

# Overtime hours and overtime pay

Most employees (full and part-time) are entitled to overtime pay. These standards come into effect on January 1, 2018.

**The legislation on this page comes into effect on January 1, 2018**

For information on Employment Standards legislation that is in force until December 31, 2017, go to <http://work.alberta.ca/employment-standards/overtime-hours-and-overtime-pay.html>

## Basic rules

- Most employees are entitled to overtime pay.
- There are some exemptions for certain industries and professions.
- Overtime is all hours worked over 8 hours a day or 44 hours a week, whichever is greater (8/44 rule).

## Pay rate

Except where there's a written overtime agreement, an employer must pay an employee overtime pay of at least 1.5 times the employee's regular wage rate for all overtime hours worked.

## Banked overtime

Sometimes, instead of paying overtime pay, an employer may give an employee time off work with pay (banked overtime) at a rate of 1.5 hours for each overtime hour worked as part of an overtime agreement between the employer and employee.

Employees must use up banked overtime within 6 months of the end of the pay period in which they earned it, unless there is a collective agreement that allows the overtime banking period to be extended.

## Change of ownership

When a business changes ownership, it doesn't affect an employee's overtime benefit entitlement. The previous owner must pay all overtime pay accumulated up to the date of transfer of ownership, and the new owner must grant any banked overtime.

## Employee eligibility

## Basic eligibility

Most employees, including those paid a weekly, monthly, or annual salary, must be paid overtime pay for overtime hours they work.

## Non-eligible employees

The following employees aren't eligible for overtime hours and overtime pay:

- managers, supervisors and those employed in a confidential capacity
- [waged, non-family farm and ranch employees](#)
- professionals, including agrologists, architects, certified or chartered accountants, chiropractors, dentists, denturists, engineers, geoscientists, information systems professionals, lawyers, students-at-law, optometrists, podiatrists, psychologists and veterinarians
- salespersons of automobiles, trucks, buses, farm machinery, road construction equipment, heavy duty equipment, manufactured homes or residential homes
- salespersons who solicit orders, principally outside of the employer's place of business, who are fully or partly paid by commission (this does not apply to route salespersons)
  - Read more about [salesperson](#)
- licensed salespersons of real estate and securities
- licensed insurance salespersons who are paid entirely by commission income
- salespersons who are at least 16 years old and are engaged in direct selling for licensed direct sellers
  - Read more about [direct sellers](#)
- licensed land agents
- extras in a film or video production
- counselors or instructors at an educational or recreational camp that is operated on a charitable or not-for-profit basis for children, persons with disabilities, or religious purposes
- domestic employees (these employees are not exempt from sections 18 and 19 of the Code concerning rest periods and days of rest)
  - Read more about [domestic employees](#)

## Industries with different overtime rules

A number of industries and occupations are subject to variations in daily, weekly, and/or monthly hours worked before overtime is payable.

The following industries and occupations have exceptions from the Code's basic overtime rules of 8 hours daily and 44 hours weekly:

<b>Industry/Occupation</b>	<b>Daily hours</b>	<b>Weekly hours before O/T is calculated</b>	<b>Monthly hours before O/T is calculated</b>
Ambulance attendants	10	60	N/A

Industry/Occupation	Daily hours	Weekly hours before O/T is calculated	Monthly hours before O/T is calculated
Geophysical exploration	10	N/A	191
Irrigation districts	9	54	N/A
Logging and lumbering	10	N/A	191
Oilwell servicing	12	N/A	191
Surveying	10	N/A	191
Trucking	10	50	N/A
Field catering or land surveying	10	N/A	191
Highway and railway construction & brush clearing	10	44	N/A
Nursery industry	9	48	N/A
Road maintenance activities (limited to employees of municipal districts or Metis settlements)	10	N/A	191
Taxi cab industry	10	60	N/A
Firefighting services	N/A	44 <sup>1</sup>	N/A
Caregivers (home care & residential care)	Rules depend on the type of shift worked by the employee. <a href="#">See information on caregivers</a>		

1. Based on an average of 44 hours per week over the period of the work cycle. The 44 hour limit does not apply when the fire fighter is scheduled to work more than 44 hours in a week, in which case the scheduled hours are the threshold for overtime hours.

## Calculating overtime pay

## Calculating overtime for salaried employees

Whether basic or special overtime rules apply, the formula for calculating overtime pay is the same. Overtime hours are calculated both on a daily and weekly basis, except in few instances that require overtime to be calculated on a monthly basis. Overtime is whichever is greater.

