

# EMPLOYMENT STANDARDS FACT SHEET

## OVERTIME AGREEMENTS

An employee or the majority of a group of employees may enter into an overtime agreement

- (a) as part of a collective agreement, or
- (b) if there is no collective agreement, in a written agreement between the employee or group of employees and the employer,

that provides that, wholly or partly instead of overtime pay, the employer will provide, and the employee or group of employees will take, time off with pay instead of overtime pay.

[S. 23(1), Employment Standards Code]

### **What is an 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 is banked. The agreement can be between an employer and a single employee or 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. Cancellation of an overtime agreement requires one party to provide the other with not less than one month's written notice.

Where a majority of a group of employees agrees 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 deemed 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. 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.

- 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 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. Permits are not issued for periods longer than 6 months.

An example of the requirement to use up banked time within 3 months of the end of the pay period is as follows:

If overtime is banked on:      It must be used up by:

June 1 <sup>st</sup>	September 30 <sup>th</sup>
August 11 <sup>th</sup>	November 30 <sup>th</sup>
September 15 <sup>th</sup>	December 31 <sup>st</sup>

*(This example assumes that the pay period ends on the last day of each month.)*

- If time off with regular pay instead of overtime pay is not provided, taken, and paid in accordance with the previous bullet, the employee must be paid overtime pay of at least 1.5 times the employee's wage rate for the overtime hours worked.

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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)

### Employment Records

Whenever an overtime agreement is in place, the employer must:

- keep an up-to-date record of the number of overtime hours banked and taken with regular pay by the employee.
- after each pay period, provide the employee with a pay statement showing the number of overtime hours banked and taken with regular pay by the employee.

### Requesting A Permit To Bank Overtime 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. Such a request should be submitted to:

Administrator, Permit Requests  
Alberta Human Resources and Employment  
Employment Standards  
Main Floor, 9940 – 106 Street  
Edmonton, Alberta T5K 2N2  
or Fax to 780/422-8944

Please include the following information with your request:

1. Name and address of employer.
2. Reason for the application.
3. Description 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. Provide name, signature and phone number of the employee(s).

*(Note: A group overtime agreement requires the support of a majority (greater than 50%) of employees.)*

Where a collective agreement provides that overtime can be banked for longer than 3 months, it will prevail.

### Determining How Many Banked Overtime Hours can be used in a Day or a Week

The general rule is that overtime is payable in excess of eight hours in a day or 44 hours in a week, whichever calculation results in the greater number of overtime hours. An employer can decide that overtime will be paid after fewer hours. In addition, under Employment Standards legislation, some variances to the 8/44 rule exist for certain industries. See Fact Sheet # 3, *Hours of Work and Overtime Compensation* that explains the

various rules on overtime, exceptions, and how overtime is to be calculated.

When overtime is paid over 8 hours per day or 44 hours per week, to determine how many banked overtime hours can be used in a day or week, the following rules apply:

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

Example 1:

An employee has entered into an overtime agreement with their employer. The employer pays overtime after 8/44. The business is open 6 days per week, Monday to Saturday, although the employee is not required to work on Saturdays. In a week, the employee works:

S	M	T	W	T	F	S	Total hours
-	9	8	10	8	8	-	43

In this example, daily overtime is  $1 + 2 = 3$  hours. There is no weekly overtime as total hours are less than 44. Therefore, 3 hours are banked.

The employer and employee decide to use the banked hours in the same week they were earned, by providing the employee with 3 hours of paid time off on Saturday. Using Saturday is acceptable because it is a day the employee **could** have been asked to work, even though the employee may seldom, if ever, be scheduled to do so.

Example 2:

An employee has entered into an overtime agreement with their employer. The employer pays overtime after 8/44. The business is open 5½ days per week, Monday to noon on Saturday. The employee is not required to 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

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 week one.

