

### 3. Overtime

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**LEGISLATION COVERED IN THIS SECTION**

**The Labour Standards Act**

- 2(s), "week" and 5, "day"
- 6, Hours of work and overtime pay
- 7, 10-hour day
- 8, Meaning of "permit any employee to work"
- 9, Averaging
- 10, Observance of a public holiday
- 11, Power to revoke authorizations
- 12, Employer not to require employee to work overtime
- 12(4), Emergency circumstances
- 13, Period of rest

**The Labour Standards Regulations**

- 4, Exemption from Part I of the Act
- 7, Exemption from sections 6 and 12 of Act
- 9, Exemption from sections 6 and 12 of Act – highway workers (repealed)
- 10, Hourly wage

## Introduction

This module discusses the rules governing overtime pay. Section 6 of Part I of *The Labour Standards Act* addresses overtime pay requirements. Section 12 sets out the maximum number of hours that employees can be asked to work in a week.

Employees can be completely exempt from Part I, only exempt from sections 6 and 12, or governed by special overtime pay rules. Averaging of hours permits are also available from the Director of Labour Standards to allow employees to work compressed workweeks (for example, four 10-hour days) in return for more time off.

Employers and employees can agree to better terms and conditions of employment than the law requires. However, Saskatchewan employers and employees cannot enter into employment contracts that do not meet legal requirements, even if those contracts are written in another country.

### ***Definitions of ‘week’ and ‘day’***

The definitions of ‘week’ and ‘day’ in the legislation affect how overtime pay is calculated.

#### ***“Week” (Act, Section 2[s])***

A “week” means the period between midnight Saturday and midnight on the Saturday immediately following. A “week” is a legally defined term and cannot be modified by the employer. The Director of Labour Standards cannot issue a permit or grant any authorization that establishes a different “week.”

#### ***“Day” (Act, Section 5)***

A “day” is any period of 24 consecutive hours. For example, for the purpose of calculating overtime, a ‘day’ would run from the beginning of the employee’s first shift to the end of the next shift.

## **Overtime pay (Act, Section 6)**

Employees should work no more than eight hours in any day or 40 hours in any week. In a week with a public holiday, employees should work no more than 32 hours. Eligible employees who are required or permitted to work more hours must be paid overtime.

## Calculating overtime pay (Act, Section 6[2])

Overtime pay is calculated at one and one-half times (1.5X) the employee's regular hourly wage rate.

## Overtime pay in a day and week (Act, Section 6[3])

Most employees who work more than eight hours in a day earn overtime, even if the total number of hours they work in a week works out to 40 hours or less. Employees also earn overtime if they work more than 40 hours in a week, (32 hours in a week with a public holiday) but eight hours or less each day.

<b>OVERTIME EXAMPLES</b>																											
<b>Employee works for more than eight hours a day, but less than 40 hours in a week.</b>	<b>Employee works for less than eight hours a day, but more than 40 hours in a week.</b>																										
<p>Mary works these hours:</p> <table style="width: 100%; border-collapse: collapse;"> <tr><td>Monday</td><td style="text-align: right;">6 hrs</td></tr> <tr><td>Tuesday</td><td style="text-align: right;">5 hrs</td></tr> <tr><td>Wednesday</td><td style="text-align: right;">6 hrs</td></tr> <tr><td>Thursday</td><td style="text-align: right;">8 hrs</td></tr> <tr><td>Friday</td><td style="text-align: right;"><u>12 hrs</u></td></tr> <tr><td>Total:</td><td style="text-align: right;">37 hrs</td></tr> </table> <p>Mary has worked less than 40 hours in a week. However, she is entitled to four hours of overtime because she worked more than eight hours on Friday.</p>	Monday	6 hrs	Tuesday	5 hrs	Wednesday	6 hrs	Thursday	8 hrs	Friday	<u>12 hrs</u>	Total:	37 hrs	<p>John works these hours:</p> <table style="width: 100%; border-collapse: collapse;"> <tr><td>Monday</td><td style="text-align: right;">8 hrs</td></tr> <tr><td>Tuesday</td><td style="text-align: right;">6 hrs</td></tr> <tr><td>Wednesday</td><td style="text-align: right;">6 hrs</td></tr> <tr><td>Thursday</td><td style="text-align: right;">8 hrs</td></tr> <tr><td>Friday</td><td style="text-align: right;">6 hrs</td></tr> <tr><td>Saturday</td><td style="text-align: right;"><u>8 hrs</u></td></tr> <tr><td>Total:</td><td style="text-align: right;">42 hrs</td></tr> </table> <p>John has not worked more than eight hours each day. However, he is entitled to two hours of overtime because he worked more than 40 hours in the week.</p>	Monday	8 hrs	Tuesday	6 hrs	Wednesday	6 hrs	Thursday	8 hrs	Friday	6 hrs	Saturday	<u>8 hrs</u>	Total:	42 hrs
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<p>Eligible employees begin earning overtime after working more than eight hours in a day. Employers cannot refuse to pay overtime until the employee has worked more than 40 hours in a week.</p>																											

## At the disposal of the employer (Act, sections 6[4] and 8)

An employee must be paid whenever he or she is:

- required to work for the employer;
- at the disposal of the employer (required to be available for work, whether or not the employee must work); or
- permitted to work (an employer allows an employee to work who is not supposed to be working).

#### **EXAMPLE OF AN EMPLOYEE WHO IS AT THE DISPOSAL OF THE EMPLOYER**

1. The employer expects employees to come in a few minutes early to put on their uniforms and open the store for business. These employees are at the disposal of the employer and entitled to be paid.
2. Employees are rotationally assigned to handle the office phones over their lunch breaks. The employees handling the phones over their lunch breaks are at the employer's disposal and entitled to be paid.
3. An employee is asked to pick up supplies on his way to work in the morning and deliver equipment to a customer on his way home after work. The employee is at the disposal of the employer and is entitled to have his wages paid for the time spent travelling.

#### **EXAMPLE OF WHERE AN EMPLOYEE HAS BEEN PERMITTED TO WORK**

Employees work from 8 to 5 each day with a one-hour unpaid lunch break (eight hours). The employer knows that some of them come to work at 7:30 and start working, but does not say anything about it. In this situation, the employer has *permitted these employees to work*. The employees are working for eight and a half hours each day and are entitled to a half an hour of overtime pay.

