

Employment Standards

Rights and responsibilities at work

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Overtime Hours and Overtime Pay

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Part 2, Division 4 of the *Employment Standards Code (Code)* sets out the general rules for Overtime Hours and Overtime Pay. The Employment Standards Regulation (Regulation) excludes a number of occupations from these sections. The Regulation also provides special rules for calculating overtime for several other occupations.

In addition, section 2(3) of the *Code* exempts certain farm and ranch employees from the application of this standard.

Definition of terms

Hours of work

This means the period of time during which an employee works for an employer, and time off with pay instead of overtime pay provided by an employer and taken by an employee.

Wage rate

This means the hourly rate of pay for wages.

Work day

This means a 24-hour period ending at midnight or a 24-hour period as established by the consistent practice of an employer.

Work month

This means a calendar month or the period from a time on a specific day in a month to the same time on the same day in the following month as established by the consistent practice of an employer.

Work week

This means the period between midnight on a Saturday and midnight on the following Saturday, or 7 consecutive days as established by the consistent practice of an employer.

The basic rule

Overtime hours in respect of a work week are the greater of:

- the total of an employee's hours of work in excess of 8 hours on each work day in the work week, or
- an employee's hours of work in excess of 44 hours in the work week.

If the greater of the 8 or 44 hours are the same, then overtime hours are those common hours.

Employees to which overtime hours and pay do not apply

- Managers, supervisors and those employed in a confidential capacity;
- Farm workers;
- Professionals, including agrologists, architects, certified or chartered accountants, chiropractors, dentists, denturists, engineers, information systems professionals, lawyers, students-at-law, optometrists, podiatrists, psychologists and veterinarians;
- Salespersons of automobiles, trucks, buses, farm machinery, road construction equipment, heavy duty equipment, manufactured homes or residential homes;
- Salespersons who solicit orders, principally outside of the employer's place of business, who are fully or partly paid by commission (this does not apply to route salespersons);
- Licensed salespersons of real estate and securities;
- Licensed insurance salespersons who are paid entirely by commission income;
- Salespersons who are at least 16 years old and are engaged in direct selling for licensed direct sellers;
- Licensed land agents;
- Extras in a film or video production;
- Counselors or instructors at an educational or recreational camp that is operated on a charitable or not-for-profit basis for children, persons with disabilities, or religious purposes; and
- Domestic employees (these employees are exempt only from sections 16 and 17 of the *Code* concerning hours of work and notice of work times, but not from rest periods).

Industries and employees with different overtime rules

Employees who work in the following industries and occupations are exempt from the *Code's* basic overtime rules of 8 hours daily and 44 hours weekly. Different overtime rules apply to them.

- Ambulance services
- Geophysical exploration
- Irrigation districts
- Logging and lumbering
- Oilwell servicing
- Land surveying
- Trucking
- Field catering
- Highway and railway construction and brush clearing
- Nurseries
- Road maintenance activities
- Taxi cabs
- Caregivers (home and residential)

The table below shows the various industries daily, weekly and in some cases monthly hours of work before overtime becomes payable.

Industry and occupation	Daily hours	Weekly hours before overtime is calculated	Monthly hours before overtime is calculated
Ambulance attendants	10	60	N/A
Geophysical exploration	10	N/A	191
Irrigation districts	9	54	N/A
Logging and lumbering	10	N/A	191
Oilwell servicing	12	N/A	191
Surveying	10	N/A	191
Trucking	10	50	N/A
Field catering	10	N/A	191
Highway and railway construction and brush clearing	10	44	N/A
Nursery industry	9	48	N/A
Road maintenance activities	10	N/A	191
Taxi cab industry	10	60	N/A

Overtime rules for caregivers (home care and residential care) depend on the type of shift worked by the employee. Please see the “Caregivers” Fact Sheet at <http://work.alberta.ca/esfactsheets> for more information.

Calculating and paying overtime pay

Whether basic or different overtime rules apply, the formula for calculating overtime pay is the same. It is important to remember that overtime hours are calculated on daily and weekly basis, except in few instances that require overtime to be calculated on a monthly basis.

Overtime hours must be paid at not less than 1.5 times the employee’s wage rate. To provide an employee with the correct amount of overtime pay, the overtime rate of pay has to be multiplied by the total number of overtime hours that employee has worked.

