

## Compressed Work Week Arrangements and Common Questions

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Under section 20 of the *Employment Standards Code (Code)*, providing certain conditions are met, an employer may require or permit an employee to work a Compressed Work Week (CWW), which is an arrangement that consists of fewer work days in the work week and more hours of work in a work day, paid at the employee's regular wage rate.

Note: An employee's approval is not required, nor is permission from Employment Standards required.

To be valid, a compressed work week **must be scheduled in advance** and the schedule must meet the following requirements:

- (a) if the compressed work week is part of a cycle, the schedule must show all the work weeks that make up the cycle;
- (b) the maximum hours of work that an employee may be scheduled to work in a work day is 12 hours;
- (c) the maximum hours of work that an employee may be scheduled to work in a compressed work week is 44 hours;
- (d) if the CWW is part of a cycle, clause (c) above (which requires that the maximum hours of work that an employee may be scheduled to work in a CWW is 44 hours) does not apply and the maximum average weekly hours of work that an employee may be scheduled to work in the work weeks that are part of the cycle is 44 hours.

## Examples of typical CWW arrangements

### Single-week schedules using non-CWW

1. Non-CWW Schedule:

5 days of 8 hours, plus 4 hours on day 6 = total 44 hrs/wk

CWW Schedule:

4 days of 11 hours = total 44 hrs/wk

NOTE: Daily hours are increased from 8 to 11 and days worked reduced from 6 to 4.

2. Non-CWW Schedule:

5 days of 8 hours = total 40 hrs/wk

CWW Schedule:

4 days of 10 hours = total 40 hrs/wk

NOTE: Daily hours are increased from 8 to 10 and days worked reduced from 5 to 4.

### Multi-week schedules

3. Non-CWW Schedule:

6 days of 7 hours = total 42 hrs/wk

CWW Schedule:

*Week 1* – 3 days of 12 hours, then 4 days off = total 36 hrs/wk

*Week 2* – 4 days of 12 hours, then 3 days off = total 48 hrs/wk

NOTE: Daily hours are increased from 7 to 12 and days worked reduced from 6 to 3 in the first week and 4 in the second.

Average total weekly hours are 42.

4. Employee works 3 days of 12 hours, followed by 3 days off. The cycle repeats itself every 6 weeks:

Average total weekly hours are 42.

5. Employee works 4 days of 10 hours, followed by 4 days off. The cycle repeats itself every 8 weeks:

Average total weekly hours are 35.

## Overtime pay

Overtime is still possible with a CWW arrangement, but it may not be scheduled as part of the CWW. Overtime is calculated **both** on a daily and a weekly (or cycle) basis. **The greater number of overtime hours is what must be paid.** Alternatively, overtime worked under the CWW arrangement could be given as time off through an overtime agreement.

Based on the various examples of CWW shown above, overtime on a daily basis is those hours worked in excess of the CWW daily hours:

Example 1: after 11 hours

Examples 2 and 5: after 10 hours

Examples 3 and 4: after 12 hours (but permitted only in emergencies and a few other situations)

Overtime on a weekly basis, for those compressed schedules contained within a week, is those hours worked in excess of 44. Where the employer has a practice or policy of paying overtime after fewer weekly hours, then overtime will be the hours worked in excess of those fewer hours. Where the compressed schedule runs two or more weeks in a cycle, overtime is those hours in excess of 44 hours (or fewer according to employer practice) times the number of weeks in the cycle. For instance, in Example 4, assuming the employer's practice was to pay overtime after 42 average weekly hours, overtime would be those hours worked in excess of 12 in a day or 252 in the cycle, **whichever is greater.**

## General holiday pay

### How to pay if the employee does not work on a general holiday

Qualified employees are entitled to have the general holiday off with pay only if they are normally scheduled to work on that day. There are two acceptable options for calculating the pay for the general holiday.

#### Option 1:

The regularly scheduled hours of work on the affected day in the compressed work week schedule becomes the basis for general holiday pay entitlement. The employee is entitled to a day off with a day's pay. Using Example 1 above, where the employee normally works 11 hours per day from Monday through Thursday, if the general holiday fell on one of those days, the employee would get the day off with 11 hours' pay.

#### Option 2:

The employer pays the employee for all nine statutory holidays, whether they fall on a regularly scheduled day of work or not, at 8 hours per holiday. If the holiday falls on an employee's regularly scheduled working day, the employee would have the day off. Over the period of a year, this method of payment generally provides better than the minimum entitlement to the employees.

## How to pay if an employee works on the general holiday

If an employee is required to work on the holiday, then, **in addition to the regular day's pay (Option 1), or the 8 hours per holiday (Option 2)**, the employee must be paid time-and-a-half for all the hours worked on the holiday.

### *Alternatively,*

The holiday can be treated as just another working day (regular and overtime requirements would apply). The employee must then receive another working day off with pay in place of the holiday. Payment for the day off would be the hours regularly scheduled on the replacement holiday (Option 1) or 8 hours pay if all holidays are paid (Option 2). This future day off with pay must be given sometime before the employee's next annual vacation.

## Vacations and vacation pay

Vacation entitlements are normally described in terms of number of weeks. This principle continues to apply.

### Single-week schedules

In Examples 1 and 2 above, the number of days of vacation entitlement will be 4 times the number of weeks of vacation. Thus, an employee entitled to three weeks' vacation would be entitled to take 12 regular working days.

### Multi-week schedules

In Examples 3, 4 and 5, however, the number of hours worked per week varies. The approach in these situations is to describe the vacation entitlement in terms of hours. Thus, three weeks' vacation would be 3 times the average weekly hours worked:

Example 3:      $3 \times 42 \text{ hours} = 126 \text{ hours of vacation}$

Example 4:      $3 \times 42 \text{ hours} = 126 \text{ hours of vacation}$

Example 5:      $3 \times 35 \text{ hours} = 105 \text{ hours of vacation}$

Vacation pay continues to be calculated as 4 per cent of regular wages for two weeks' vacation entitlement, and 6 per cent for three weeks.