#### **EXAMPLE OF WHERE AN EMPLOYEE HAS NOT BEEN PERMITTED TO WORK**

Employees work from 8 to 5 each day with a one-hour unpaid lunch break (eight hours). The employees voluntarily come to work at 7:30 to have coffee with each other and chat until 8 a.m. In this situation, the employer has not permitted the employees to work and the employees are not entitled to overtime pay.

### ***The employee's responsibilities***

Employees must record the actual hours they work on their timecards. Employees who want to work extra hours have a responsibility to get approval. Employees, who work overtime hours without prior authorization in an emergency or some other situation, must inform the employer.

## **Calculating overtime pay for employees not paid by the hour (Act, Section 6[5])**

*All employees must be paid at least the minimum wage for each hour worked.*

Employees who are not paid by the hour may be paid by the day, week, month (salary), distance travelled, commission, piecework, or by a percentage of revenue. Since overtime is based on the employee's hourly wage rate, the employee's pay must be converted to an hourly rate to make the overtime calculation.

Section 6(5) of the Act sets the rules for determining the hourly wage rate for eligible employees paid by the day, week or month. Regulation 10 sets the requirements for calculating overtime pay for employees who are not paid on an hourly, daily, weekly or monthly basis.

### ***Employees paid by the day***

Daily rates of pay are converted to hourly rates by dividing the employee's regular daily wage by the number of hours during which the employee normally works; in no case may this number exceed eight. Daily rates must work out to at least the minimum wage for all hours worked, and include applicable public and annual holiday pay.

**EXAMPLE HOW TO CALCULATE OVERTIME FOR EMPLOYEES PAID BY THE DAY**

Calculating hourly overtime pay rate for an employee paid a daily rate who must work an eight-hour shift.

Daily wage rate.....	\$100.00
Divided by eight (hours cannot exceed eight) .....	\$12.50
Times 1.5 (overtime rate).....	\$18.75

***Employees paid by the week***

Weekly rates of pay are converted to hourly rates by dividing the employee's regular weekly wage by the number of hours during which the employee normally works; in no case may this number exceed 40.

**EXAMPLE OF HOW TO CALCULATE OVERTIME FOR EMPLOYEES PAID BY THE WEEK**

Calculating hourly overtime pay rate for an employee paid a weekly rate.

Weekly wage rate (five day workweek).....	\$400.00
Divided by 40 (hours cannot exceed 40) .....	\$10.00
Times 1.5 (overtime rate) .....	\$15.00

***Employees paid by the month (salaried employees)***

Most salaried workers who are not managerial or professional employees are entitled to receive overtime pay. Monthly rates of pay are first converted to weekly rates (monthly wage x 12 months divided by 52 weeks), then the hourly rate is calculated by dividing the weekly wage by the number of hours worked in a week. This number may not exceed 40.

If salaried employees, who are not managers or professionals, must work a certain number of overtime hours each day or week, the employer must build the applicable overtime pay into their salaries or calculate overtime based on the employee's hourly rate and pay it in each pay period.

The employer must pay overtime if an employee works more overtime hours than are built into the salary for each pay period. Salaries must also include applicable public and annual holiday pay, and premium pay for work performed on a public holiday.

These arrangements should be stated in the employment contract and explained to new employees.

**EXAMPLE OF HOW TO CALCULATE OVERTIME FOR SALARIED EMPLOYEES**

Calculating hourly overtime pay rate for a salaried employee:

Monthly wage rate.....	\$2,500.00
Times 12 (yearly rate) .....	\$30,000.00
Divided by 52 (weekly rate).....	\$576.92
Divided by 40 (hourly rate).....	\$14.42
Times 1.5 (overtime rate) .....	\$21.63

If the regular weekly hours worked were 37.5 hours, the weekly rate (\$576.92) would be divided by 37.5 to give an hourly rate of \$15.38, etc.

***Employees not paid on an hourly, daily, weekly or monthly basis***

Regulation 10 sets the rules where an employee is paid his or her wages on a basis other than an hourly, daily, weekly or monthly basis. In these situations, the hourly wage of the employee is obtained by dividing the wages of the employee earned during the week, exclusive of overtime, annual holiday pay and public holiday pay, by the lesser of:

- (a) 40; and
- (b) the actual number of hours worked during the week, exclusive of overtime.

In no case shall an hourly wage be determined to be greater than five times the minimum wage or less than the minimum wage.

***Employees paid by distance travelled***

To determine the hourly wage for an employee whose pay is based on distance travelled, multiply 64 times the rate per kilometre.

***Employees paid fully by commission only (salespersons)***

The minimum wage is the hourly wage for employees who are employed as salespersons and who receive all of their remuneration as commissions.

***Pieceworkers***

A contract with a rate of wages based on piecework must be converted into an hourly rate. This hourly rate must be at least the minimum wage.

*The rules for paying salespersons are discussed in the Appendix.*

*Employees paid by a percentage of revenues*

A contract with a rate of wages based on a percentage of revenues must be converted into an hourly rate. The conversion to an hourly rate must be done weekly (therefore, the employee's hourly rate may vary from week to week). Overtime is not included in the calculation. The resulting hourly rate cannot be less than the minimum wage or greater than five times the minimum wage. The employer must keep accurate records of the employees' regular and the overtime hours worked each week.

**ONE EXAMPLE OF HOW TO CALCULATE OVERTIME FOR  
EMPLOYEES PAID BY A PERCENTAGE OF REVENUES**

An employee worked 45 hours in a week with a rate of wages of 25 per cent of revenues. There were \$4,000 of revenues generated in that week, \$200 of which was earned during the 5 overtime hours. Once converted to an hourly rate of wages, the overtime entitlement can then be determined and compared to the wages paid during this period. Under regulation 10, the hourly rate is  $\$(4,000-200) \times 25 \text{ per cent of revenues} / 40 \text{ hours per week} = \$23.75 \text{ per hour}$ . To calculate the employee's pay:

40 hours x \$23.75 (hourly rate) .....	\$950.00
Plus 5 overtime hours (5 x \$23.75 x 1.5).....	\$178.13
Total (actual wages) .....	\$1,128.13
	Or
25 per cent of \$4,000 revenue .....	\$1,000.00

In this example, the employee is to be paid an additional \$128.13 for that week (\$1,128.13) because the hours worked, plus overtime pay is greater than the \$1,000 earned percentage of revenue).

