

# EMPLOYMENT STANDARDS FACT SHEET

## CONSTRUCTION INDUSTRY (Overtime and Overtime Pay, Vacation Pay, General Holiday Pay and Termination Pay)

This fact sheet summarizes various issues from the Employment Standards Code and Regulation that apply to the construction industry.

“Construction employee” means an employee employed

(i) at the site of and in the construction, erection, repair, remodelling, alteration, painting and interior decoration or demolition of any

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| (A) building or structure,              | (F) earth and rock fill dam,                                 |
| (B) road, highway, railway or airfield, | (G) sewage system,   |
| (C) sidewalk, curb or gutter,           | (H) power transmission line or power distribution system, or |
| (D) pipeline,                           | (I) gas distribution system,                                 |
| (E) irrigation or drainage 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 Employment Standards Regulation)

### **Overtime and Overtime Pay**

Overtime hours can be compensated for 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.

#### **Calculation of Overtime Hours and Overtime Pay**

For each week, hours worked in excess of 8 per day must be totalled and any hours worked in excess of 44 must be totalled. The greater of the daily total or weekly total are the overtime hours. There are two relevant exceptions to this general rule – see the italicized note below.

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

An employee employed in a managerial or supervisory capacity 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.

*Note: In the case of highway and railway construction where the construction is outside, or a continuation from the outside of “the boundaries of a city, town or village” and in the case of brush clearing, overtime hours are those in excess of 10 per day or 44 per week, whichever*

*is greater. See sections 22 - 25 of the Employment Standards Regulation.*

*In the case of employees of a municipal district or Metis 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.*

*Where fewer than 191 hours are worked in the first or last month of employment, then 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 Employment Standards Regulation.*

#### **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 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 3 months of the pay period in which the overtime was worked. (The Director of Employment Standards can issue a permit extending the term up to a maximum of 3 additional months).

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- Contact our Information Centre at: **427-3731**  
(Toll-free in Alberta by dialing 310-0000, then 780-427-3731)
- Visit our Web site at: [www.gov.ab.ca/hre/employmentstandards](http://www.gov.ab.ca/hre/employmentstandards)

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 would be required. A sample overtime agreement can be found on our web site.

*(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 Employment Standards 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 employees are entitled to vacation pay, from the start of employment, at the rate of at least 6% 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 employees are entitled to general holiday pay, from the start of employment, at the rate of at least 3.6% of their regular wages.

Employees are not required to be given a day off for the general holiday. If the employees work the day 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 (*unless employed to perform ongoing maintenance or as an office employee*).

**Some Common Questions on Overtime Pay and Overtime Agreements in the Construction Industry**

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**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 notice to terminate the agreement.

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

If the employer cannot re-negotiate a majority agreement he 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 Employment Standards Code. The Director can order re-instatement, compensation or both.

**4. Can an employee 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. Can banked hours be used on down days (e.g. rain out days) or on days that the employee normally never works?**

Yes, as long as the employee could have worked those days (i.e. days company was open or would normally be open for business).

**6. 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 8 regular hours per day or 44 regular hours per week including banked overtime hours (subject to the exceptions noted).

**7. 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.