

## Frequently Asked Questions 300 – 399

### How are employees who are paid a flat rate (like many mechanics and automobile repair technicians) paid for overtime?

To calculate overtime for employees paid a flat rate, establish the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period, and calculate the overtime wages.

For example: a mechanic who is paid once a week earns \$40 for each brake job completed. In this pay period, the mechanic does 30 brake jobs and actually works 48 hours, comprising 40 regular hours and 8 overtime hours. The total pay for the 30 brake jobs is \$1,200.

Calculate the regular hourly wage by dividing the total wages earned in the pay period by the total number of hours worked in the pay period:

$$\frac{\text{Flat rate}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$1200}{48} = \$25$$

For the regular hours worked, the mechanics hourly wage is multiplied by the standard 40 hours of work:

$$\text{Hourly Wage} \times \text{Regular Hours Worked} \quad \$25 \times 40 = \$1000$$

The overtime wage rate is calculated by multiplying the hourly wage by 1 ½ times;

$$\text{Hourly Wage} \times 1.5 = \text{Overtime Wage} \quad \$25 \times 1.5 = \$37.50$$

The overtime wage is calculated by multiplying the overtime wage by the number of overtime hours worked :

$$\text{Overtime Wage} \times \text{Overtime Hours} \quad \$37.50 \times 8 = \$300$$

Add the regular wages and the overtime wages together to calculate the total amount the salesperson earned during the pay period.

$$\$1000 + \$300 = \$1300$$

Since the mechanic was already paid \$1200 as a flat rate, the employer pays \$100 to account for the hours worked that have not yet been paid.

## How are employees paid for piece work (like sewing machine operators) paid for overtime?

To calculate overtime for employees paid by the piece, determine the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period, and calculate the overtime wages.

For example: a sewing machine operator who is paid once a week earns \$0.75 for each pocket sewn. In the pay period, the employee sews 1,000 pockets, for a total pay of \$750 and worked 50 hours.

Calculate hourly wage by dividing the total pay by the number of hours worked in the pay period:

$$\frac{\text{Incentive Pay (Piecework)}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$750}{50} = \$15$$

For the regular hours worked, the sewing machine operators hourly wage is multiplied by the standard 40 hours of work:

$$\text{Hourly Wage} \times \text{Regular Hours Worked} \quad \$15 \times 40 = \$600$$

The overtime wage is calculated by multiplying the hourly wage by 1 ½ times;

$$\text{Hourly Wage} \times 1.5 = \text{Overtime Wage} \quad \$15 \times 1.5 = \$22.50$$

Multiply the salespersons overtime wage by the number of overtime hours worked:

$$\text{Overtime Wage} \times \text{Overtime Hours} \quad \$22.50 \times 10 = \$225$$

Add the regular wages and the overtime wages together to calculate the total amount the sewing machine operator earned during the pay period.

$$\$600 + \$225 = \$825$$

Since the sewing machine operator already earned \$750 in piecework, the employer pays \$75 to account for the hours worked that have not yet been paid.

## How are employees (whose productivity can be measured every hour) paid for overtime?

In some cases, employers are able to measure exactly how productive employees are during the overtime hours. In the piece work example, where employees are paid \$0.75 for each pocket sewn, the employer could show how many pockets were sewn during regular hours and how many pockets were sewn during overtime.

Employers can choose to calculate the hourly wage over the pay period as shown in the previous examples, or they may pay 1 ½ times the piece rate for work done in overtime hours. In this example, the employer could simply pay \$1.13 for each pocket sewn in the overtime rather than calculate the hourly wage for the pay period.

## How are employees who earn a salary or wage and incentive pay paid for overtime?

There are two ways to calculate overtime for employees who earn a salary or wage, plus incentive pay.

1. If the salary or wage is more than twice the minimum wage, the overtime wage is calculated using only the salary or wage. The incentive pay is not used to calculate the hourly wage.

For example if the employee earns \$30 per hour plus a commission, the overtime wage rate would be  $\$30 \times 1.5 = \$45$  per hour of overtime. The commission would not be used in the calculation.

2. If the salary or wage is less than twice the minimum wage, the overtime wage is calculated separately for the wage or salary and for the incentive pay. The two are then added together.

## How are employees who are paid at least twice the minimum wage as a base and incentive pay, paid for overtime?

To calculate overtime for employees paid a base wage greater than twice the minimum wage, only the base salary or wage is used.

For example: a miner who is paid a base wage of \$30 per hour plus incentive pay for the amount he/she produces in the period. If the base wage is more than twice the minimum wage, the overtime wage would be calculated as follows:

***Base Wage  $\times 1.5 = \text{Overtime Wage}$***

***$\$30 \times 1.5 = \$45$***

This equals an overtime wage of \$45 for each hour of overtime. The incentive pay is not included in the calculation.

## How are employees, who are paid a salary or wage less than twice the minimum wage and incentive pay, paid for overtime?

To calculate the overtime rate for employees who are paid a base salary or wage less than twice the minimum wage and incentive pay, establish the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period, and calculate the wages.

For example: In this pay period, a salesperson who is paid \$10 per hour plus a sales commission, earned \$84 in commission and worked 42 hours (40 standard hours and two hours overtime). The salespersons wage is less than twice the minimum wage, so the hourly wage is calculated separately for both the base wage and the incentive pay; then the two are added together.