Note: Care must be taken not to calculate overtime hours based on pay periods. This could lead to incorrect calculation. Employers are allowed to establish pay periods that suit their business and staff needs, but to avoid incorrect calculation of overtime hours, calculate overtime on the appropriate daily, weekly or monthly basis.

The only exception to paying overtime at the rate of 1.5 times is where the overtime is accumulated under an overtime agreement between the employer and employee. In such cases, the agreement will provide for time off work with pay to be taken instead of overtime pay. It is important to note that even though the pay period may end mid-week, overtime pay is based on overtime hours for the work week, not the pay period.

If an employer establishes a work week of fewer than 44 hours (e.g. a 40-hour work week) overtime pay is still payable under the basic 8/44 rule unless a collective agreement, some other agreement, or the consistent practice of an employer establishes that overtime hours are to be counted after working fewer than 8 hours in a work day or 44 in a work week.

Overtime pay for employees paid by commission or other incentive pay plans

Employees who are paid exclusively by incentive pay such as commission, piecework or a similar method, have no established rate of pay. Therefore, for the purpose of calculating overtime entitlements the wage rate is deemed to be the minimum wage. If the incentive pay is less than what would have been earned at minimum wage, the employer must top up the incentive pay earnings.

If an employee is paid by a combination of salary and incentive pay, and the salary is greater than minimum wage, the salary establishes the hourly rate for the purpose of calculating overtime entitlements. If the salary component of the employee’s wages is equal to or less than the minimum wage, the minimum wage is used for calculating overtime entitlements.

Overtime agreement

An overtime agreement allows overtime hours to be banked and subsequently taken off with regular pay instead of overtime pay. For every hour of overtime worked, one hour must be banked.

The agreement can be between an employer and a single employee or with a group of employees. An overtime agreement can also be part of a collective agreement. The employees may be part-time or full-time.

An overtime agreement must be in writing. Employers must give a copy of the agreement to employees who are covered by it, including new employees. If a majority of the employees in a work group agree to enter into an overtime agreement, the provisions of the overtime agreement will bind all employees of that particular group.

Provisions deemed to be in every overtime agreement

The *Code* deems an overtime agreement to contain certain minimum provisions, whether they are actually mentioned in the agreement or not. These provisions are:

- Time off with pay instead of overtime pay will be provided, taken and paid at the employee's regular wage rate at a time that the employee could have worked and received wages from the employer. Note: the phrase "...at a time that the employee could have worked..." means that time off can be provided any time that the employee could have been scheduled to work non-overtime hours.
- If time off with regular pay instead of overtime pay is not provided, taken, and paid as required (that is, at the employee's wage rate and at the time the employee could have worked and received wages), the employee must be paid overtime pay of at least 1.5 times the employee's wage rate for the overtime hours worked.
- Time off with regular pay instead of overtime pay must be provided, taken and paid to the employee within three months of the end of the pay period in which it was earned, unless:
 - i) the agreement is part of a collective agreement and the collective agreement provides for a longer period within which the time off with pay is to be provided and taken, or
 - ii) the Director of Employment Standards issues a permit authorizing an agreement that provides for a longer period within which the time off with pay is to be provided and taken.
- No amendment or termination of the agreement is to be effective without at least one month's written notice given by one party to the agreement to the other.

Examples of the requirement to use up banked time within 3 months of the end of the pay period are as follows:

Overtime worked	Pay period ends	Banked time to be taken by
June 1	June 30	September 30
August 11	August 12	November 12
September 15	September 15	December 15

The *Code* requires employers to keep up-to-date records of the following information when there is an overtime agreement in place:

- The number of overtime hours banked,
- The number of hours taken off with pay by the employee,
- The employer must provide the employee with a pay statement showing the number of banked overtime hours taken with regular pay by the employee, for each pay period.

Note: Records must be kept for at least 3 years from the date each record is made.

Permit to bank overtime for longer than 3 months

It is possible to request a permit extending the 3-month time limit for providing paid time off for any hours that have been banked. Note: Permits are not issued for periods longer than 6 months.

A request for a permit must include the following information:

1. Name and address of employer.
2. Reason for the application.
3. Description of the roles of the employee(s) who would be subject to the extension.
4. Written consent to the extension request by the employee(s) who would be affected by it. This includes the name, signature and phone number of the affected employee(s).

You can download the “Joint Application to Extend the Overtime Banking Period” form at <http://work.alberta.ca/documents/Joint-Application-to-Extend-the-Overtime-Banking-Period.pdf> or phone the Employment Standards Contact Centre at 1-877-427-3731 to receive a copy by fax or mail.