## Compressed workweeks (Act, Section 7)

Employers and employees can apply for an Averaging of Hours Permit from the Director of Labour Standards to allow them to work four, 10-hour days in return for three days off each week.

## Overtime in a week with a public holiday (Act, Section 10)

During weeks in which a public holiday occurs, employees are entitled to overtime after working for more than eight hours in any 24-hour period or 32 hours in the week, not including time worked on the public holiday.

## Employees who are completely exempt from Part I of the Act

*The Act does not prevent employers from paying these employees overtime.*

Some classes of employees are completely exempt from the hours of work and overtime pay rules under section 6 and 12. However, the other sections of the Act apply to most of these employees.

#### **Managers (Act, Section 4[2])**

Any employee who performs services that are “entirely of a managerial character” (is a full-time manager) is completely exempt from the rules governing overtime, periods of rest, work schedules, breaks between periods of work and meal breaks.

*Managers must earn at least the minimum wage for each hour worked.*

#### **Definition of ‘manager’**

*The Labour Standards Act* does not define “manager.” Court decisions suggest that a manager, for the purposes of the Act, is an employee who regularly exercises powers that are normally exercised by the employer, because the employer owns the business. Managers usually perform at least some of the following duties all of the time, rather than only part of the time:

- supervising and directing workers;
- coaching, counselling, and disciplining subordinates; individually or as part of a management team;
- evaluating the performance of subordinates;
- hiring and promoting staff;
- exercising some independence and discretion in performing assigned duties;
- supervising a collective agreement, where the work place is unionized;
- negotiating remuneration individually rather than collectively; and
- implementing the employer's budgetary and performance requirements.

*The Occupational Health and Safety Act defines ‘supervisor’ and sets out specific responsibilities for supervisors and their employers.*

#### **Supervisors who are not managers are entitled to overtime pay**

The managerial exemption does not apply to supervisors who do not perform work that is “entirely of a managerial character.” The Act’s hours of work and overtime pay rules apply to these types of supervisors.

Examples might include:

- front-line supervisors who perform the same work and earn much the same pay as their subordinates, but have some management responsibilities;
- employees who have some management responsibilities, but whose work is primarily non-managerial; and
- employees who temporarily supervise others when the employer is out of the office.

***Schoolteachers working under The Education Act (The Labour Standards Act, Section 4[4])***

Teachers are exempt from the rules affecting overtime and public and annual holidays. However, teachers' aides, school maintenance personnel and so on are fully covered by *The Labour Standards Act*.

***Employees of fishers and trappers (Regulation 3[3])***

Employees who are commercial fishers or commercial trappers are exempt from *The Labour Standards Act*, except for those sections covering pay stubs, payroll records and administrative requirements.

***Employees covered by The Fire Departments Platoon Act (Regulation 4)***

*The Fire Departments Platoon Act* applies to cities with a population over 10,000. *The Fire Departments Platoon Act* defines the term "full-time fire-fighter" and prescribes hours of work and periods of rest and permits the establishment of platoons. Employees covered by *The Fire Departments Platoon Act* are exempt from the overtime, periods of rest, work schedules, breaks between periods of work and meal break provisions of *The Labour Standards Act*. Other provisions of the Act apply.

*The Labour Standards Act* completely covers fire departments in communities with a population below 10,000 and volunteer fire departments.

**Employees who are exempt from sections 6 and 12**

These employees are only exempt from the hours of work and overtime pay provisions of Part I.

*The overtime and hours of work rules of The Labour Standards Act apply to trades people and registered apprentices because they are not classed as 'professionals.'*

***Professionals and students learning their profession (Regulation 7[2][a])***

"Employees who are professional practitioners registered or licensed in accordance with any Act or who, while learning their profession, are interns, students-at-law, students in accountancy or other trainees or students" are exempt from the provisions of the Act governing overtime and hours of work.

***Where the professional exemption applies***

For the 'professional' exemption to apply, the employee must be a 'professional' or 'student practitioner' registered or licensed in the specified area of practice in accordance with an Act of the legislature.

The employee must have acquired a specialized body of higher learning, be actively engaged in the practice of the profession, have autonomy or the ability to work independently without supervision or oversight, be expected to utilize their independent judgment and professional ethics in carrying out their responsibilities, and be a member of a statute-created oversight organization.

*Where the professional exemption does not apply*

This exemption does not apply to professionals working or training outside of their professions, such as teachers working in retail housing construction during the summer.

***Employees of a rural municipality who are engaged solely in the occupation of road construction or maintenance (Regulation 7[2][b])***

*The hours of work and overtime pay rules of the Act apply to road construction or maintenance employees in urban municipalities.*

These employees are exempt from the hours of work and overtime pay rules of the Act while they: perform road construction or maintenance work; or service or repair road construction or maintenance equipment on the job.

The hours of work and overtime pay rules of the Act apply to employees who store, service, or repair road construction or maintenance equipment in the warehouse or shop of the rural municipality.

***Travelling commissioned salespersons (Regulation 7[2][c])***

To be completely exempt from the hours of work and overtime pay provisions under sections 6 and 12 of the Act, travelling commissioned salespersons must meet all of these criteria:

1. They must be employed as salespersons.
2. They must travel regularly in the course of their duties to two or more cities, towns or villages that are at least 20 kilometres apart.
3. They must receive all of their remuneration as commissions with respect to sales of goods or services or offers to purchase that usually are made at a place other than the employer's establishment.

All salespersons must earn at least the minimum wage for each hour worked.

**Employees in the logging industry – including cooks, cookees, bull cooks, and watchmen (Regulation 7[2][e])**

These employees are exempt from the hours of work and overtime pay provisions under sections 6 and 12 of the Act. However, sections 6 and 12 apply to industry employees working in an office, saw mill or planing mill.

**Care providers and live-in domestic workers (Section 7[2][f] of Regulation 7 and sections [2] & [3] of Regulation 12)**

There are special rules for privately employed “household” workers. See our booklet *Rights and Responsibilities* for more information.

Part I of the Act applies to commercial building and house cleaning companies.