Divide the total commissions earned by the number of hours worked in the pay period, then add the hourly commission wage and the base pay together:

To calculate the hourly rate for the incentive pay, use the formula:

$$\frac{\text{Commissions}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$84}{42} = \$2/\text{hour in commissions}$$

$$\text{Base Pay} + \text{Hourly Wage in Commissions} = \text{Total Hourly Wage} \quad \$10 + \$2 = \$12/\text{hour}$$

For the regular hours worked, the salespersons total hourly wage is multiplied by the standard 40 hours of work:

$$\text{Hourly Wage} \times \text{Regular Hours Worked} \quad \$12 \times 40 = \$480$$

The overtime wage is calculated by multiplying the regular wage by 1 ½ times;

$$\text{Hourly Wage} \times 1.5 = \text{Overtime Wage} \quad \$12 \times 1.5 = \$18$$

Multiply the overtime wage rate by the number of overtime hours worked in the pay period:

$$\text{Overtime Wage} \times \text{Overtime Hours} \quad \$18 \times 2 = \$36$$

Add the regular wages and the overtime wages together to calculate the total amount the salesperson earned during the pay period.

$$\$480 + \$36 = \$516$$

Since the salesperson already earned \$84 in commission and \$400 in regular earnings, totalling \$484, the employer pays an additional \$32 to account for the hours worked that have not yet been paid.

## **Must employers calculate the hourly wage in every pay period for each employee that works overtime?**

Yes. The hourly wage for employees paid by incentive or commissions will generally change in every pay period, since it depends on the productivity in that period and the number of hours worked.

## **Are employees entitled to minimum wage for all hours worked?**

Employees are entitled to at least minimum wage in each pay period and cannot agree to work for less. The hourly wage for employees must be calculated in every pay period to ensure it is at least minimum wage. The [Minimum Wage](#) page has more information.

## **How is overtime calculated if incentive pay is not paid at the time of production or sale, but at some later date?**

Overtime is calculated based on the hours worked and the wages paid in each pay period. To calculate overtime, the wages paid in a pay period are averaged over the hours worked in that pay period, regardless of when the production actually occurred.

## **How do other incentives like bonuses and profit sharing affect the calculation of overtime pay?**

Incentives that can be measured by the productivity of employees are considered part of the wage when calculating overtime. Incentives that are discretionary bonuses, and are not tied to employees' productivity in any way, are not considered a wage and therefore, not included in calculating overtime.

## **Are there exceptions to paying overtime?**

There are exceptions to the overtime rules for some employees. See the pages on [Employees Who Generally Perform Management Functions](#) or [Employees Who Have Substantial Control Over Their Hours of Work and Earn Twice the Industrial Average Wage](#). Some businesses may have an averaging permit which allows the hours of work to be varied or averaged; others have individual flex-time agreements with their employees to set up a schedule with different standard hours of work. See the [Averaging Permits](#) and [Individual Flextime Agreements](#) pages for more details.

## Who is exempt from overtime and hours of work under this provision?

Employees who have substantial control over their hours of work and earn a regular annual income of at least two times the Manitoba average industrial wage are exempt from overtime. Both criteria are required for an employee to be exempt from overtime.

## What is the Manitoba Industrial Average Wage?

Statistics Canada establishes the Manitoba Industrial Average Wage each year. If employees make twice that amount and have substantial control over their hours of work, they may be exempt from overtime.

<i>Year</i>	<i>Manitoba Industrial Average Wage</i>	<i>Twice the Manitoba Industrial Average Wage</i>
June 1, 2015 May 31, 2016	\$44,869.24	\$89,738.48
June 1, 2014 May 31, 2015	\$43,134.00	\$86,268.00
June 1, 2013 May 31, 2014	\$42,021.72	\$84,043.44
June 1, 2012 May 31, 2013	\$40,890.20	\$81,780.40

## Does it matter if the employee gets paid by the hour, by salary, or by commission?

No matter how they are paid, if employees earn more than twice the Manitoba Industrial Average Wage per year, they meet the earning criteria for the overtime exemption. This also applies to employees who receive a base salary that is under the required level, but receive production bonuses or commissions that would raise their earnings above the required level. Employees must also have substantial control over their hours of work to meet the exemption for overtime. In any case, employees also need to have substantial control over their hours of work.

## How is "substantial control over hours of work" defined?

Some employees have the ability to organize their work schedule to suit the needs of themselves and clients. They may need to check in with their employer occasionally, but the employer generally does not set the schedule or control their day-to-day activities. These employees would be considered to have "substantial control over their hours of work."

Most employees are told by the employer what days and hours they are required to work. They can request changes to their schedules, but do not have the final say. These employees do not have substantial control over their hours of work.

## **Who determines if employees have substantial control of the hours of work?**

Employers are responsible for establishing the terms and conditions of employment. It should be clear to employees they are allowed to control their hours of work. Also, employers must be able to show an employee falls under this exemption if they are not paying overtime wages.

When establishing the terms and conditions of employment, employers need to consider the entire working relationship and understand every situation is different. Employers should also remember the employee needs to make two times the Manitoba Industrial Average Wage to satisfy the exemption for overtime.

## **Are employees who establish their own schedule based on clients' availability exempt from overtime?**

For employees to be exempt from overtime, they must have the flexibility to adjust a schedule themselves without the need for approval from employers.

## **Do both criteria need to be met to be exempt from overtime?**

Yes. To be exempt from overtime, employees must have substantial control over their hours of work and earn an annual regular wage of greater than twice the Manitoba industrial average wage.

