespeople with either RBC or Aviva who have information that may assist the litigation should contact Alexandra Monkhouse at 416-907-9249, ext. 211 or [alexandra@monkouselaw.com](mailto:alexandra@monkouselaw.com).

Affected employees of RBC or Aviva can keep up-to-date on the employee class action lawsuit by completing [this form](#), on the Monkhouse Law website.

## Commissioned Salespeople & Employment Standards

The employee class action lawsuit claims that, according to an RBC policy, commissions to salespeople were allegedly set at a level to cover vacation and public holiday pay. However, the commissioned salespeople didn't get the proper amounts they were owed because, in calculating the employees' vacation and holiday pay, RBC didn't take both the fixed and commission-based component of employees' wages into account.

In addition, the employee class action lawsuit alleges that this is shown when vacation pay was increased on January 1, 2018, to become 6% for those with more than five years seniority. This change was not updated in any way in the compensation policy which shows that the policy actually did not include vacation pay.

Under the *Employment Standards Act, 2000*, employees with variable compensation must be paid additional vacation pay above and beyond their regular pay. For employees with less than five years seniority, the pay must not be less than 4%. For those with five years or more seniority, the pay must be 6%.

In 2015, an Ontario divisional appeal court ruled that, under the Canada Labour Code, employers who fall within the federal jurisdiction cannot pay vacation pay only on base salary. While RBC Insurance/Aviva fall under Ontario employment law, Mr. Monkhouse notes that the law is similar for the provision of vacation pay between the Employment Standards Act and the Canada Labour Code.

“Employers are required under Ontario law to pay their employees vacation pay fairly. Those employers who do not pay adequate vacation pay may end up on the hook for substantial payments from the entire tenure of the employee,” said Mr. Monkhouse. “All workers should be

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compensated fairly and be paid for vacation pay, even if they are earning commissions in their workplace.”

## About Monkhouse Law

Toronto-based [Monkhouse Law](#) is an employment law firm that specializes in: wrongful dismissal, human rights law, labour law, employment insurance claims, and denied long-term disability claims.

Monkhouse Law has a strong history of representing employees in class actions including having started the first Canadian [contractor misclassification case of \*Sondhi v. Deloitte\*](#) in 2015.

## More Information

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