**Outfitters (Regulation 7[2][g])**

The hours of work and overtime pay rules under sections 6 and 12 do not apply to the employees of outfitters, as defined in *The Outfitter and Guide Regulations, 2004*, who are primarily engaged in outfitting.

*Township 62 is roughly in the same place as the northern boundary of Meadow Lake Provincial Park.*

**Employees in mineral exploration working north of Township 62 (Regulation 7[2][h])**

The hours of work and overtime pay rules under sections 6 and 12 do not apply to employees engaged in mineral exploration north of Township 62, but the rules do apply to their office employees.

The exemption ends when mineral exploration ends and mineral production/extraction (mining) begins.

**Motor vehicle salespersons (Regulation 7[3])**

The overtime pay provisions under sections 6 of *The Labour Standards Act* do not apply to salesmen as defined in *The Motor Dealers Act*. The definition of salesman in *The Motor Dealers Act* is very broad and includes someone selling any self-propelled vehicle. Other applicable sections of *The Labour Standards Act* apply.

**Operators of residential service facilities (Regulation 8)**

The rules governing hours of work, overtime pay and breaks between periods of work (sections 6, 12, 13.2 and 15 of the Act) do not apply to operators of residential service facilities (group homes) approved by the Ministry of Social Services.

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*Section 2(c) of The Residential-service Facilities Regulations defines “operator” as “any representative of the facility that has control or management of a residential-service facility.”*

“Operator” means an operator, as defined in *The Residential-service Facilities Regulations*, who is designated by the employer for the purposes of this exemption.

The employer in a residential-service facility may appoint one person per day (only) as an operator who will be covered by the exemption. However, if this operator leaves the facility, his or her replacement will not be covered by the exemption.

This exemption does not apply to operators of personal care homes regulated by the Ministry of Health.

#### ***Ambulance attendants (Section 40 of The Ambulance Act)***

*The Ambulance Act* exempts attendants from the hours of work, scheduling and overtime provisions of Part I of *The Labour Standards Act*.

### **Employees who are covered by special rules**

Some employees are eligible for overtime, but are covered by special overtime pay rules.

#### ***Editorial writers, reporters and advertising salesmen employed by a city newspaper (Regulation 5)***

Editorial writers, reporters and advertising salesmen may work up to 80 hours in any two consecutive weeks before being eligible for overtime pay. The 80-hour standard drops by eight hours for each public holiday that occurs in the two consecutive weeks and does not include any time worked on a public holiday.

This special rule applies to employees in newspapers located in a city defined under *The Urban Municipality Act, 1984*, (including Llodymminster). This special rule does not apply to employees in a newspaper that is not located in a city.

#### ***Employees in commercial hog barns (Regulation 5.1[1])***

*Family businesses employing only immediate family members are exempt from the Act.*

*The Labour Standards Act* covers commercial hog operations, but there are special rules for hours of work, overtime and public holiday pay.

A “commercial hog operation” is defined as an undertaking that employs six or more “full-time equivalent” workers and is engaged in the breeding, farrowing, weaning or finishing of porcine animals. Employees of commercial hog operations may work for a maximum of

10 hours per day or 80 hours over a two-week period before overtime is payable. If overtime applies, it is paid at the rate of time and one-half of the employee's regular pay.

A public (statutory) holiday reduces the 80-hour standard by eight hours for each public holiday that occurs in the period. Time worked on the public holiday is not counted when determining whether overtime is payable.

Employees in commercial hog barns can be also be required to work more than 44 hours in a normal week or 36 hours in a week with a public holiday. Hog barn operators may apply to the Director of Labour Standards for an authorization allowing hours of work to be averaged over a longer number of weeks or over a month.

### ***Oil truck drivers (Regulation 6[1])***

Under Section 2(1)(h) of *The Labour Standards Regulations*, an "oil truck driver" means:

"an employee who is employed principally in delivering gasoline, lubricating oils and other petroleum products by truck from a refinery, bulk filling station or other similar premises to farms, garages or automobile service stations, but does not include an employee who regularly travels in the course of his or her duties to two or more cities, towns or villages that are at least 20 kilometres apart."

Oil truck drivers who work full-time have their overtime paid once a year. Their hours are calculated weekly, and any hours worked in excess of 40 are placed in the employee's bank. If an employee works less than 40 hours in a week, the shortfall is used to reduce the hours in the bank. On July 1<sup>st</sup> each year, the employee is paid overtime for all hours accumulated to his or her credit. This pay period empties the overtime bank.

### ***Highway construction workers (Regulation 9, repealed)***

The Regulation 9 exemption only applies to employees working under contracts signed before the regulation was repealed in May 2009.

Under the special rule created by regulation 9, sections 6 and 12 do not apply to employees who are designing, constructing, repairing or maintaining a highway, or assisting in those activities, where work on a highway is being performed: outside a city, town or village; or from a point or points outside any city, town or village into or through that city, town or village.

The exemption allows highway workers to work up to 100 hours in any two consecutive weeks becoming eligible for overtime pay. The 100-hour standard was reduced by eight hours for each public holiday that occurs in an averaging period and did not include any time worked on a public holiday.

## **Permits (Act, sections 7-12)**

*The Labour Standards Act and The Labour Standards Regulations* set out the minimum employment standards in the workplace. Permits, sometimes called “variances,” allow for certain employment standards to be varied, provided the appropriate permission is obtained from the Labour Standards Division.

The Director of Labour Standards can approve, reject, revoke or alter permits at any time and for any lawful reason. The Director will generally approve a permit if it meets all of the criteria listed on the application. However, each application is dealt with on a case-by-case basis.

### ***Application Process***

Labour Standards only issues permits to employers. Independent contractors, with no employees, or self-employed persons do not require them.

In general, employers apply for permits, not employees. However, parents and guardians (not the employer) must apply for the *Authorization to Vary Youth Employment Rules Permit* if they wish to alter youth employment regulations.

Permit application forms are available from any Labour Standards Division District Office or by calling (306) 787-2438 (Regina) or toll free 1-800 667-1783. Forms can also be downloaded from the Forms page on the Ministry’s website at: <http://www.lrws.gov.sk.ca/labour-standards-publications-forms>.

Applications must be completed, signed and returned to the Labour Standards Division for approval.

To allow for sufficient processing time, employers should have their permit applications in our office for processing at least two weeks before they are required. Consider the mail delivery times in your community when planning to submit your permit application.