## **Will the overtime exemption apply if an employee controls the hours, but has only worked part of the year and not earned twice the Manitoba Industrial Average Wage?**

If an employer wants to use this exemption to exclude an employee from overtime, they must be able to show that the employee meets both criteria (ie. has substantial control over hours of work and would earn more than twice the Manitoba Industrial Average Wage). Past performance is the best way to show the employee would have made the income criteria.

The determination for the income criteria is based on wages over the course of a year. If a full year of work has not been completed, it is up to the employer to show the employee would have met the income criteria.

## **Who is exempt from overtime and hours of work under this provision?**

Employees who perform management functions primarily are exempt from overtime. These are functions that affect the control and direction of a business. Employees who have the authority to independently make key

business decisions on most issues are likely to be exempt. Employees who only sometimes perform management duties are generally not exempt from overtime and must be paid accordingly.

For example, in a franchise business where all of the major decisions on staff, budget, and marketing are made at the corporate office, employees will likely not be considered to be performing management functions primarily.

## **What are considered to be management functions?**

Employees with the power to make a final decision on most issues without needing approval of another person are likely performing management functions.

Some examples of management functions would include, but are not limited to, the ability to:

- Hire and fire employees
- Change the job duties or wage rates of other employees
- Authorize overtime
- Make decisions on how business dollars are spent
- Act on behalf of the employer

## **Are employees called "manager" or "supervisor" exempt from overtime and hours of work?**

Job titles have no impact on whether employees are exempt or not. The factors that are considered include the nature of their work functions and their level of control and authority in the organization.

## **Are employees who supervise other employees exempt from hours of work and overtime?**

Supervisory duties alone are not usually considered to be management functions. To determine if employees perform management functions primarily, all of their job duties must be examined. One of the questions to consider is who makes the final decision on things like terminations and discipline. Many supervisors make recommendations on these issues, but someone with more authority in the company makes the final decision. Generally, supervisors are not exempt from overtime and hours of work.

## **Who determines if employees primarily perform management functions?**

Employers who wish to exclude employees from overtime must be able to show that they are performing management functions primarily.



## **Are managers who take direction from a board of directors exempt from hours of work and overtime?**

It depends on the level of authority the manager has been given to make decisions affecting the business. Many factors may be considered, including: how active the board of directors is in the day-to-day operation of the business, how involved they are in monitoring expenditures, and whether the manager has the authority to interpret and implement board policies and procedures.

## **What are the standard hours of work?**

Employers can require employees to work up to eight hours in a day and 40 hours in a week as standard hours of work.

Employees who work more than the standard hours are entitled to overtime pay for them.

## **Who controls scheduling?**

Employers control schedules. They make or approve work schedules that suit their business needs and can change work schedules at any time. Sometimes employers involve employees in decisions about scheduling, but are not required to do so.

## **Can employers change employees' schedules?**

Yes. Employers make schedules that suit their businesses and can change work schedules at any time. This includes deciding to close on a certain day, or to reduce or increase the number of hours they are open each week.

Employers can also change employees schedules after a shift has started. If employees are scheduled for 3 hours or more and the employer ends the shift early, wages must be paid for 3 hours or for the time worked, whichever is greater. See the [Wages for Reporting for Work](#) fact sheet for more information.

## **Can employees change schedules?**

Employers control work schedules, but some employers allow employees to switch shifts with co-workers or to change schedules.

## **Do employers need to pay overtime that occurs when employees change the schedule?**

If employees work overtime, they must be paid overtime wages. Employers who allow employees to change the schedule or switch shifts cannot refuse to pay for overtime that occurs as a result. Employers should know the weekly and daily hours employees are working.

## **Can employers change schedules even after shifts have started?**

Employers can end employees' shifts early or start additional ones if they are within standard hours of work. If employees are scheduled for 3 hours or more and the employer ends the shift early, wages must be paid for 3 hours or for the time worked, whichever is greater. Overtime is voluntary or by agreement. More information can be found on the [Wages for Reporting for Work](#) and [Overtime](#) pages.

## **Are there times when employees can take time off work without the employer's permission?**

There are legislated leaves where employees can take time off work without needing the consent of their employer. For instance, family leave allows employees to take three unpaid days off each year to deal with family needs or personal illness. Bereavement leave provides three unpaid days off to deal with the death of a family member

All leaves have specific requirements for the amount of notice to be provided to the employer. For more information, see the [Summary of Unpaid Leaves](#) fact sheet.

## **How long are employees allowed to work without a break?**

Employees must be given a 30 minute unpaid break after every five consecutive hours of work. Many employers provide additional coffee breaks, cigarette breaks or other meal breaks. These are a benefit, but are not required.

## **What is a break?**

A break is when employees are on their own time and free of all responsibility. Employees must be able to leave the workplace during their breaks.

## **Are employees paid for their breaks?**

Employers are not required to pay for breaks but can choose to do so.

## **Can employers be excluded from the break requirement?**

Employers must apply to Employment Standards for any changes to the break requirement. Employment Standards will consider the needs of the business and whether the employees are in support of the proposed change and will benefit in some way. Unionized workplaces may have different provisions for work breaks. For more information, see the [Work Break Order](#) fact sheet.

## **Are breaks included when calculating overtime?**

Breaks are not included in overtime calculations. For example: an employee, who works from 9:00 a.m. to 5:30 p.m. with 30 minutes for lunch, has worked an eight-hour day. Keeping accurate records will show when employees work and when they are on breaks.