It's important to note that even though the pay period may end mid-week, overtime pay is based on overtime hours for the work week, not the pay period.

### Basic overtime pay rate

Overtime hours must be paid out at least 1.5 times the employee's wage rate. This overtime rate of pay is multiplied by the total number of overtime hours that employee has worked.

## Exceptions

### Time off with pay (banked overtime)

Sometimes, instead of paying overtime pay, an employer will give an employee time off work with pay (banked overtime) at a rate of 1.5 hours banked for each hour work as part of a written overtime agreement between the employer and employee. This is the only exception to paying overtime at the rate of 1.5 times.

### Exceptions to the 8/44 rule

If an employer establishes a work week of fewer than 44 hours (e.g. a 40-hour work week), overtime pay is still payable under the basic 8/44 rule. The exception to this is when a collective agreement, some other agreement, or the consistent practice of an employer has been established in writing that overtime hours are to be counted after working fewer than 8 hours in a work day or 44 in a work week.

### *Employees paid by commission or other incentive pay plans*

Employees, who are paid exclusively by incentive pay such as commission, piecework or a similar method, have no established wage rate. Therefore, for the purpose of calculating overtime entitlements, the wage rate is deemed to be the minimum wage. If the incentive pay is less than what would have been earned at minimum wage, the employer must top up the incentive pay earnings.

If an employee is paid by a combination of salary and incentive pay, and the salary is greater than minimum wage, the salary establishes the hourly rate for the purpose of calculating overtime entitlements. If the salary component of the employee's wages is equal to or less than the minimum wage, the minimum wage is used for calculating overtime entitlements.

Read more about [Commission Pay Plans and Minimum Compensation Entitlement](#)

# Overtime agreements

Employees and employers may enter into a mutual overtime agreement where, instead of paying overtime pay, an employer gives paid time off with regular pay. For every hour of overtime worked, 1.5 hours of time off must be banked.

## Types of agreements

Employers must give a copy of the written agreement to employees who are covered by it, including new employees.

Any overtime banked under an overtime agreement prior to January 1, 2018 can be compensated at straight time. Banking overtime for hours worked as of January 1, 2018 onwards must be done at a rate of at least 1.5 hours banked for each hour worked.

There are 2 types of agreements:

### 1. Individual overtime agreements

- An individual overtime agreement is between a single employee and an employer.
- See a [Sample individual overtime agreement](#) (PDF, 0.2 MB).
- Cancelling or changing the agreement: Either the employee or the employer can cancel or change the agreement by giving the other party one-months' notice in writing.

### 2. Group overtime agreements

- A group overtime agreement is between an employer and a designated group of employees. The employer and a majority (greater than 50%) of the employees in the designated group must sign the agreement. In this case, the provisions of the overtime agreement will bind all employees of that particular group.
- An overtime agreement can also be part of a collective agreement. The employees may be part-time or full-time.
- See a [Sample group Overtime Agreement](#) (PDF, 0.2 MB).
- Cancelling or changing the agreement: Either the group of employees or the employer can cancel or change the agreement by giving the other party 1-months' notice in writing. If the employees want to cancel the agreement, the notice to cancel must be signed by a majority of the employees affected by the agreement.

## Overtime agreement requirements

The Code requires employers to keep up-to-date records of the following information when there is an overtime agreement in place:

- Time off with pay, banked at a rate of 1.5 hours for each overtime hour worked, 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.

- If time off with regular pay instead of overtime pay is not provided, taken, and paid as required (that is, at the employee’s wage rate and at the time the employee could have worked and received wages), the employee must be paid overtime pay of at least 1.5 times the employee's wage rate for the overtime hours worked.
- Time off with regular pay instead of overtime pay must be provided, taken and paid to the employee within 6 months of the end of the pay period in which it was earned, unless:
  - 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
  - no amendment or termination of the agreement is to be effective without at least one month’s written notice given by one party to the agreement to the other.

Examples of the requirement to use up banked time within 6 months of the end of the pay period are as follows:

**Overtime worked Pay period ends Banked time to be taken by**

June 1	June 30	December 30
August 11	August 12	April 12
September 15	September 15	March 15

The Code requires employers to keep up-to-date records of the following information when there is an overtime agreement in place:

- number of overtime hours banked by the employee
- number of overtime hours taken off with regular pay by the employee
- provide the employee with a pay statement showing the number of banked overtime hours taken with regular pay by the employee, for each pay period
- keep records for at least 3 years from the date each record is made

**Banking overtime for periods longer than 6 months**

Employees must use up their banked overtime within 6 months, starting at the end of the pay period when the overtime was earned.