**Permits available under The Labour Standards Act and The Labour Standards Regulations**

- A. Averaging of Hours Permit (sections 7 and 9). This permit allows an employer to average the hours of work of an employee or group of employees work over a period of weeks, rather than be limited to eight hours per day or 40 hours per week.
- B. Authorization to vary the rule that employees who work more than 20 hours per week get one day off per week (subsection 13[4]).
- C. Authorization to vary the rule that employees working more than 20 hours in a retail business with 10 or more employees get two consecutive days off per week.(subsection 13[4]).
- D. Authorization to vary the requirement to post a work schedule or a change to the work schedule (Section 13.1).
- E. Authorization to vary the requirement for a meal break (Section 13.3).
- F. Authorization to allow a holiday (vacation) shutdown for less than three consecutive weeks (Section 31).
- G. Authorization to move a public holiday to another day (Section 40).
- H. Authorization to vary the youth employment rules (Regulation 9.5)
- I. Variation to the requirement for the employer to provide 4 weeks' notice of annual holiday commencement where there is an agreement with the union or for non-union environments where there is agreement between the employer and employee (Section 32).
- J. Authorization to permit the payment of wages during a strike on a day other than the day on which they would usually be paid. Application for this authorization is by a letter of request to the Director of Labour Standards (Section 52).
- K. Authorization to waive the requirement to provide notice of group termination. Application for this authorization is by a letter of request to the Director of Labour Standards (Regulation 22).
- L. Approval of living accommodation. Application for this authorization is by a letter of request to the Director of Labour Standards (Regulation 33).

#### ***Averaging of hours permits***

Section 9 of the Act permits the Director of Labour Standards to authorize working days longer than eight hours per day, or work weeks longer than 40 hours, by averaging hours over a period of weeks. Overtime rules are modified for employers who have received an authorized Averaging of Hours Permit from the Director of Labour Standards allowing employees to work compressed workweeks. For example, employees at fly-in and remote worksites can agree to work longer days/hours one week and shorter or no days/hours during the next week.

#### ***Separate permits***

To ensure fairness, the Director may require separate permit applications for each:

- job site or business location; and/or
- category of employee, within the same organization – where the jobs performed by each category of employee is different.

#### ***Consent in non-union workplaces***

If the employees are not represented by a trade union, an application for a permit must be completed by the employer and submitted to the Director of Labour Standards. If the employees are not represented by a trade union, an application for a permit must be completed by the employer and submitted to the Director of Labour Standards.

All of the employees whose work schedules will be affected by the permit should sign the *Employee Declaration* (found at the end of the application form) to show their support for the permit application. The Director of Labour Standards may change the requirements for the percentage of affected employees to sign the declaration if the applicant can show that it would be impracticable to obtain the signatures of all of the employees.

Generally, the written consent of two-thirds of the affected employees will be necessary for approval. Where 20 or more employees are affected, the Director of Labour Standards may specify what percentage of employee signatures would demonstrate majority support for the application.

The Director of Labour Standards will provide the authorization applied for if a majority of the affected employees consent to the employer's application. Section 83.3 of the Act allows the Director to conduct a secret ballot vote to determine majority support.

Employers can apply for a permit for a group of employees or for individual employees. An employer and employee cannot enter into an overtime agreement without an approved permit.

The Director will act in the best interests of employees in determining whether an authorization is necessary or advisable. The Director may revoke a permit upon being satisfied that a condition of the authorization has been breached or that the authorization is no longer necessary or advisable (Act, Section 11).

#### *Consent in unionized workplaces*

The authorization of the Director is not required if the trade union representing affected employees and the employer agree to average hours of work over a number of weeks. However, in no case can the agreement allow for an average number of hours in excess of 40 in a week without the payment of overtime. If the union agrees, permits can be granted for specific workplaces.

#### *Permits are based on the workplace's work schedule*

A typical work schedule of the affected employees for one averaging period is to be attached to the permit application. The schedule must include days of work and hours of work per day. Unless the work schedule is unpredictable, the permit will be based on this work schedule. Note: a permit application will not be processed unless a schedule is attached.

Permits for employees who are scheduled to work less than 30 hours per week on average are considered on a case-by-case basis where there are good and sufficient reasons.

#### *Unpredictable work schedules*

The Director will consider one or two-week permit options on a case-by-case basis where a work schedule:

- fluctuates;
- is unpredictable; or
- circumstances dictate that another arrangement should be contemplated.

The employer must continue to provide employees with work schedules that are at least one week long.

#### *Hours of work limits*

All hours of work limits must be honoured. Even with an Averaging of Hours Permit, a worker can refuse to work more than 44 hours in any week (a week runs from Saturday midnight to the following Saturday midnight).

In the construction industry, two permit options are available:

- four 10-hour days per week; or
- 40-hour/1-week/10-hour day permit.

#### *Monthly permits*

Monthly permits should be requested where employees are paid monthly or bi-monthly, unless the employer has a method to track hours worked.

In these cases, state on the permit application which type of shift rotation basis will be used (that is to say: Monday-Friday; Sunday-Thursday; or Tuesday thru Saturday). Monthly permits will start on the first and will end on the last day of the month. The permit will specify the daily and total number of hours that an employee may work during the month before being paid overtime.

#### *Weekly permits*

Weekly permits are based on a 40-hour week, times the number of weeks in a rotation. Weekly permits should be requested where employees are paid weekly or bi-weekly. Typical examples include: four 10-hour days/week permit; 40-hour/1-week permit; 80-hour/2-week permit; 120-hour/3-week permit; and a 160-hour/4-week permit.

#### *Daily limits and scheduled shifts*

Daily work limits should be the same as the scheduled shifts, as demonstrated by the typical work schedule. Shifts longer than 10 hours will be subject to safety considerations.

#### *Weather considerations*

For outside workers, the permit can arrange for catch-up days due to the weather stoppages.

#### *Weeks with public holidays*

When a public holiday occurs in a permit period, the maximum amount of hours stated on the permit is reduced by 8 hours for each public holiday that occurs in the permit period.

### *Rest periods*

In addition to the weekly day(s) off requirement, except in an emergency as defined in section 12(4) of *The Labour Standards Act*, all employees must have at least an 8-hour rest break in any period of 24 hours (section 13.2).