## **How much rest time should employees get each week?**

Most employees are entitled to a rest period of no less than 24 consecutive hours each week. Domestic and residential care workers must receive at least 36 consecutive hours of rest each week, when they are not required to perform work. See the [Domestic Workers](#) and [Residential Caregivers](#) sheets for more information.

## **Are employees entitled to the same day off each week?**

No. The day of rest is scheduled by the employer and does not need to be the same day each week. In practice, this means employees could work up to 12 days in a row in a two week period if the days of rest occur at the beginning of the first week and the end of the second week.

## **Are employees paid for the day of rest?**

No. Employers are not required to pay wages for a weekly day of rest.

## Can employers apply to be excluded from the weekly day of rest?

Employers must apply to Employment Standards to have their workplace excluded from the weekly day of rest. Employers need to show that a day of rest:

- Is an undue hardship to the employer
- Is of little or no benefit to the employees because of the remote location of the business
- Unduly restricts the operation of the business that operates only part of the year
- Causes severe loss to the business owing to the circumstances in which it operates

For more information, see the [Weekly Day of Rest Order](#) fact sheet.

## Who is excluded from a weekly day of rest?

Security personnel, caretakers and power engineers who live in the buildings where they work are not required to have a weekly day of rest. Employees working during a declared emergency or employees who perform management functions primarily are also excluded.

## How are employees' wages protected?

- 1) Under the legislation, employees are entitled to be paid all wages earned.
- 2) Employees must be paid at least minimum wage, and may not agree to work for less.
- 3) Deductions from employees wages must directly and clearly benefit the employees.

## What types of things cannot be deducted from employees wages?

Employers cannot charge interest or fees for cashing cheques or providing payroll advances. Employers cannot recover business expenses from the wages of employees.

Unauthorized deductions include:

- Fees to cash cheques
- Cost of damage to company property and vehicles (i.e. insurance deductible, parking tickets, or other violations, with the exception of photo radar ticket or a red light camera tickets)
- Cost of lost, stolen or broken tools, equipment, products, or faulty service
- Cost of cash or inventory shortages, dine & dashes, or drive offs
- Cost of personal safety equipment
  - ◆ Safety equipment is an employers responsibility. There are exceptions for safety headwear and some safety footwear. Contact The Workplace Safety and Health Branch at 204-945-3446 or visit their website [safemanitoba.com](http://safemanitoba.com) for more information.
- Cost of a uniform

# What can be deducted from employees' wages?

The general rule is employers can only make deductions from wages when these are:

- Required by law (i.e. statutory deductions)
- For something for which employees agree to pay and is of a direct benefit to them, or
- To compensate for any cash advances or payroll errors.

Examples of what can be deducted from employees wages include:

- Pay Advances
  - ◆ Employees and employers should agree on how and when to repay the money when the advance is given, such as paying in regular instalments or in one lump sum. However, no interest, service charges, or any other fees related to the advance may be deducted.
  - ◆ If employers and the employees cannot agree on how and when the cash advance will be paid back, employers can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
- Payroll Error Corrections
  - ◆ Employers can correct any payroll errors as soon the employee or employer notices them. Employees and employers should agree on how and when to make the correction, such as paying in regular instalments or in one lump sum.
  - ◆ If employers and the employees cannot agree on how and when the payroll error will be corrected, employers can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
- Cost of Tools
  - ◆ Employers can only deduct the amount agreed to by employees and only if: a) the tools remain the property of employees; b) are not unique to the particular employer; c) are available for purchase from different suppliers; d) can reasonably be expected to be used at different employers in the same occupation; e) are voluntarily bought from the employer instead of another supplier.
  - ◆ If the employer and employee cannot agree on how and when the employee will reimburse the employer for the cost of the tools, the employer can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
  - ◆ Employers cannot deduct the cost for tools that are required by law.
- Photo Radar Tickets or Red Light Camera Tickets
  - ◆ Employers may deduct the minimum amount payable if employees give written consent to do so.
- Cost of Courses and Training
  - ◆ Only sometimes. Employers cannot charge an employee for a course that has no value to them outside of the workplace. This includes most mandatory employer-specific courses. Employers may deduct the cost for all or part of a course or training that directly benefits their employees if they voluntarily attend and agree to pay.
- Cost of Room and Board
  - ◆ With employees consent, employers can charge for room and board if employees have no other practical options for obtaining meals and lodging. The amount employers are allowed to deduct cannot reduce employees earnings below minimum wage for the pay period by more than \$7 per week for the room and by more than \$1 for each meal.

## **What is a direct benefit to employees?**

Examples of deductions that directly benefit employees include:

- Health or insurance packages
- Voluntary purchases of goods or services from the employer
- Some types of educational expense
- Meals and rent

The cost for room and meals can be deducted if employees have no other practical options for obtaining meals and lodging. These deductions cannot take employees below minimum wage in a pay period by more than \$1 for each meal and \$7 per week for the room.

Employees must agree to the deduction. This often happens at the start of employment. For example, an employer will have a mandatory health insurance package. If the employee was aware of the health insurance package before they began to work for the employer, and chose to accept the job, Employment Standards would determine the employee agreed to the deduction.

## **Can employees opt out of a group benefit plan?**

No, group benefits or services that employers may provide as a condition of employment are allowed because they directly benefit employees as a whole. It is an employees choice whether to use the benefit that is provided.

## **Can employers deduct the costs of a uniform, or require employees to buy uniforms?**

No. Uniforms are a direct benefit to employers. Employers cannot make employees buy uniforms.

