

Averaging Permits Information

Employers are responsible for scheduling employees, according to the standard hours of work (eight hours in a day and 40 hours in a week). Work beyond these hours is overtime. Employers must also ensure their employees get an appropriate break and weekly day of rest. When the needs of the business cannot be accommodated within these standards, employers may apply to Employment Standards for a permit to modify the daily hours, the weekly hours, the work break or the weekly day of rest. The agreement of a significant majority of the affected employees is usually required.

How do I Apply?

An application form can be found on the web site at www.manitoba.ca/labour/standards/forms.html or by contacting the Employment Standards Branch. The employer applies providing the rationale and information about the workplace environment and proof of the employees agreement with the proposal. The completed form can be taken, mailed or faxed to the nearest Employment Standards Branch office.

Are there restrictions on who can apply?

No, but consideration will only be given to workplaces that meet the legislated criteria and have proposed a set schedule or schedule cycle. Permits are not generally given to individual employee schedules or to accommodate "flex-time". Permits are also not given to workplaces where the majority of employees disagree with the proposal.

There are some industries that have different standard hours of work outlined in legislation. You can find more information regarding overtime on our [Overtime Fact Sheet](#).

Do employees have a choice about the proposed schedule?

The opinion of the affected employees' must be considered. In most cases, a significant majority of employees must agree in writing to the proposal before it will be considered. Employees with questions about their rights should call Employment Standards. If a permit is approved, the employer may require the minority of employees, who did not agree, to work the new schedule.

What constitutes "employees' agreement"?

Applications for averaging the standards hours of work and varying the break period must include the written opinion of the affected employees. The document must clearly show that the employees knew what they were agreeing to and understood they have a choice. See the sample [Employees Written Agreement](#) page for more

information.

Are employees entitled to see the permit and know the terms and conditions?

Yes. Permits must be posted at the workplace at all times, in a place where employees have access to see it. Employers who do not post the permit, or restrict access to it, risk having the permit canceled or denied.

Do employees working under a permit receive overtime?

Yes. Employers who ask or allow employees to work longer than the hours allowed in the permit must pay these employees 1 ½ times their regular hourly wage for each hour worked during overtime. Overtime does not apply when the employer schedules within the terms of the permit.

For example: a permit allows an employee to work a maximum of 10 hours per day, 50 hours per week and 80 hours in a two-week period. If the employee is asked, or allowed, to work more than 10 hours in a day they are owed overtime pay (1 ½ times their regular hourly wage) for the extra hours. If the employee works more than 50 hours in a week or more than 80 hours in two weeks, they are also owed overtime pay.

When can the new schedule begin?

New Schedules can begin once a permit is received and posted. Before that the standard hours of work remain eight hours a day and 40 hours a week, and hours worked beyond this are overtime.

The schedule can remain in effect until the permit expires. To maintain a continuous schedule, employers must get a new permit before the old permit expires. Each application needs the written support of the current employees. Employers who do not apply for a new permit must return to the standards hours of work in the Employment Standards Code, or pay overtime for longer hours.

What factors will Employment Standards consider in reviewing the application?

To approve a permit, Employment Standards must be satisfied that the new schedule is similar to what is usual for that industry, does not increase risks in the workplace, and benefits the affected employees. Repeat violations of the Employment Standards Code can also result in the denial of a permit.

Factors affecting averaging and work break applications:

- industry custom or practice
- opinion of a significant majority of the affected employees
- safety, health and welfare of the public and employees
- employers history of compliance or non-compliance with the Code

Factors affecting weekly day of rest applications:

- undue hardship or severe loss to the employer
- realities of the benefit to employees, such as in remote locations

- restricting a business that operates only part of the year

What is an averaging permit?

The standard hours of work are forty (40) hours in a week and eight (8) hours in a day. Hours worked above these are overtime. Employers may apply to increase the daily hours in a 40-hour work week or to average the hours across a longer period such as 80 hours in a two-week period, 120 hours in a three-week period, 240 hours in a six-week period, and so on.

What is a work break order?

The Code provides employees with a 30 minute work break after five consecutive hours of work. During this time the employee is free from duties and responsibilities. Employers may apply to reduce or eliminate this break with employee agreement, if they can demonstrate a need, and a benefit to the affected employees.

What is a weekly day of rest order?

The Code provides employees with a weekly rest period of not less than 24 consecutive hours. Employers may apply to have their workplace exempt in order to change the timing of the rest period and lengthen the number of consecutive work days. The number of days of rest employees are entitled to at the end of the work period is still equal to one per week.

Employees' Survey for Written Agreement

To constitute a valid written employee agreement/opinion, the document must clearly show that the employees knew what they were agreeing to and understood they have a choice.

The document must contain:

1. The proposed terms to which the employees are agreeing, on the same page as the signature(s).
2. A list of employees that will be affected by the schedule change.
3. Each affected employees signature, either agreeing or disagreeing with the proposal.
4. Explanation for any employees unavailable to sign, such as those on leave.
5. Contact information for the employees to contact the Employment Standards Branch with questions or concerns. The phone number is 204-945-3352, or 1-800-821-4307 (toll free in Manitoba). E-mail employmentstandards@gov.mb.ca

Below is a sample of what an employees agreement sheet might look like.

We would like you to consider the request of COMPANY XYZ to apply to the Employment Standards Branch for a permit seeking certain exemptions from the provisions of The Employment Standards Code. Please review the proposed terms and sign your opinion to the proposed application below.

Proposal: (clearly state all terms related to new schedule)

(example) *Employees in the sifting department will work 10 hours per day (from 8:00 a.m. to 6:00 p.m.), 50 hours*

per week, 80 hours in a two-week cycle, without overtime pay. Employees will receive one 15-minute break at 10:00 a.m., one 30-minute break at noon, and a second 15-minute break at 3:00 p.m. Overtime will be paid after 10 hours per day, 50 hours per week, and 80 hours in a two-week period.

If you have any questions or concerns about this proposal that COMPANY XYZ is unable to address, you may call the Employment Standards Branch at (204) 945-3352 or 1-800-821-4307 (toll free in Manitoba).

Please sign below to indicate your support or disagreement with the proposal.

<i>Employee</i>	<i>Signature</i>	<i>Date</i>	<i>Agree</i>	<i>Disagree</i>
Albert Einstein				
Bob Newhart				
Carmen Electra				
Davie Jones				
Ed Asner				
Frankie Avalon				
Gina Lollobrigida				

For more information contact the Employment Standards Branch:

Phone: 204-945-3352; or toll free in Manitoba 1-800-821-4307

Fax: 204-948-3046

E-mail: Employmentstandards@gov.mb.ca

Website: www.manitoba.ca/labour/standards

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including *The Employment Standards Code* and *The Worker Recruitment and Protection Act*, or contact the Employment Standards Branch to ask for advice.

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