### *Retroactivity*

The permit is generally not issued retroactively except where it is necessary to match pay periods to the start of the averaging period.

### *Permit and payroll periods to coincide*

The permit period and the payroll period should coincide to allow the employer and the affected employees to easily identify when the overtime thresholds are exceeded. Alternatively, the employer will need to demonstrate that there is a system in place to track hours covered by the permit.

### *Work safe considerations*

Where a job requires heavy physical or a higher than normal mental effort and due care, non-standard and extended work shifts can affect workers' levels of alertness and their performance towards the end of an extended shift. This can result in a greater chance of an accident during the extended portion of the shift.

Therefore, a higher than average lost time work injury rate may be a consideration when determining if an application is to be approved for shift arrangements longer than 10 hours.

### *Maximum number of employees covered*

Permits will be issued for a maximum number of employees. If this maximum number is exceeded, the permit does not apply to the excess. In this case, a new permit is required for the additional employees, as the original permit does not cover the last employees hired outside of the maximum. New employees must be informed of the permit if they are affected.

### *Discretion of the director to issue a permit*

The Director retains the discretion to amend the permit request or refuse to grant such a permit request.

### *Posting a permit*

If the authorization is granted, the permit will be issued to the business. The Permit must be posted in a place accessible to all employees.

#### *Revoking a permit*

The Director may revoke a permit at any time upon being satisfied that a condition has been breached or that the authorization is no longer necessary or advisable. If a permit is to be revoked, the employer and the employees will be informed in advance of the Director's intentions and given the opportunity to make representation.

#### *Employee concerns with a permit*

Employees may file a written complaint with the Director of Labour Standards should they believe that support for the permit was coerced or that it is not being properly applied. Alternatively, should they wish to file an anonymous complaint, they may contact the Compliance Review Unit. In this latter case, they will be asked for evidence of wrongdoing.

#### *Dependent care issues*

If it is brought to the Labour Standards Division's attention that the proposed averaging permit will have a negative impact on an employee's dependent care arrangements, an accommodation may be required as a condition of receiving the permit.

#### *Expiration of permit*

As a rule, first time permits will be granted for one year and renewals of existing permits will be granted for up to two years. Once a permit expires, the regular overtime rules apply unless a new permit is acquired.

Note: Labour Standards does not notify employers that their permit has expired.

## Appendix

HOURS OF WORK AND OVERTIME EXEMPTIONS	
The Act and its regulations fully or partially exempt certain types of employees from the overtime rules.	
TYPE OF EMPLOYEE	EXEMPTION
Managers (Section 4[2] of the Act)	Completely exempt from Part I and all of the hours of work and overtime rules.
Schoolteachers under <i>The Education Act</i> (Section 4[4] of the Act)	Completely exempt from Part I and all of the hours of work and overtime rules.
Employees who are commercial fishers or trappers (Regulation 3[3])	Exempt from <i>The Labour Standards Act</i> , other than sections 48-90 governing payment of employees, payroll records and administrative requirements.
Workers under <i>The Fire Departments Platoon Act</i> (Regulation 4)	Exempt from the hours of work and overtime rules.
Professionals and students learning their profession (Regulation 7[2][a])	Professionals and students learning their profession are exempt from the hours of work and overtime rules while working in their professional areas.
Employees of a rural municipality who are engaged solely in the occupation of road construction or maintenance (Regulation 7[2][b])	<p>These employees are exempt from sections 6 and 12 of the Act while they:</p> <ul style="list-style-type: none"> <li>• perform road construction or maintenance work; or</li> <li>• service or repair road construction or maintenance equipment on the job.</li> </ul> <p>The hours of work and overtime rules apply to employees who store, service, or repair road construction or maintenance equipment in the warehouse or shop of the rural municipality. The rules apply to employees in urban municipalities.</p>
Travelling commissioned salespersons (Regulation 7[2][c])	<p>Sections 6 and 12 do not apply to employees who meet <b>all</b> of these criteria:</p> <ol style="list-style-type: none"> <li>1. They are employed as salespersons.</li> <li>2. They travel regularly in the course of their duties to two or more cities, towns or villages that are at least 20 kilometres apart.</li> <li>3. They receive all of their remuneration as commissions with respect to sales of goods or services or offers to purchase that usually are made at a place other than the employer's establishment.</li> </ol> <p>The employer must pay travelling commissioned salespersons at least the minimum wage for each hour worked. Salespersons that do not travel or receive all of their pay through commissions are entitled to overtime.</p>
Employees in the logging industry – including cooks, cookees, bull cooks, and watchmen (Regulation 7[2][e])	These employees are exempt from sections 6 and 12 of the Act. However, the hours of work and overtime pay rules apply to industry employees working in an office, saw mill or planing mill.
Outfitters (Regulation 7[2][g])	The hours of work and overtime pay rules do not apply to the employees of outfitters, as defined in <i>The Outfitter and Guide Regulations, 2004</i> , who are primarily engaged in outfitting.
Employees in mineral exploration working north of township 62 (Regulation 7[2][h])	The hours of work and overtime pay rules do not apply to employees engaged in mineral exploration north of Township 62, but the rules apply to office workers.
Motor vehicle salespersons (Regulation 7[3])	Hours of work and overtime rules do not apply to <i>salesmen</i> as defined in <i>The Motor Dealers Act</i> , including anyone selling any self-propelled vehicle.
Operators of residential service facilities (Regulation 8)	The employer in a residential service facility regulated by the Ministry of Social Services may designate one employee each day as the <i>operator</i> . That operator is exempt from the hours of work and overtime pay rules. The employer cannot designate another employee as the 'operator' for the purpose of the exemption.
Ambulance attendants (Section 40 of <i>The Ambulance Act</i> )	Exempt from the hours of work and overtime rules.

**General overtime pay requirements for hourly paid salespeople**

1. All hourly paid, salaried employees are entitled to overtime pay, as well as those who are paid by commission or a percentage of sales.
2. The employer must keep records (Section 70 of the Act) of the hours worked by all employees, including those who are paid on by commission or a percentage of sales.
3. Overtime is payable after the employee has worked, or been at the employer's disposal, for more than eight hours in a 24-hour period or 40 hours in a week (Saturday midnight to the following Saturday midnight). The weekly limit falls to 32 hours in a week with a public holiday.
4. Any overtime payments or overtime pay calculations must be attached to or shown on the employee's pay statement (Section 4 of *The Minimum Wage Regulations*).
5. The overtime rate is one and one-half times the employee's regular hourly wage rate. This rate can be increased by agreement, but it cannot be lowered.