## **What is considered a uniform?**

Employers can require employees to wear a uniform, however, they cannot make employees pay for it. Uniforms are usually clothing that is unique to a business, identified with the employers logo, symbol, name, or colours, making it of no practical use outside of that workplace. Employees often have no choice in style, colour, or where to buy it.

## **Can employers have a dress code?**

Yes. Employers can have a dress code and set standards for employees appearance while they are working. This may include telling employees to remove jewellery while working, or requiring all serving staff to wear a clean, pressed white shirt and black pants at work.

If the dress code requires clothing that would be of no practical use to employees out of the workplace, it is considered a uniform and not a dress code. A dress code would allow the employees to wear their own clothes to work. A common example of a dress code is the loose fitting clothing that identifies nurses in the workplace. Employers can require this attire and do not have to provide or pay for it unless they require a logo or emblem that identifies the company.

## **Can employers require special clothing?**

Employers can reasonably expect employees to provide some special clothing that is common in the industry. Similar to tools, special clothing must be useful with other employers. It may be specific to the job, but not to the employer. As with tools, employees must have choices about where and what to buy. The clothing cannot have a logo or other markings that make it useful only for one employer, and the clothing must remain the property of the employee.

For example: nurses may wear a certain type of loose fitting clothing. It identifies them as nurses, and is usually required for the job. Employers can expect these employees to have this outfit, and would not have to provide or pay for it unless they require a logo or emblem that identifies the company.

## **Can employers deduct the cost of cleaning special clothing or uniforms?**

Employers can provide a service, such as laundry or dry cleaning, and ask employees for payment if the service directly benefits employees. In most cases, employees must each have the choice to use the service, or not.

## **Can employers deduct payroll errors or advances from employees' wages?**

The employee and the employer should discuss when and how the cash advance or payroll error will be paid back. They can agree to any payment schedule, such as paying in regular instalments or in one lump sum.

If the employer and the employee cannot agree on how and when the cash advance or payroll error will be paid back, the employer can deduct the amounts equal to what would be allowed if they had a garnishment under The Garnishment Act.

## **How long can a deduction for a payroll error or advance continue to be taken from employees pay cheques?**

The amount that can be deducted on each paycheque is limited by *The Garnishment Act*. Deductions can continue until the overpayment or advance is repaid.

## **What if employees authorized the deduction?**

Employees can only authorize deductions where there is a direct benefit to them. If employees agree to pay for anything *The Employment Standards Code* does not allow, employers may be ordered to pay the money back to

the employees.

## Who must keep records?

Employers must keep records of their employees, the hours they work, and the wages paid. It is strongly suggested employees also keep records of the hours they work and what they have been paid.

## What records are employers required to maintain?

Employers must keep records for all employees that show:

- Name, address, date of birth, and occupation
- The date the employment started
- The regular wage and overtime wage at the start of employment and whenever the wage rate changes
- The regular and overtime hours of work, recorded separately and daily
- Date wages are paid and the amount paid on each date
- Deductions from wages, and the reason for each deduction
- If applicable, overtime that is banked with the written agreement of the employee and employer and the dates the employee takes the banked time off with pay
- The dates on which general holidays are taken
- The employees hours of work on a general holiday and the wages paid
- Start and end dates of annual vacations, the period of employment in which the vacation is earned, and the date and amount of vacation wages paid
- The amount of any outstanding vacation wages when the employment ends and the date this is paid to the employee
- Copies of documents on maternity leave, parental leave, compassionate care leave or other leaves, including dates and number of days taken as leave
- Dates of termination of the employment
- Copies of work schedules

If an employee is paid a monthly or annual salary, it can be divided into an hourly wage for record keeping purposes. Regular hours of work are not required to be recorded if they do not vary on a daily basis, but any overtime or other changes should be recorded.

## How often must employers update records?

Employers must ensure their records are accurate and current. Some items, such as hours of work, need daily updates. Others, such as employee addresses, should be updated when there are changes.



## **How long must employers keep records?**

Employers must keep records for at least three years after records are made. Records showing addresses, dates of birth, and wage changes are kept for three years after the termination of employment. It is important to note that other agencies, such as the Canada Revenue Agency, may require employers to keep different types of records, for different lengths of time.

## **When must employees be paid?**

Employees must be paid at least twice a month, within 10 working days of the end of a pay period. If the employment is terminated, employees must be paid within 10 working days from the date of termination.

## **How long can a pay period be?**

A pay period cannot be longer than 16 days because employees must be paid at least twice a month.

## **Can employees have monthly or annual salaries?**

Employees who are on a monthly or annual salary must have the salary divided to ensure they are being paid at least twice a month.

## **Can employers pay their employees different wages?**

Employers must pay at least minimum wage, but they are free to offer raises and negotiate different wages for employees. Employers cannot, however, discriminate between male and female employees; paying men on a different wage scale from women for work that is the same, or substantially the same, would not be in compliance with *The Employment Standards Code*.

## **Do employers need to provide pay statements when they pay wages?**

Employers must give employees written pay statements when they are paid, unless the wage payments will be the same over a period of time and the employer provides a statement showing wages to be paid, wage rate, deductions, and net amount on each of the dates. Pay statements are sometimes referred to as pay stubs.

## What must a pay statement show?

Pay statements must show:

- The regular wage and the number of regular hours worked in the pay period
- The overtime wage and any overtime hours worked in the pay period
- All deductions from wages, with a date and reason for each deduction
- The total amount of wages paid to the employee

## What are the standard hours of work?

Standard hours of work are 40 hours a week and 8 hours a day. Employees are entitled to their regular wage rate for work during these hours. Employees must be paid at the overtime wage rate if they work more than the standard hours.

