

Employment Standards

Rights and responsibilities at work

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Construction Industry (Overtime and Overtime Pay, Vacation Pay, General Holiday Pay and Termination Pay)

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Except for exemptions made in Part 3, Division 3 of the Employment Standards Regulation (Regulation) for employees in highway and railway construction and brush clearing industry, with respect to overtime hours, the *Employment Standards Code (Code)* normal overtime hours apply to most employees in the construction industry. Part 3, Division 2 also provides for overtime hours for municipal district or Métis settlement employees engaged in road construction, road maintenance or removal of snow.

Part 4 of the Regulation provides different rules for general holiday pay and vacation pay for employees in the construction and brush clearing industries.

Definition of terms

Brush clearing

This means the cutting, removal and burning or other disposition of trees or brush for the primary purpose of clearing land and **not** for the harvesting of timber on it.

Construction employees

Construction employee means someone employed:

- I. at the site of and in the construction, erection, repair, remodeling, alteration, painting and interior decoration or demolition of any:
 - (A) building or structure
 - (B) road, highway, railway or airfield
 - (C) sidewalk, curb or gutter
 - (D) pipeline
 - (E) irrigation or drainage system
 - (F) earth and rock fill dam

- (G) sewage system
- (H) power transmission line or power distribution system, or
- (I) gas distribution system,

But does not include employees employed to perform ongoing maintenance at the site or office employees employed at the site, or

- II. in the cutting, removal, burning or other disposition of trees and brush or either of them for the primary purpose of clearing land and not for the harvesting of timber on it (see section 44 of the Regulation).

Railway construction

Means work performed in respect of the construction, maintenance or repair of a railway.

Road construction

Means work performed in respect of the construction, maintenance or repair of a road or highway.

Calculation of overtime hours and overtime pay

Overtime hours can be compensated by being paid out at the overtime rate or by way of an overtime agreement. A compressed work week arrangement can be used to schedule employees for extended hours without incurring overtime.

Construction industry in general

The basic overtime rule of 8 hours a day or 44 hours a week applies generally to employees in the construction industry. There are, however, two exceptions:

- highway and railway construction and brush clearing employees, and
- employees of a municipal district or Métis settlement employed in construction, road maintenance or the removal of snow from roads.

In calculating overtime pay for each week, hours worked in excess of 8 per day must be totalled. Any hours worked in excess of 44 a week must be also totalled. The greater of the daily total or weekly total are the overtime hours.

When paying out overtime hours, the overtime rate must be at least 1.5 times the employee's regular wage rate.

Highway and railway construction

Overtime hours for employees employed in the highway and railway construction industry, where the construction is outside or a continuation from the outside of the boundaries of a city, town or village, are those hours in excess of 10 per day and 44 per week, whichever is greater. See sections 22-25 of the Regulation.

In calculating overtime pay for each week, hours worked in excess of 10 per day must be totalled. Any hours worked in excess of 44 a week must also be totalled. The greater of the daily total or weekly total are the overtime hours.

When paying out overtime hours, the overtime rate must be at least 1.5 times the employee's regular wage rate.

Brush clearing

Overtime hours for employees employed in brush clearing are those hours in excess of 10 per day or 44 per week, whichever is greater. See sections 22-25 of the Regulation. The method of calculating and paying overtime for these employees is the same as for employees in highway and railway construction.

Employees of a municipal district or Métis settlement

In the case of employees of a municipal district or Métis settlement employed in road construction or maintenance, or snow removal from roads, overtime hours are those in excess of 10 per day or 191 per month, whichever is greater.

In calculating overtime pay for each week, hours worked in excess of 10 per day must be totalled. Any hours worked in excess of 191 per month must be totalled. The greater of the daily total or monthly total are the overtime hours.

Where fewer than 191 hours are worked in the first or last month of employment, overtime hours for that month are those in excess of 10 per day or 44 per week, whichever is greater. See sections 19-21 of the Regulation.

In calculating overtime pay where hours worked are fewer than 191 in a month, for each week, hours worked in excess of 10 per day must be totalled. Any hours worked in excess of 44 a week must also be totalled. The greater of the daily total or weekly total are the overtime hours.

When paying out overtime hours, the overtime rate must be at least 1.5 times the employee's regular wage rate.

Employees exempt from overtime hours and pay

Employees employed in a managerial, supervisory or in a capacity concerning matters of a confidential nature and whose duties do not, other than in an incidental way, consist of work similar to that performed by other employees who are not so employed, are exempt from overtime pay.

Overtime agreements

An overtime agreement allows overtime hours to be banked and subsequently taken as time off by the employee. For every hour of overtime worked, one hour is banked, and when taken as time off by the employee, is paid at the regular rate of pay instead of the overtime rate. The time off must be provided at a time when the employee could otherwise be working for the employer and must be taken within three months of the pay period in which the overtime was worked.

Note: The Director of Employment Standards (Director) can issue a permit extending the term up to a maximum of three additional months.

Upon termination of employment, whether initiated by the employer or the employee, the employer must pay all remaining banked overtime hours at a rate of at least 1.5 times the employee's wage rate for the overtime hours worked.

