



Employment standards tool kit for employers

Module 4 | Overtime hours and overtime pay

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Employment Standards Tool Kit for Employers: Module 4 – Overtime Hours and Overtime Pay

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Introduction

This tool kit was developed by the Government of Alberta to help business owners and their employees understand and comply with the *Employment Standards Code* and Regulation.

Following the Code is your responsibility, and this tool kit is designed to help you do that.

The laws for Employment Standards are minimum requirements. Some tools, forms and a list of resources are provided to assist business owners in meeting or exceeding the minimum requirements. You may use the sample tools provided, or you may develop your own.

This resource does not outline all the requirements under the *Employment Standards Code* and Regulation.

This is not a definitive guide to the legislation and does not exempt readers from their responsibilities under applicable legislation.

In case of inconsistency between this resource and employment standards legislation, the legislation will always prevail.

Availability of legislation

In Alberta, the *Employment Standards Code* and Regulation outlines the requirements for employment standards. See www.qp.alberta.ca to download these documents.

Official printed copies may be purchased from the Alberta Queen's Printer online at www.qp.alberta.ca or in person at:

7th floor, Park Plaza
10611-98 Avenue Edmonton, Alberta T5K 2P7

Phone: 780-427-4952

Call any Government of Alberta office toll-free: Dial 310-0000, then the area code and telephone number you want to reach.

Other legislation that may apply to you includes:

Canada Labour Code: www.laws-lois.justice.gc.ca/eng/acts/L-2

Labour Relations Code: www.alrb.gov.ab.ca/legislation.html

Occupational Health and Safety Act, Code and Regulation: www.alberta.ca/occupational-health-safety.aspx

Alberta Human Rights Legislation: www.albertahumanrights.ab.ca

Workers' Compensation Board: www.wcb.ab.ca/home

Employment Standards website

Visit alberta.ca/employment-standards.aspx for more information on Alberta's employment standards.

The website provides detailed information on the rights and obligations of employers and employees under the *Employment Standards Code*, as well as information for specific groups, occupations and industries.

The website also provides access to other resources, including an interactive self-assessment tool for employers, webinars, and other publications.

Overview

With the exception of some supervisory and managerial positions, most employees are entitled to overtime pay for overtime hours worked.

Visit alberta.ca/employment-standards.aspx for a list of occupations that have exceptions or are exempt from the overtime rules.



Remember! All employees, including those working part-time and those who are paid a salary, must be paid overtime pay for overtime hours they work.



See additional resources: [Management or supervisory employee questionnaire](#)

Overtime hours

In most industries, overtime is all hours worked in excess of 8 hours a day or 44 hours a week, whichever is greater. See **Industries with different overtime rules** in this section for a list of industries and occupations that have an exception to this overtime standard.

The minimum standard for overtime is different when an averaging arrangement is in place. See [Module 5: Averaging arrangements](#) for details on averaging arrangements.

If overtime is banked to be taken as time off with pay, the overtime hours must be banked at a rate of at least 1 hour for each overtime hour worked.

Reference: *ES Code*, Sections 21 and 22



All employees must meet minimum standards for overtime pay. Employers and employees cannot make agreements, verbally or in writing, that would allow the employer to pay less than the minimum overtime required.

Calculating overtime pay

Overtime hours are to be calculated both on a daily and weekly basis. The greater of the totals is the number of overtime hours worked in the week that must be paid.



The Basic 8/44 rule

Overtime is all hours worked in excess of 8 hours a day, or 44 hours a week, whichever is greater.

Applying the 8/44 rule

1) Calculate the total daily overtime hours for the week.

Each day worked in the week must be considered individually. Any hours more than 8 hours worked in each day will be daily overtime hours.

2) Calculate the weekly overtime hours.

You must also look at the week as a whole. Any hours more than 44 hours worked in a week will be weekly overtime hours.



If the employer uses a work week that is less than 44 hours, overtime pay will still be payable under the basic 8/44 rule unless there is a collective agreement, or some other agreement in place, or it is the consistent practice of the employer that overtime hours are counted after less than 8/44.

3) Compare the daily and weekly totals.

4) Pay the greater number of overtime hours.

The *Employment Standards Code* defines a work day, work week, and work month for the purposes of calculating hours of work and overtime.

A **work day** is generally the 24-hour period from midnight to midnight.



An employer can establish a different 24-hour period by consistent practice (e.g. 7 p.m. to 7 p.m. the next day).



An employee's shift should fall within a single work day. If the employee's shift extends past midnight, the employer must establish a different 24-hour period to ensure the shift falls into a single work day.

Unless otherwise established by the employer, a **work week** begins and ends at midnight on Saturday and a **work month** is a calendar month.

Reference: *ES Code*, Section 21

Time off with pay

Sometimes, instead of paying overtime, an employer will give an employee time off with pay at a rate of at least 1 hour for each overtime hour worked as part of an overtime agreement.



Time off with pay instead of overtime pay is considered hours of work when calculating weekly and daily hours of work.

Calculating overtime when pay period ends mid-week

When a pay period ends mid-week, calculating overtime hours can be confusing.

The following example shows how to calculate overtime hours when pay periods end mid-week. In this case, the employee gets paid on the last day of each month. Look at the hours of work done in the last week of September and the first week of October. In this example Tuesday is the last day of the September pay period.