## What is the overtime wage rate?

Employees are paid 1 ½ times their regular hourly wage for each hour (or part of an hour) worked during overtime.

## How are overtime hours determined?

Overtime is determined by the number of hours employees work in a day and in a week. Any hours worked over 8 hours in a day or 40 hours in a week are overtime.

Below are some examples of how to calculate overtime. Days where overtime hours are worked are shown in bold:

Sun	Mon	Tue	Wed	Thu	Fri	Sat		Total	Regular	Overtime
	8	8	8	8	8	<b>8</b>		48	40	<b>8</b>
	8	6	6	8	<b>10</b>			38	36	<b>2</b>
	<b>10</b>	6	<b>10</b>	6	<b>10</b>			42	36	<b>6</b>
<b>7</b>	6	8	7	7	<b>8</b>			43	40	<b>3</b>

## **Who decides when overtime will be worked?**

Employees cannot work overtime without the knowledge or permission of their employers. Employees must be paid at 1½ times their regular wage rate if employers ask, allow, or acknowledge the overtime.

Employees and employers can agree, as part of the terms of employment, that a certain amount of overtime is required. Overtime is voluntary or by agreement, except in declared emergencies.

## **Can employees bank overtime and take time off later?**

Yes. Employers and employees can agree in writing to bank overtime. The agreement must follow these rules:

- For each hour of overtime worked, 1 ½ hours of time is banked, which is paid at the regular wage rate when the employee takes the time-off;
- Employers must schedule time-off during the employees regular hours;
- Employers must provide the time-off within three months of it being earned, unless Employment Standards authorizes a longer period.

## **What if the banked time is not taken?**

If banked time is not taken within three months of it being earned, employers must pay out all overtime hours at 1 ½ times the regular wage rate.

## **How does overtime affect payment for vacations and general holidays?**

When banked overtime is taken as time off it is included in the calculation for general holiday and vacation pay because it is considered regular time worked. If overtime is paid out, it is not considered in the calculation for general holiday and vacation pay.

## **Do salaried employees receive overtime?**

Yes. Employees who are paid by salary are entitled to overtime. An hourly wage can be calculated to determine the overtime pay per hour.

For example: an employee who earns a salary of \$450 per week and is expected to work a 40-hour week is paid \$11.25 per hour. Overtime is paid at 1 ½ times the regular wage rate. Using this example, the employee would earn \$16.87 per hour for overtime.

To calculate an employees hourly wage:

*Salary earned per week ÷ Total Hours = Hourly Wage*

*\$450 ÷ 40 = \$11.25 / hour*

To calculate the overtime rate:

*Hourly Wage × 1.5 = Overtime*

*\$11.25 × 1.5 = \$16.87 Hour of overtime*

## Can a salary include some overtime?

Yes. Employers and employees can agree on a salary that includes a specific amount of overtime. Agreements should be made before any overtime is worked and must clearly identify wages for working more than the standard hours. Clearly written agreements can save future disagreements.

For example: An employee earns a salary of \$700 per week and is expected to work a 50-hour week. This agreement means the employee is working 40 regular hours and 10 hours of overtime each week as part of the salary. To calculate an hourly wage rate for the salary, the overtime hours are first converted to standard (regular) hours by multiplying them by 1 ½.

In this example

10 overtime hours × 1.5 = 15 regular hours

These are then added to the regular hours:

40 regular hours + 15 regular hours = 55 regular hours

The hourly wage an employee should be paid for regular hours worked is then calculated by dividing the salary by the total number of regular hours:

\$700 salary ÷ 55 regular hours worked = \$12.73/hour

For the overtime hours worked, the employee must be paid at 1 ½ times this hourly wage:

\$12.73/hour × 1.5 = \$19.10 overtime wage

If the employee works more than the agreed 50 hours, the employee must be paid at the overtime wage for those hours.

## Do employees who are paid by commission receive overtime?

Yes. Employees who are paid by an incentive plan, such as commission are still entitled to receive overtime pay. Employees earning incentive pay are entitled to at least minimum wage and the correct overtime pay for any overtime hours worked.

Employees who are paid on an incentive plan are entitled to overtime based on their average hourly wage, instead of minimum wage. See the [Incentive-Based Overtime](#) page for more information.

## Are there employees who are not entitled to overtime?

Election officials, enumerators and any other temporary person appointed under *The Elections Act* are not entitled to overtime.

Employees who Perform Management Functions Primarily and Employees Who Substantially Control Their Hours of Work and Earn Twice the Manitoba Average Industrial Wage are excluded from standard hours of work and overtime. More information can be found on those pages.

## Are there exceptions to the standard hours of work?

There are exceptions to standard hours of work, which include:

- Areas of the construction industry
- The landscaping business
- Companies with collective (union) agreements that specify different hours
- Companies with an Averaging Permit from Employment Standards
- Employees who have an Individual Flextime Agreement with their employer
- Election officials, enumerators and any other temporary person appointed under *The Elections Act*.

## What are the standard hours of work for a construction or landscaping business?

The standard hours of work for the construction industry are established in The Construction Industry Wages Act.