In week two, the employer provides the employee with paid time off on the Friday (8 hours) and Saturday (4 hours) at the employee's regular wage rate. The 12 hours is the maximum that can be withdrawn from the bank as these hours top up the employee's total hours in week two from 32 to 44 hours. The total of hours worked in week 2 plus banked hours used in that week cannot exceed 44. This is because the employee's banked time off must be provided 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 employment terminates, whether an employee quits or is dismissed, the employee may have banked time that has not yet been taken. Any banked overtime remaining on termination must be paid out at time and a half the regular rate of pay. During the period when an employee is on notice of termination of employment (whether the termination has been initiated by the employer or the employee), an employer can require an employee to use up outstanding banked time during their notice period.

### ***Sample of Overtime Agreements***

An example of both an Individual Overtime Agreement and a Group Overtime Agreement are attached.

**INDIVIDUAL  
OVERTIME AGREEMENT**

1. It is agreed between:

\_\_\_\_\_ of \_\_\_\_\_  
Employee name Employee address

and

\_\_\_\_\_ of \_\_\_\_\_  
Employer/company name Employer/company address

that either wholly or partly the employer will provide and the employee will take, time off with pay in place of overtime pay for those hours worked in excess of \_\_\_\_\_ in a day or \_\_\_\_\_ in a week comprising of \_\_\_\_\_ to \_\_\_\_\_.  
(Day of the week) (Day of the week)

- 2. The time off with pay in place of overtime pay shall be provided, taken and paid at the regular rate of wages at a time that the employee could have worked and received wages from the employer.
- 3. The time off shall be provided, taken and paid within 3 months of the end of the pay period in which it was earned unless,
  - (i) the agreement is part of a collective agreement which provides for a longer period of time, or
  - (ii) the Director of Employment Standards issues a permit providing for a longer period of time.
- 4. If the time off in place of overtime pay is not provided, taken and paid in accordance with paragraph 2, the employee shall be paid at the overtime rate for all the overtime hours with respect to which time off was not provided, taken and paid.
- 5. Time off in place of overtime shall be treated as hours of work and remuneration paid in respect to time off in place of overtime pay shall be treated as wages.
- 6. The employer shall provide a copy of this agreement to the employee.
- 7. No amendment on termination of this agreement shall be effective without at least one month's notice in writing by one party to the other.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed \_\_\_\_\_  
For employer/company Employee



**GROUP  
OVERTIME AGREEMENT**

1. It is agreed between:  
**The Employees Listed On Part A Attached**

and

\_\_\_\_\_ of \_\_\_\_\_  
Employer/company name Employer/company address

that either wholly or partly the employer will provide and the employees will take time off with pay in place of overtime pay for those hours worked in excess of \_\_\_\_\_ in a day or \_\_\_\_\_ in a week comprising of \_\_\_\_\_ to \_\_\_\_\_.  
(Day of the week) (Day of the week)

2. The time off with pay in place of overtime pay shall be provided, taken and paid at the regular rate of wages at a time that the employees could have worked and received wages from the employer.

3. The time off shall be provided, taken and paid within 3 months of the end of the pay period in which it was earned unless,

- (i) the agreement is part of a collective agreement which provides for a longer period of time, or
- (ii) the Director of Employment Standards issues a permit providing for a longer period of time.

4. If the time off in place of overtime pay is not provided, taken and paid in accordance with paragraph 2, the employees shall be paid at the overtime rate for all the overtime hours with respect to which time off was not provided, taken and paid.

5. Time off in place of overtime shall be treated as hours of work and remuneration paid in respect to time off in place of overtime pay shall be treated as wages.

6. The employer shall provide a copy of this agreement to each employee affected by it.

7. No amendment or termination of this agreement shall be effective without at least one month's notice in writing by one party to the other.

I certify that the employees who have signed **Part B** attached to this form are the majority of the employees in the group described and named on **Part A** attached.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed \_\_\_\_\_  
For employer/company

