# Fixed Cycle Averaging Agreements

**The Labour Standards Code:** The Labour Standards Code states that nothing in the Code affects the rights or benefits of an employee under any law, custom, **contract or arrangement** that are more favourable than the rights or benefits under this Act.

**See:** Code: Section 6

**Summary**: Employers and employees may average hours of work where there is a pre-determined, fixed cycle of work that repeats over a specific period of time. For example, it is not uncommon to see this type of schedule in the health care sector where staff may work six days on and four days off.

This type of averaging allows employees & employers to schedule extra hours in a day or extra days in a week in exchange for time off. There must be a **"greater benefit"** in the form of an **extended period of time off** otherwise the employer has violated the Labour Standards Code.

**Details:**

A pre-determined, fixed cycle with averaging must meet the following conditions:

- There should be an agreement in writing and signed by the employer and employee before the start date.
- The agreement should specify that the employee receives an extended period of time off and the amount of time that the employee will receive. Extended time off must exceed the norm.
- The agreement must clearly outline a pre-determined, fixed cycle that repeats over a specified period of time
- The agreement specifies the number of hours in each week, weeks in the cycle, and the number of times the cycle is repeated.
- The schedules must be posted in advance.
- If the hours scheduled average more than 48 per week over the period of the agreement then overtime is payable at 1 ½ the regular rate of pay (unless some other rule applies to this group of employees)
- The employee must receive a copy of the agreement before the agreement takes effect.
- The employee must be given proper notice of a change in the terms and conditions of employment
- The onus is on the employer to prove that the pre-determined, fixed cycle is a greater benefit to an employee than overtime.

The objective of the agreement is not to avoid overtime costs, but rather to provide a greater benefit to the employee.

**Procedure:**

Averaging agreements do not have to be filed with Labour Standards. However, if an employee files a complaint the employer will be required to provide evidence of the agreement and the benefit otherwise overtime at 1 ½ the employee's rate of pay will be payable for each hour worked over 48 in one week.

**Questions and Answers:**

Q: Does averaging require approval from the Director of Labour Standards?

*A: No.*

Q: Does an averaging agreement require approval of the employee?

*A: Yes, employees who are subject to an agreement must agree in writing.*

Q: When does an employee under an averaging agreement qualify for overtime?

*A: Overtime is payable for those hours worked in excess of an average of 48 per week. If the cycle is 4 weeks (48 x 4 = 192) then overtime is payable once the employee exceeds 192 hours of work during the four week cycle.*

Q: What happens if the employer already has a policy agreeing to pay overtime after 40 hours per week.

A: *An increase in the overtime threshold, from 40 to 48 per week, is a change in the terms and conditions of employment. The employer must give each employee notice of the change. For example, if the employee has been employed by the employer for a period of more than three months but less than two years, one weeks' written notice is required.*

*Or, pay the overtime previously agreed upon. For example, if the employer and employee agree that overtime is payable after 40 hours per week (a greater benefit than the minimum in the Code), instead of 48, then this benefit may continue*

Q: Can an employee work for seven days without a day off?

*A: Only if the employer has written approval from the Director of Labour Standards in the form of a variance. Otherwise, the Labour Standards Code requires one day off in seven.*

Q: How is a "greater benefit" in the form of extended time off defined?

*A: By looking at the industry or sector determine, among other things, the following:*

*What is the common practice in the industry?*
*What is the practice of this particular employer?*
*Do the employees agree that it is a benefit?*

*For example, in government the practice is to work a 5 day week with 2 days off, even though the Labour Standards Code only requires 1 day off in 7. Therefore, the standard for government employees is 2 days off in 7. In order to meet the greater benefit test a third day off would be required.*

Q: How is a "greater benefit" determined?

*A: A "greater benefit" requires a comparison of the minimum benefit provided in the Labour Standards Code and the benefit provided by the employer. When comparing benefits, Labour Standards <u>does not</u> look at the <u>total employment package</u> but rather the specific benefit at issue. This means that statutory overtime entitlement is compared to the overtime benefit that the employer is offering.*

Q: What happens when an employee picks up an extra shift from another employee?

*A: Hours of work accumulate with the employee who, in fact, performs the work.*

Q: How is an employee paid if employment is terminated before the end of a cycle?

*A: The employee will be paid the scheduled hours of work at the regular rate of pay and overtime is payable at 1½ the regular rate after 48 hours of work in one week, unless some other rule applies.*

Q: What happens if the employer changes the cycle or the schedule without notice?

*A: Notice is required. The amount of notice must be equivalent to the requirements under section 72 of the Code. In the absence of notice, overtime pay would be calculated according to section 40(4) of the Code.*