- For Residential Construction, the standard hours are 8 hours a day and 40 hours a week
- For ICI Construction, the standard hours are 10 hours a day and 40 hours a week
- For Heavy Construction, the standard hours are:
  - ◆ 50 hours per week outside of Winnipeg
  - ◆ 50 hours per week in Winnipeg from April 1 to October 31
  - ◆ 48 hours per week in Winnipeg from November 1 to March 31 the following year

Additional information can be found on the Construction Industry, ICI Construction, and Heavy Construction pages.

For employees working in the landscaping business, the standard hours are varied from April 15 to November 30 each year. During that period, the standard hours are 10 hours a day, 50 hours a week and 2,080 hours a year.

## What is a landscaping business?

Landscaping businesses involve construction or maintenance of a landscape, including lawn cutting, fertilizing, applying sod and controlling weeds. They do not include the maintenance or cleaning of parking lots or snow

removal, or working with inventory or customers at a gardening/landscaping retail outlet.

## **What types of construction activities are included in the industrial, commercial and institutional sector?**

The industrial, commercial, and institutional sector (ICI) is defined by *The Construction Industry Wages Act*. It includes most industrial, commercial and institutional construction projects in Manitoba and is often called the building construction sector.

Activities under the ICI sector must take place onsite and include building, decorating, removing and relocating of buildings or other structures other than houses.

Employers and employees who need information about their individual situations should see the ICI Wage Schedule or contact the Employment Standards Branch directly.

## **What construction activities are excluded from the ICI sector?**

The following construction activities are specifically excluded:

- House building (except for major building construction projects)
- Onsite maintenance, redecorating, renovating, remodeling and repair of an ICI building or other structure that does not require a blueprint or a structural or architectural change
- Prefabrication of structures away from the building site
- Regular maintenance and repair of buildings, which is paid by the owner, tenant, or occupant
- Construction of farm buildings

## **What is the minimum wage in the ICI construction sector?**

The minimum wage depends on employees job classifications, where the jobs are located, and size of the jobs. The classifications and wage rates can be found in the [ICI Wage Schedule](#).

## **How are the ICI classifications categorized?**

1. Journeyperson: anyone with a journeyperson certificate from a recognized authority (usually a provincial apprenticeship branch) or anyone who has learned the skills by working in the trade for at least six years.
2. Skilled tradesperson: anyone who has worked at least 2,400 hours in one of the following trades: asbestos abatement; elevator construction; floor covering; insulating; specialty labour (assistant bricklayer); general construction; marble, tile and terrazzo installation; plastering; pre-fabricated metal building erecting; sheeting, decking and cladding; and scaffolding.

3. Trainee: anyone training to become a skilled tradesperson. There are two trainee wage levels:
  - Trainee 1 for less than 1,200 hours of work in a trade
  - Trainee 2 for between 1,200 and 2,400 hours in a trade.Employers may not have more than one trainee for each skilled tradesperson.
4. Construction worker: anyone working on a construction site who is not a journeyperson, skilled tradesperson, trainee, or apprentice.

## **Can employers have unlimited numbers of trainees and construction workers on a job site?**

No. Legislation limits the number of trainees and construction workers. Employers can only employ one trainee for each skilled tradesperson working on a job site. They can also only employ one construction worker for every 10 employees working on a site. Staff not working in construction (e.g. administrative or bookkeeping) should not be counted in the ratio.

For example: if an employer has three carpenters, two carpenter apprentices, two plasterers, and one plasterer trainee on a worksite, there can also be one construction worker at that site.

## **What do trainees in the journeyperson trades get paid?**

People in training to become journeypersons are called apprentices. The wage rates and staffing ratios are set by *The Apprenticeship and Trades Qualifications Act*. For more information contact the Apprenticeship Branch in Winnipeg at 945-3337; 1-877-978-7233 toll free, or visit their website at [www.gov.mb.ca/tradecareers](http://www.gov.mb.ca/tradecareers).

## **Are the minimum wages for ICI the same for all projects across Manitoba?**

Yes. As of June 1, 2009, the minimum wage rates for ICI projects are the same regardless of where the project is in Manitoba.

## **What are the hours of work and overtime rules for the ICI sector?**

The standard hours of work are 10 hours per day and 40 hours per week. All additional hours are overtime and must be paid at the overtime rate. More information on calculating the regular and overtime hours can be found on the [Overtime](#) page

Before 2006, different trade classifications and areas in Manitoba had different hours of work and overtime standards. The standards are now the same for all employees working in the industrial, commercial and institutional construction sector.