## Some common questions

### General

#### 1. When is it appropriate to institute a CWW?

When the work is scheduled on a consistent and repetitive basis, it lends itself to a CWW. If the work schedule is dependent on other factors such as work availability or the weather, a CWW would not be appropriate.

**2. Is it possible to have a CWW and an overtime agreement as described in section 23 of the Code?**

Yes. This is because under a CWW arrangement, it is conceivable that employees may work overtime hours. An employer and its employee(s) may therefore agree that instead of paying overtime pay, the employer will provide and the employee(s) will take, time off in place of overtime pay.

**3. Is there a limit to the number of regular hours which may be scheduled in a day as part of a CWW?**

Yes. The maximum number of regular hours that an employee may be scheduled to work in a work day is 12 hours. Note: this includes breaks.

**4. Can a CWW average more than 44 hours per week?**

No, unless the Employment Standards Regulation specifies more than 44 regular hours per week before overtime is payable for a specific industry.

**5. What is a CWW ‘cycle’?**

A cycle is a work schedule covering more than one week that repeats itself in the same order. The work schedule must show all the work weeks that make up the cycle.

**6. How is a new employee paid for hours of work if they start employment part way into the cycle?**

All scheduled hours will be paid at regular pay. The employer must establish the cycle. Once this is done, any employee working within that cycle is subject to payment under the CWW. The employer must inform the new employee of this before the employee starts work.

**7. If a casual or part-time employee fills in for another employee on a CWW, can the scheduled hours worked be paid at regular pay?**

Yes. The employee must be informed prior to working the shift that they are filling in on a CWW and will not be paid overtime for any of the scheduled hours. However, any overtime hours worked by the employee must be paid at overtime rate.

**8. Can two employees job-share on a CWW schedule?**

Yes. However it is the employer’s responsibility to ensure that the employees are informed of all aspects of the arrangement before the work begins.

**9. Can an employee be required to make up a shift when they have been absent, for any reason, on a scheduled work day?**

Yes. However, the employee must be paid regular wages and any applicable overtime for the day.

**10. If an employee was absent from work for a scheduled shift and was paid sick pay by the employer for that day, can the employee be required to make up a shift?**

Yes. Sick pay is not wages and sick days do not constitute hours of work.

**11. Can any scheduled work day be 8 hours or less under a CWW?**

Yes. The scheduled work days under a CWW can be a combination of work days with greater or fewer than 8 hours per day.

### **Overtime**

**12. Under a CWW arrangement, is it permissible to work overtime hours?**

Yes, provided that the overtime is worked on a casual, occasional or intermittent basis. It is not permissible to schedule overtime on a regular and continuous basis.

**13. When does an employee on a CWW qualify for overtime pay?**

An employee on a CWW qualifies for overtime pay when the hours worked exceed the daily hours scheduled.

On a weekly schedule, overtime is also any hours worked over 44 per week or fewer hours as established by the consistent practice of the employer.

Over a cycle, overtime is those hours in excess of:

- 44 hours times the number of weeks in the cycle [i.e. if the cycle is six weeks, overtime would be any hours in excess of 264 ( $44 \times 6 = 264$ )],
- or**
- if an employer pays overtime over fewer weekly hours, it is those weekly hours times the weeks in the cycle [i.e. if the cycle is six weeks and an employer pays overtime over 40 hours a week, overtime would be any hours in excess of 240 ( $40 \times 6 = 240$ )].

The employee will receive the greater number of overtime hours under these three calculations.

## General holiday pay

### 14. Who is a qualified employee for general holiday pay purposes?

A qualified employee is an employee who:

- worked for the same employer for 30 days or more in the 12 months preceding the holiday,
- worked on the holiday when required or scheduled to do so,
- worked their scheduled day before and after the holiday, or
- if absent from work on either of these days, was absent with the consent of the employer.

### 15. How is a qualified employee under a CWW paid for a general holiday that falls on a scheduled work day and the employee does not work?

The employee receives an average daily wage for that day.

### 16. What is the minimum pay that a qualified employee under a CWW must be paid for working on a general holiday when scheduled to work on the holiday?

A qualified employee must receive either:

- pay for the scheduled hours of work under the terms of the CWW for the holiday, plus time and one half for each hour worked on the holiday,
- or**
- pay for the hours worked, and overtime if applicable, for the day in question,
- and**

be provided a day off with pay of an amount that is at least the employee's average daily wage. The day off must be on a day that would normally be a work day for the employee and taken not later than their next annual vacation.

### 17. If a qualified employee was not scheduled to work on a general holiday but was required to work on that day, how are they paid?

A qualified employee must be paid time-and-one-half (1.5) of their wage rate for each hour worked on that day.

### 18. If a qualified employee does not work on a general holiday when the holiday falls on a scheduled work day, can the employee be required to "make up" a shift?

Yes. But the employee must be paid regular wages and any applicable overtime for the day.

**19. Is the “5 out of 9 Rule” under section 27 of the Code used in determining a normal work day under a CWW?**

No. The only determination required in this instance is whether the CWW schedule requires employees to work on the general holiday or not.

**20. How is a “construction employee” paid general holiday pay when working under a CWW arrangement?**

The employee must be paid 3.6 per cent of their regular wages. Note: No distinction is made as to whether or not they work on a general holiday.

**Termination**

**21. How is an employee paid if their employment is terminated prior to the end of a cycle?**

The employee must be paid the scheduled hours worked at the regular rate, plus any accrued overtime as though the employee had worked to the end of the cycle.

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