	S	M	T	W	T	F	S	Total
September	-	10	9					
October				8	11	8	8	54

1) Calculate the daily overtime hours

September: Monday + Tuesday = 3 hours

October: Wednesday + Thursday + Friday+ Saturday = 3 hours

There is a total of 6 daily overtime hours worked this week.

2) Calculate the weekly overtime hours

Adding all six workdays in the work week equals 54 hours.

This means that 10 of the hours worked are weekly overtime hours (according to the 8/44 rule).

3) Pay the greater number of overtime hours

4) Decide what to pay and when

If the employer does not have all of the information necessary to consider the full week calculation, then he/she would pay the employee for the 3 hours of overtime earned in September, and pay for the remaining 7 hours of overtime in October.



Remember! The 8/44 rule requires employers to pay the greater of the two overtime hour calculations.

Calculating overtime for salaried employees

Calculating overtime hours for salaried employees is no different than employees paid hourly.

Salary is payment only for the regular hours of work. Overtime hours must be compensated for in addition to the regular hours.

To calculate the overtime rate of pay for salaried employees:

1) Calculate the average number of weeks in a month

Divide 52 weeks (in a year) by 12 months = 4.3333.

2) Calculate the employee's weekly wage

Divide the employee's monthly salary by 4.3333.

3) Calculate the employee's hourly rate of pay

Divide the employee's weekly wage by 44 hours or by the number of hours that make up the employee's regular work week.

4) Calculate the employee's overtime rate of pay

Multiply the hourly rate of pay by at least 1.5 to get the overtime rate.

All of the calculated overtime hours should be multiplied by this result to figure out the total pay.

Calculating overtime on general (statutory) holidays

If the hours worked on a general holiday are paid at 1.5 times the regular rate, the hours of work for that day(s) are not used when calculating overtime hours.

If an employee is paid straight time plus a day off, the hours worked on that day(s) are used for calculating overtime hours.

Reference: *ES Code*, Section 33



Some employees may have averaging arrangements in place, which allows for different overtime thresholds. See [Module 5: Averaging arrangements](#) for more information on averaging arrangements.

Industries with different overtime rules

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

Industry/Occupation	Daily hours	Weekly hours before O/T calculated	Monthly hours before O/T calculated
Ambulance attendants	10	60	
Geophysical exploration	10		191
Irrigation districts	9	54	
Logging and lumbering	10		191
Oilwell servicing	12		191
Surveying	10		191
Trucking industry*	10	50	
Field catering and land surveying	10		191
Highway and railway construction and brush clearing	10	44	
Road construction and maintenance	10		191
Taxi cab industry	10	60	
Firefighting Services**		44	
Caregivers (homecare and residential care)	Rules depend on the type of shift worked by the employee. See alberta.ca/employmentstandards for more information.		

*Trucking overtime can be calculated based on the 8/44 rule or a 10/50 rule. If you're not sure which, call the Contact Centre for assistance at 1-877-427-3731.

**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 firefighter is scheduled to work more than 44 hours in a week, in which case the scheduled hours are the threshold for overtime hours.

See the Employment Standards Regulation online at www.qp.alberta.ca for more detailed information.

Overtime agreements

An employer may give paid time off instead of paying overtime pay.

Time off in place of overtime pay is a **mutual** agreement in writing between employee and employer.

There are 2 types of agreements: individual and group overtime agreements.

Individual overtime agreements

An individual overtime agreement is between one employee and an employer. Either the employee or the employer can cancel or change the agreement by giving the other party one month's notice in writing.

Group overtime agreements

A group overtime agreement is between an employer and a designated group of employees. The employer and a majority of the employees in the designated group must sign the agreement. The agreement can be cancelled or changed by either party by giving one month's notice to the other.



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 agreements must be in writing, be signed by both parties, and contain certain requirements.

Overtime agreement requirements

- A copy of the written agreement must be given to each employee affected by it.
- When overtime hours are worked, they are banked.
- The banked hours are given/taken off at a time when the employee could have worked.
- At least 1 hour of time off must be given for each hour of overtime worked.
- Regular wages are paid for the hours when they are given/taken off.

- Time off must be given/taken within 6 months at the end of the pay period when the overtime hours were worked.
- If the time is not given/taken off within 6 months, it must be paid out at 1.5 times the rate of pay on the day the 6 months expired.
- An overtime agreement may be contained in a collective agreement or other written agreement.

Reference: *ES Code*, Section 23



Remember! Paid time off for banked overtime is considered wages. Vacation pay is owed on these payments.



See additional resources: [Individual overtime agreement](#) and [Group overtime agreement](#)

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

- document and retain an up-to-date record of the number of overtime hours banked and taken 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

Reference: *ES Code*, Section 23

Paying out banked overtime upon termination

When either the employer or employee ends the employment relationship by giving a written notice of termination, an employer cannot require the employee to use up some or all outstanding banked overtime during the notice period, unless agreed to by both parties.

When overtime is paid for hours worked over eight hours in a day or 44 hours in a week, the total of any hours worked, plus banked overtime taken, cannot exceed eight hours in a day or 44 hours in a week.

When notice of termination is provided, any banked overtime not provided and taken with pay must be paid out at 1.5 times the employee's regular rate of pay.