Submit your request to:

Permit Technical Analyst, Employment Standards
Jobs, Skills, Training and Labour
701, Labour Building, 10808 – 99 Avenue NW
Edmonton, AB T5K 0G5

Email your request to: JSTL.ESPermits@gov.ab.ca

Fax your request to: 780-422-8944

Note: A group overtime agreement requires the support of a majority (greater than 50 per cent) of employees of that group.

An overtime agreement that allows employees to bank overtime for a period longer than three months is acceptable if it is contained in a collective agreement.

Determining how many banked overtime hours can be used in a day or a week

To determine how many banked overtime hours can be used in a day or week (when overtime is paid for working longer than 8 hours a day or 44 hours a week), the following rules apply:

- The total of hours worked in a day plus banked hours taken (with regular pay) on that day cannot exceed 8 hours.
- The total of hours worked in a week, plus banked hours taken (with regular pay) in that week, cannot exceed 44 hours.

This is because the employee’s banked time off must be provided and taken during non-overtime hours.

Example 1

A group of employees have entered into an overtime agreement with their employer, who pays overtime after 8/44. The business is open 5 days per week, Monday to Friday. In a week, an employee works:

S	M	T	W	T	F	S	Total Hours
-	9	8	10	8	6	-	41

In this example, daily overtime is $1 + 2 = 3$ hours. There is no weekly total for overtime since the total weekly hours are less than 44. Therefore, 3 overtime hours are banked. The employer and employee agree to use some of the banked hours in the same week they were earned, and the employee takes 2 hours of banked time off with pay on Friday.

Using Friday is acceptable because total hours worked that day were less than 8 hours. Including the 2 banked hours with the 6 hours worked on Friday brings the total weekly hours to 41. The total of hours worked plus banked hours used in that week cannot exceed 44. This is because the employee’s banked time off must be provided and taken during non-overtime hours.

Example 2

An employee has entered into an overtime agreement with her employer, who pays overtime after 8/44. The business is open 5½ days per week, from Monday until noon on Saturday. The employee does not usually work on Saturdays. In a two-week period, the employee works:

S	M	T	W	T	F	S	Total Hours
-	11	11	10	12	10	7	61
-	8	8	8	8	-	-	32

In this example, overtime is calculated as follows:

Week 1:

- Daily overtime is $3 + 3 + 2 + 4 + 2 = 14$ hours
- Weekly overtime is $61 - 44 = 17$ hours

The employee is entitled to the greater amount of overtime. Therefore, 17 hours of weekly overtime are banked.

Week 2:

The employee has not worked any daily or weekly overtime in this week, however, the employee has 17 hours banked from the first week.

In the second week, the employer provides the employee with 8 hours of paid time off on Friday of the second week. As the employee could work on Saturdays, the employer also provides 4 hours of paid time off on Saturday of the second week at the employee's regular wage rate.

A maximum of 12 hours can be withdrawn from the bank, as these 12 hours top up the employee's total hours in week two from 32 to 44 hours. The total of hours worked in the second week, plus banked hours used in that week, cannot exceed 44. This is because the employee's banked time off must be provided and taken during non-overtime hours.

This leaves a balance of $17 - 12 = 5$ hours in the bank. The employee can take these hours as paid time off within the next 3 months.

Paying out banked overtime on termination

When either the employer or employee ends the employment relationship by giving a written notice of termination, the employer can require the employee to use up some or all outstanding banked overtime during the notice period. When overtime is paid for hours worked over 8 hours in a day or 44 hours in a week, the total of any hours worked, plus banked overtime taken, cannot exceed 8 hours in a day or 44 hours in a week.

Whether or not any notice of termination was provided, any banked overtime not provided and taken with pay by the end of the last day of employment must be paid out at 1.5 times the employee's regular rate of pay at the time it was earned.

Prohibition on agreements to not pay overtime pay

Employers and employees cannot make agreements verbally or in writing that overtime pay is not to be paid. Section 130(2) of the *Code* says that if an employee works for less than the overtime rate to which he or she is entitled, both the employer and the employee are guilty of an offence. If an investigation determines that an employer and employee agreed that the overtime rate is not to be paid, the agreement is contrary to the *Code*. Both the employer and employee can be prosecuted and the minimum standards of the *Code* for the payment of overtime pay will be enforced.

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