OVERTIME REQUIREMENTS FOR SALARIED AND COMMISSIONED SALES PEOPLE											
Type of Employee	Overtime Pay Requirements										
<p>1. Travelling commissioned salespersons (Regulation 7[2][c])</p>	<p>Section 6 and 12 of the Act do not apply to employees who meet <u>all of these three criteria</u>:</p> <ol style="list-style-type: none"> <li>1. They are employed as salespersons.</li> <li>2. They travel regularly in the course of their duties to two or more cities, towns or villages that are at least 20 kilometres apart.</li> <li>3. They receive all of their remuneration as commissions with respect to sales of goods or services or offers to purchase that usually are made at a place other than the employer's establishment.</li> </ol> <p>The employer must pay travelling commissioned salespersons at least the minimum wage for each hour worked. Salespersons that do not travel or receive all of their pay through commissions are entitled to overtime.</p>										
<p>2. Paid by commission only (Section 10[4] of <i>The Labour Standards Regulations</i>)</p>	<p>The hourly wage must be at least the minimum wage (\$9.50). The employee must receive at least the minimum wage for each hour worked and 1.5 times the minimum wage for each overtime hour worked.</p> <p><b>Example</b></p> <p>Assuming the employee worked 45 hours in a week and earned \$350 in commissions for that week, the employee is entitled to the greater of A or B:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">A. Regular wages: 40 x \$9.50 (minimum wage)=</td> <td style="text-align: right;">\$380.00</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Overtime wages: 5 x \$9.50 x 1.5=</td> <td style="text-align: right; border-bottom: 1px solid black;">\$71.25</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: right;"><b>\$451.25</b></td> </tr> </table> <p>B. Commissions earned= \$350.00</p> <p>In this case, the employee would be paid \$451.25 because it is greater than the \$350 earned commission.</p>	A. Regular wages: 40 x \$9.50 (minimum wage)=	\$380.00	Overtime wages: 5 x \$9.50 x 1.5=	\$71.25	<b>Total</b>	<b>\$451.25</b>				
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<p>3. Paid by the greater of a guaranteed base salary <u>or</u> commission.</p>	<p>The hourly overtime pay calculation is based on the guaranteed base salary.</p> <p><b>Example</b></p> <p>Let us assume that the guaranteed base salary is \$1,800 per month for a 40-hour week, the employee worked five hours of overtime for the month and earned \$1,600 in commissions for that month. Using the guaranteed base salary rate, the hourly wage rate is calculated this way:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"><u>\$1,800/month x 12 months= \$21,600.00=</u></td> <td style="text-align: right;">\$10.38 hourly wage</td> </tr> <tr> <td>52 weeks/year x 40 work hours per week</td> <td></td> </tr> </table> <p>This employee is entitled to the greater of A or B:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">A. Guaranteed base salary=</td> <td style="text-align: right;">\$1,800.00</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Plus overtime wages: 5 hours x \$10.38 x 1.5=</td> <td style="text-align: right; border-bottom: 1px solid black;">\$77.85</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: right;"><b>\$1,877.85</b></td> </tr> </table> <p>B. Commissions earned= \$1,600.00</p> <p>In this case, the employee would be paid \$1,877.85 because it is greater than the \$1,600 earned commissions.</p>	<u>\$1,800/month x 12 months= \$21,600.00=</u>	\$10.38 hourly wage	52 weeks/year x 40 work hours per week		A. Guaranteed base salary=	\$1,800.00	Plus overtime wages: 5 hours x \$10.38 x 1.5=	\$77.85	<b>Total</b>	<b>\$1,877.85</b>
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### 3. Overtime

OVERTIME REQUIREMENTS FOR SALARIED AND COMMISSIONED SALES PEOPLE	
Type of Employee	Overtime Pay Requirements
<p>4. Paid by a guaranteed base salary <u>plus</u> commissions (Regulation 10[1])</p>	<p>The hourly rate is calculated by using regulation 10. Commissions earned in the overtime period should be identified separately or all may be held to have been earned during the regular hours of work.</p> <p>The hourly rate must be calculated for each week (therefore, it is advisable to have a weekly base rate). The resulting hourly rate cannot be less than the minimum wage and is capped at five times the minimum wage.</p> <p><b>Example</b></p> <p>Using the guaranteed base salary plus commissions method, the hourly wage is calculated by using Regulation 10:</p> <p>10(1) Subject to subsections (2) to (4), for the purposes of subsection 6(5) of the Act, where an employee is paid his or her wages on a basis other than an hourly, daily, weekly or monthly basis, the hourly wage of the employee is the amount obtained by dividing the wages of the employee earned during the week, <u>exclusive of overtime, annual holiday pay and public holiday pay</u>, by the lesser of:</p> <p style="margin-left: 40px;">(a) 40; and</p> <p style="margin-left: 40px;">(b) the actual number of hours worked during the week, exclusive of overtime.</p> <p>(2) In no case shall an hourly wage be determined to be greater than five times the minimum wage or less than the minimum wage.</p> <p>The commission earned during the overtime period (in the example, \$50) is not included in the hourly wage calculation when using the Regulation 10 method.</p> <p>Let us assume that the guaranteed base salary is \$500 per week for a 40-hour week, the employee earned \$400 in commissions during the week. The employee worked one hour of overtime for the week and earned another \$50 in commissions during the overtime period. Using the guaranteed base salary plus commissions method, the hourly wage rate is calculated this way:</p> <p><math>\frac{\\$500/\text{week} + \\$400 \text{ in commissions} - \\$50}{40 \text{ work hours per week}} = \\$21.25 \text{ per hour}</math></p> <p>For that week, this employee is entitled to:</p> <ul style="list-style-type: none"> <li>• Guaranteed base salary= <span style="float: right;">\$500.00; plus</span></li> <li>• Commissions earned (excluding overtime)= <span style="float: right;">\$400.00</span></li> <li>• Plus the greater of A or B:</li> </ul> <p style="margin-left: 40px;">A. Overtime wage (1 hour x \$21.25 x 1.5)= <span style="float: right;">\$31.88</span></p> <p style="margin-left: 120px;">-OR- <span style="float: right;">\$50.00</span></p> <p style="margin-left: 40px;">B. Overtime commissions earned= <span style="float: right;">\$50.00</span></p> <hr/> <p><b>Total <span style="float: right;">\$950.00</span></b></p>