## Industrial, Commercial and Institutional Minimum Wages

	<b>Winnipeg/ Major Building</b>		<b>Rural</b>	
<b>Classifications</b>	<b>June 1, 2006</b>	<b>October 1, 2006</b>	<b>June 1, 2006</b>	<b>October 1, 2006</b>
1. Asbestos Abatement Worker Skilled Tradesperson	\$19.00	\$19.50	\$15.20	\$17.55
(a) Trainee 2 (1,201 to 2,400 hours)	\$15.20	\$15.60	\$12.16	\$14.04
(b) Trainee 1 (0 to 1,200 hours)	\$11.40	\$11.70	\$9.12	\$10.53
2. Boilermaker Journeyperson	\$25.10	\$25.80	\$20.08	\$23.22
3. Bricklayer Journeyperson	\$26.60	\$26.90	\$21.28	\$24.21
4. Carpenter Journeyperson	\$24.15	\$24.50	\$19.32	\$22.05
5. Concrete Finisher Journeyperson	\$20.85	\$21.15	\$16.68	\$19.04
6. Construction Electrician Journeyperson	\$28.00	\$28.95	\$22.40	\$26.06
7. Crane and Hoisting Equipment Operator Journeyperson	\$23.84	\$24.20	\$19.07	\$21.78
(a) Mobile Crane Operator	\$25.65	\$26.15	\$20.52	\$23.54
(b) Tower Crane Operator	\$20.60	\$21.00	\$16.48	\$18.90
(c) Boom Truck Hoist Operator				
8. Elevator Constructor Skilled Tradesperson	\$30.00	\$30.00	\$24.00	\$27.00
(a) Trainee 2 (1,201 to 2,400 hours)	\$24.00	\$24.00	\$19.20	\$21.60
(b) Trainee 1 (0 to 1,200 hours)	\$18.00	\$18.00	\$14.40	\$16.20
9. Floor Coverer Skilled Tradesperson	\$21.95	\$22.50	\$17.56	\$20.25
(a) Trainee 2 (1,201 to 2,400 hours)	\$17.56	\$18.00	\$14.05	\$16.20
(b) Trainee 1 (0 to 1,200 hours)	\$13.17	\$13.50	\$10.54	\$12.15
10. Glazier Journeyperson	\$22.80	\$23.40	\$18.24	\$21.06
11. Industrial Mechanic (Millwright) Journeyperson	\$26.05	\$26.70	\$20.84	\$24.03
12. Insulator Skilled Tradesperson	\$22.40	\$23.10	\$17.92	\$20.79
(a) Trainee 2 (1,201 to 2,400 hours)	\$17.92	\$18.48	\$14.34	\$16.63
(b) Trainee 1 (0 to 1,200 hours)	\$13.44	\$13.86	\$10.75	\$12.47
13. Ironworker Journeyperson	\$26.20	\$26.90	\$20.96	\$24.21



(a) Structural Steel Erector	\$22.65	\$23.35	\$18.12	\$21.02
(b) Reinforcing Iron (rebar)	\$25.20	\$26.49	\$20.16	\$23.84
(c) Miscellaneous Metal Worker/ Ornamental Worker				
14.1 Specialty Labourer Skilled	\$19.80	\$19.85	\$15.84	\$17.87
Tradesperson (assisting bricklayer)	\$15.84	\$15.88	\$12.67	\$14.30
(a) Trainee 2 (1,201 to 2,400 hours)	\$11.88	\$11.91	\$9.50	\$10.72
(b) Trainee 1 (0 to 1,200 hours)				
14.2 General Construction Labourer Skilled Tradesperson	\$18.60	\$18.90	\$14.88	\$17.01
	\$14.88	\$15.12	\$11.90	\$13.61
(a) Trainee 2 (1,201 to 2,400 hours)	\$11.16	\$11.34	\$8.93	\$10.21
(b) Trainee 1 (0 to 1,200 hours)				
15. Lather (Interior Systems Mechanic) Journeyman	\$22.25	\$22.25	\$17.80	\$20.03
16. Marble, Tile and Terrazzo Skilled Tradesperson	\$21.20	\$21.30	\$16.96	\$19.17
	\$16.96	\$17.04	\$13.57	\$15.34
(a) Trainee 2 (1,201 to 2,400 hours)	\$12.72	\$12.78	\$10.18	\$11.50
(b) Trainee 1 (0 to 1,200 hours)				
17. Painter, Decorator Journeyman	\$20.85	\$21.35	\$16.68	\$19.22
18. Plasterer Skilled Tradesperson	\$22.25	\$22.30	\$17.80	\$20.07
(a) Trainee 2 (1,201 to 2,400 hours)	\$17.80	\$17.84	\$14.24	\$16.06
(b) Trainee 1 (0 to 1,200 hours)	\$13.35	\$13.38	\$10.68	12.04
19. Plumber Journeyman	\$28.00	\$28.60	\$22.40	\$25.74
20. Pre-fabricated Metal Building Erector Skilled Tradesperson	\$22.20	\$24.00	\$17.76	\$21.60
	\$17.76	\$19.20	\$14.21	\$17.28
(a) Trainee 2 (1,201 to 2,400 hours)	\$13.32	\$14.40	\$10.66	\$12.96
(b) Trainee 1 (0 to 1,200 hours)				
21. Refrigeration and Air Conditioning Mechanic Journeyman	\$27.10	\$27.80	\$21.68	\$25.02
22. Roofer Journeyman	\$22.65	\$23.15	\$18.12	\$20.84
23. Sheeter, Decker and Cladder	\$25.50	\$25.95	\$20.40	\$23.36
Skilled Tradesperson	\$20.40	\$20.76	\$16.32	\$18.69
(a) Trainee 2 (1,201 to 2,400 hours)	\$15.30	\$15.57	\$12.24	\$14.02
(b) Trainee 1 (0 to 1,200 hours)				
24. Sheet Metal Worker Journeyman	\$28.55	\$29.50	\$22.84	\$26.55

25. Sprinkler System Installer Journeyperson	\$30.75	\$31.05	\$24.60	\$27.95
26. Steamfitter/ Pipefitter Journeyperson	\$28.00	\$28.60	\$22.40	\$25.74
27. Scaffolder Skilled Tradesperson	\$24.15	\$24.50	\$19.32	\$22.05
(a) Trainee 2 (1,201 to 2,400 hours)	\$19.32	\$19.60	\$15.46	\$17.64
(b) Trainee 1 (0 to 1,200 hours)	\$14.49	\$14.70	\$11.59	\$13.23

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