The exception is when a collective agreement specifies otherwise, or a variance authorizes a longer period.

**Using overtime hours**

To determine how many banked overtime hours can be used in a day or week (when overtime is paid for working longer than 8 hours a day or 44 hours a week), the following rules apply:

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

This is because the employee's banked time off must be provided and taken during non-overtime hours.

### Example 1

A group of employees have entered into an overtime agreement with their employer, who pays overtime after 8/44. The business is open 5 days per week, Monday to Friday. In a week, an employee works:

S M T W T F S Total hours

- 9 8 10 8 6 - 41

In this example, daily overtime is  $(1 + 2) \times 1.5 = 4.5$  hours. There is no weekly total for overtime since the total weekly hours are less than 44. Therefore, 4.5 overtime hours are banked. The employer and employee agree to use some of the banked hours in the same week they were earned, and the employee takes 2 hours of banked time off with pay on Friday.

Using Friday is acceptable because total hours worked that day were less than 8 hours. Including the 2 banked hours with the 6 hours worked on Friday brings the total weekly hours to 41. The total of hours worked plus banked hours used in that week cannot exceed 44. This is because the employee's banked time off must be provided and taken during non-overtime hours. There would then be 2.5 hours banked remaining.

### Example 2

An employee has entered into an overtime agreement with her employer, who pays overtime after 8/44. The business is open 5½ days per week, from Monday until noon on Saturday. The employee does not usually work on Saturdays. In a 2-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

In this example, overtime is calculated as follows:

**Week 1:**

- Daily overtime is  $(3 + 3 + 2 + 4 + 2) \times 1.5 = 21$  hours
- Weekly overtime is  $(61-44) \times 1.5 = 25.5$  hours

The employee is entitled to the greater amount of overtime. Therefore, 25.5 hours of weekly overtime are banked to be used as regular time off.

**Week 2:**

The employee has not worked any daily or weekly overtime in this week, however, the employee has 25.5 hours banked from the first week.

In the 2nd week, the employer provides the employee with 8 hours of paid time off on Friday of the 2nd week. As the employee could work on Saturdays, the employer also provides 4 hours of paid time off on Saturday of the 2nd week at the employee's regular wage rate.

A maximum of 12 hours can be withdrawn from the bank, as these 12 hours top up the employee's total hours in week two from 32 to 44 hours. The total of hours worked in the 2nd week, plus banked hours used in that week, cannot exceed 44. This is because the employee's banked time off must be provided and taken during non-overtime hours.

This leaves a balance of  $25.5-12 = 13.5$  hours in the bank. The employee can take these hours as paid time off within the next 6 months.

## Overtime owed at termination

When either the employer or employee ends the employment relationship by giving a written notice of termination, the employer is prohibited from requiring the employee to use some or all outstanding banked overtime during the notice period, unless agreed to by both parties. When overtime is paid for hours worked over 8 hours in a day or 44 hours in a week, the total of any hours worked, plus banked overtime taken, cannot exceed 8 hours in a day or 44 hours in a week.

Regardless of whether notice of termination was provided, any banked overtime not provided and taken with pay by the end of the last day of employment must be paid out at 1.5 times the employee's regular rate of pay at the time it was earned.

See [Termination and termination pay](#) for more information.

## Requirement to meet minimum standards

Employers and employees cannot make agreements, verbally or in writing, to arrangements that do not meet the minimum standards set out in the Employment Standards Code and Regulation.



Employers are prohibited by law from:

- paying an employee below the minimum wage set out in the Regulation
- providing an employee with less than the other legislated minimum entitlements
- requiring an employee to work hours in excess of their maximum allowable hours

It is important to be aware that any person who contravenes or fails to comply with rules set out in the *Employment Standards Code* and Regulation, or fails to comply with an authorizing or enforcement instrument is guilty of an offence under the law.

## **How the law applies**

Part 2, Division 4 of the *Employment Standards Code* sets out the general rules for Overtime Hours and Overtime Pay.

The Employment Standards Regulation excludes a number of occupations from these sections. The Regulation also provides special rules for calculating overtime for several other occupations.

## **Contact Employment Standards**

780-427-3731 (Edmonton and surrounding areas)

*For toll-free calling, dial 1-877-427-3731*

*From a cell phone, call #310 on Telus and Bell or \*310 on Rogers.*

[Ask a question online](#)

### **TTY/TDD for the deaf or hard of hearing**

780-427-9999 (Edmonton and surrounding areas)

*For toll-free calling, dial 1-800-232-7215*