OVERTIME REQUIREMENTS FOR SALARIED AND COMMISSIONED SALES PEOPLE															
Type of Employee	Overtime Pay Requirements														
5. Salaried sales people	<p>The employer and employee should agree on expected weekly hours for the salary. The resulting hourly rate for the total amount of hours worked each week cannot be less than the minimum wage.</p> <p><b>Example</b></p> <p>In this case, the hours of work are 7.5 hours per day, 5 days a week for a 37.5 hour work week. The employer and employee agree that overtime is payable after the employee has worked 7.5 hours in a day (without that specific agreement, overtime is payable after 8 hours in a day as required by the Act).</p> <p>Let us assume that the employee's salary is \$2,000 per month for a 37.5-hour week. Using that rate, the employee's hourly wage rate is:</p> $\frac{\$2,000/\text{month} \times 12 \text{ months}}{52 \text{ weeks} \times 37.5 \text{ hours}} = \$12.31/\text{hour}$ <p>If the employee works 13 hours in one day (five and one-half consecutive hours of overtime) during the week, the employee is entitled to:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Regular salary= .....</td> <td style="text-align: right;">\$2,000.00</td> </tr> <tr> <td>Overtime wages (5.5 hours x \$12.31 x 1.5)= .....</td> <td style="text-align: right;">\$101.56</td> </tr> <tr> <td style="border-top: 1px solid black;"><b>Total</b></td> <td style="text-align: right; border-top: 1px solid black;"><b>\$2,101.56</b></td> </tr> </table> <p><b>NOTE:</b></p> <p>If the employer and employee did not agree that overtime is payable after the employee has worked 7.5 hours in a day, overtime is payable after 8 hours in a day as required by the Act. In this case, the employee would not earn overtime until after working for eight hours in the day. The half-hour between 7.5 hours – 8 hours would be paid at regular pay.</p> <p>The example would therefore be as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Regular salary= .....</td> <td style="text-align: right;">\$2,000.00</td> </tr> <tr> <td>½ hour of regular pay (\$12.31 divided by 2)= .....</td> <td style="text-align: right;">\$6.16</td> </tr> <tr> <td>Overtime wages (5 hours x \$12.31 x 1.5)= .....</td> <td style="text-align: right;">\$92.33</td> </tr> <tr> <td style="border-top: 1px solid black;"><b>Total</b></td> <td style="text-align: right; border-top: 1px solid black;"><b>\$2,098.49</b></td> </tr> </table>	Regular salary= .....	\$2,000.00	Overtime wages (5.5 hours x \$12.31 x 1.5)= .....	\$101.56	<b>Total</b>	<b>\$2,101.56</b>	Regular salary= .....	\$2,000.00	½ hour of regular pay (\$12.31 divided by 2)= .....	\$6.16	Overtime wages (5 hours x \$12.31 x 1.5)= .....	\$92.33	<b>Total</b>	<b>\$2,098.49</b>
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## Frequently asked questions

QUESTION	ANSWER
What is a workweek?	A work week runs from Saturday midnight to the following Saturday midnight.
What is a work day?	A day is any period of 24 consecutive hours.
When is overtime payable?	<p>Most employees who work, or are at their employer's disposal, for more than eight hours per day are entitled to overtime pay. They are also entitled to overtime rates for any hours worked in excess of 40 hours per week.</p> <p>For weeks in which a public holiday occurs, they are entitled to overtime rates after 32 hours of work.</p>
What is the overtime rate?	Overtime must be paid at the rate of 1.5 times the hourly wage rate. To calculate the hourly rate for employees paid on a monthly basis, multiply the monthly wage by 12, divide the result by 52, and then divide by the regular weekly hours worked (which cannot be more than 40).
Do all employees get overtime?	<p>Overtime provisions do not apply to managerial or professional employees, employees working for mineral exploration operations north of Township 62, loggers, certain types of traveling salespersons, or employees working for outfitters, fishers, or trappers.</p> <p>Special overtime rules apply to some types of employment, including ambulance attendants or firefighters on a platoon system, oil truck drivers, some hog barn workers, some highway construction workers and some city newspaper employees.</p> <p>Overtime rules are also modified for employers who have received an authorized Averaging of Hours Permit from the Director of Labour Standards allowing compressed workweeks. Please call Labour Standards at: 1-800-667-1783 for more information about special rules and overtime exemptions.</p>
What are the rules regarding "short-shifting"?	Every employee is entitled to a rest period of at least eight consecutive hours in any given period of 24 hours. It does not matter if an employer is willing to pay overtime; no employee can be required to work during their rest period unless there is an emergency circumstance.
What is an "Averaging of Hours" Permit?	The Averaging of Hours Permit facilitates an averaging of the hours of work for employees who want to work longer shifts but over fewer days or weeks. Authorization for such permits is found in Sections 7-12 of <i>The Labour Standards Act</i> . This permit does not eliminate overtime. Overtime must be paid if the hours worked by the affected employees exceed the hours stated in the permit. Non-unionized employers must obtain a permit from the Director of Labour Standards; however, these permits do not apply to unionized workplaces (such workplaces must obtain the written agreement of their trade union). Application forms and additional information are available from the nearest Labour Standards office or by calling 1-306-787-2438 (Regina) or toll free 1-800-667-1783, or from <a href="http://www.lrws.gov.sk.ca/labour-standards">http://www.lrws.gov.sk.ca/labour-standards</a> .
Is there a limit to the number of hours an employee can be required to work per week?	Yes. Unless there is an emergency, employees do not have to work or be at the employer's disposal for more than 44 hours per week. An employee may agree to work the extra hours. An "emergency" is a sudden or unusual occurrence for which an employer could not have planned. If a public holiday occurs during the week, the employee does not have to work more than 36 hours. An employer cannot discipline an employee who refuses to work the extra hours.
Does an employee have to be paid for all hours worked?	An employee is entitled to be paid for each hour worked or part thereof. As well, if an employee is required to be at the disposal of the employer, the employee must be paid for those hours or part thereof.