The agreement can be between an employer and a single employee or a group of employees. When a majority of a group of employees agrees to enter into an overtime agreement, all employees of that group are bound by the agreement. An overtime agreement can also be part of a collective agreement. The employees, subject to an overtime agreement, may be part-time or full time.

An overtime agreement **must** be in writing and a copy must be provided to the employees who are affected by it. Cancellation of the agreement requires one party to provide the other with not less than one month's written notice. In the case of a group overtime agreement, majority employee support is required. A sample overtime agreement can be found online at <http://employment.alberta.ca/documents/Sample-Overtime-Agreements.pdf>.

Note: All the terms should be written into the agreement but certain provisions are deemed to be part of the agreement, whether actually included or not. See section 23(2) of the *Code*.

Compressed work week

A compressed work week arrangement is a scheduling of hours of work that has employees working longer hours each day (paid at their regular rate) balanced by working fewer days.

An employer may implement a compressed work week for all employees, or for some. No approval from Employment Standards is required.

A compressed work week schedule must specify the hours per day and the days of the week that will be worked.

If the schedule is part of a cycle, all of the weeks in the cycle must be identified as part of the schedule and it must be in writing. Over the cycle, the average number of hours worked must not exceed 44 hours per week. Hours exceeding the scheduled daily hours or 44 hours in a week (or the average of 44 hours over a cycle) are overtime hours.

Employees cannot be scheduled for more than 12 hours per day, including all breaks (coffee, lunch, etc.).

Vacation pay

All construction and brush clearing employees are entitled to vacation pay, from the start of employment, at the rate of at least 6 per cent of their **regular wages**.

If an employee is given a vacation, they must receive their vacation pay before the vacation begins.

If the employee is not given vacation time off, vacation pay must be paid on or before December 31 of each year or on termination of employment. The vacation pay may be paid as frequently as each pay period.

General holiday pay

All construction and brush clearing employees are entitled to general holiday pay, from the start of employment, at the rate of at least 3.6 per cent of their **regular wages**.

Employees are not required to be given a day off for the general holiday. If the employees work on a general holiday it is treated as any regular day of work with respect to the payment of wages and overtime pay.

General holiday pay must be paid on or before December 31 of each year, or on termination of employment.

General holiday pay may be paid as frequently as each pay period.

Note: Money paid for time off instead of overtime pay (overtime agreements) is considered regular wages and therefore must be included when calculating vacation pay and general holiday pay.

Termination pay or notice

Construction employees are not entitled to notice of termination or pay in lieu of notice of termination. See section 5 of the Regulation.

Some common questions

Overtime pay and overtime agreements in the construction industry

1. Can an overtime agreement be a condition of hire?

Yes, but at any time after the beginning of employment the employee (or a majority of employees) can give the required one month's notice to terminate the agreement.

2. What happens with a group overtime agreement when the "majority" no longer supports it?

If the employer cannot re-negotiate a majority agreement he or she has the option of negotiating individual overtime agreements with those who still want to bank overtime hours. Once an overtime agreement is terminated, overtime hours worked must be paid at the overtime rate.

3. What if the employer terminates an employee or group of employees for canceling an overtime agreement?

An employee cannot be terminated for requesting something to which he is entitled under the *Code*. The Director can order re-instatement, compensation or both.

4. Can employees request their employer to pay out banked overtime pay?

Yes. An employer has the discretion to do so but any pay out must be at the rate of at least 1.5 times the wage rate for the overtime hours worked.

5. What is the maximum number of hours per day/week (worked or banked) for which an employee can be paid, at the regular hourly rate of pay?

An employee cannot be paid for more than a total of eight regular hours per day or 44 regular hours per week including banked overtime hours (subject to the exceptions noted).

6. Can an employer extend employment for the sole purpose of using up banked overtime?

No. The banked overtime must be paid out at the rate of at least 1.5 times the wage rate for the overtime hours worked when the employer no longer requires the services of the employee.

Vacation pay

- 7. Is there a qualifying period of employment for a construction employee to be entitled to vacation pay?**

No.

- 8. Are construction employees entitled to scheduled vacation time off?**

No. However, all construction employees must be paid vacation pay.

- 9. What vacation pay must be paid?**

Vacation pay equal to 6 per cent of the employee's wages.

- 10. Are part-time construction employees entitled to the six per cent vacation pay?**

Yes.

- 11. When is vacation pay to be paid to construction employees?**

- If the employee is given a vacation, the day before it commences;
- If not given a vacation, on or before December 31 each year;
- On termination of employment; or
- With each pay cheque.

General holiday pay

- 12. Is there a qualifying period of employment for construction employees to be entitled to general holiday pay?**

No.

- 13. Are construction employees entitled to premium pay for working on general holidays, or to be given these days off with pay?**

No. However, all construction employees must be paid general holiday pay.

- 14. What must be paid to construction employees in respect to general holidays?**

General holiday pay equal to 3.6 per cent of the employee's wages.

15. Are part-time construction employees entitled to the 3.6 per cent general holiday pay?

Yes.

16. When must general holiday pay be paid to construction employees?

- On or before December 31 of each year;
- On termination of employment; or
- With each pay cheque.

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