

Employment Standards Legislation – Part II

Employment standards legislation deals with minimum standards that must be adhered to by employers and employees. This issue focuses on overtime and termination as they relate to sport employers and employees.

Overtime

What are employees paid for overtime?

Employers who ask or allow employees to work longer than the standard hours of work, (8) hours per day and (40) hours per week, must pay these employees 1 ½ times their regular hourly wage for each hour worked during overtime.

How are overtime hours determined?

Overtime is determined by the number of hours worked in a day and the number of hours worked in a week. 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	8	48	40	8
	8	6	6	8	10		38	36	2
	10	6	10	6	10		42	36	6
7	6	8	7	7	8		43	40	3

Can employees bank overtime and take time off later?

Yes, employers and employees can agree, to bank overtime if they agree in writing. The agreement must include the time off at 1-½ times the number of overtime hours worked. For each hour of overtime worked, employees get 1-½ hours off work with regular pay. Employers must schedule this time during regular hours.

The banked time must be taken within three months of being earned, unless the director of the Employment Standards Branch authorizes a longer period. Employees have earned the overtime wages once the hours have been worked, and can ask to be paid out at any time.

Do salaried employees receive overtime?

Yes, employees who are paid by salary are entitled to overtime. For salaries, an hourly wage may be calculated to determine the overtime pay per hour.

For example: employees who earn a salary of \$400 per week and are expected to work a 40-hour week are paid \$10 per hour for the standard hours. If they work overtime, they are paid 1 ½ times their regular wages. In this case, \$15 per hour.

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. The agreement must clearly identify what the employees are paid for working more than the agreed standard hours. Written agreements can save future disagreements.

For example: employees who earn a salary of \$550 per week and are expected to work a 50-hour week are paid \$10 per hour for the standard hours (40) and \$15 for each hour of overtime (10). If the employees work more than 50 hours, they are paid the overtime rate of \$15 per hour.

DID YOU KNOW - Sample Employment Agreements are available from Sport Manitoba's Human Resources Manager, Faye Finch at email: finch@sport.mb.ca or 925-5619

Overtime exclusions

Employees who substantially control their hours of work and earn more than twice the Manitoba average industrial wage may be exempt from the hours of work and overtime provisions. More information can be found on the [Overtime exemption - workers who substantially control their hours of work](#) page. In 2006, the Manitoba average industrial wage was \$35,195.16.

Employees who primarily perform management functions may be exempt from the hours of work and overtime provisions. This does not necessarily include all employees who are called managers or supervisors. More information can be found on the [Overtime exemption - workers who perform management functions primarily](#) page.

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.

Are employees still entitled to minimum wage for all hours worked?

Yes, employees are entitled to at least minimum wage in each pay period and cannot agree to work for less. The [Minimum wage](#) page has more information.

Termination

Do employers need to give notice of termination?

Yes, when employers wish to terminate employees they must give notice of termination or pay wages equal to what would normally be earned during the notice. This is often called wages in lieu of notice. The notice period varies depending how long employees have worked.

How much notice of termination must employers give to their employees?

The amount of notice employers must provide employees depends on the length of time that employee has worked for them.

Period of employment	Notice period
less than one year	one week
At least one year and less than three years	two weeks
At least three years and less than five years	four weeks
At least five years and less than 10 years	six weeks
At least 10 years	eight weeks

Employers can still either allow the employee to work out this notice period, or pay wages in lieu of notice, for the same number of weeks.

Is there a no-notice period?

In the first 30 days of employment the legislation states that employers and employees have the right to end the working relationship without notice.

Can employers have notice policies that are different from the legislation?

No. Effective April 30, 2007, employers cannot have alternate notice policies. A notice policy set under the previous legislation is not valid. The only exclusion is a unionized workplace, where a collective agreement has a probationary period that is one year or less.

Can employers pay wages instead of providing notice of termination?

Yes, employers can either allow employees to work out the notice period, or pay wages in lieu of notice. Employers can also allow employees to work part of the notice and pay wages in lieu of notice for the remainder.

Can employers keep employees' wages if employees terminate without notice?

No. Effective April 30, 2007, employers cannot keep wages from employees who quit without notice. Employers must pay employees all earned wages within 10 days of the last day of work.

Are there times employers and employees do not need to give notice of termination?

There are some cases where employers or employees, do not need to give notice:

- when employment is for a specific length of time or a specific task or job
- when it is only casual employment and the employees have substantial control over whether they accept shifts or not and are not penalized by employers for choosing not to work
- employees act in a manner that constitutes willful misconduct, disobedience or willful neglect of duty and the behaviour is not condoned by the employer
- if employees act in a manner that is violent in the workplace or is dishonest in the course of employment
- when employees are placed on a temporary layoff

Employers who want to terminate employees without notice must note that the exemptions can be complex and each case needs to be examined individually to determine if notice is required.

Do employers need to have just cause to terminate employees?

Under employment standards legislation employers and employees can terminate employment at any time, for any reason if they provide notice of termination. Just cause may be relevant in a civil action, but The Employment Standards Code does not require a reason for a termination

This is a general overview and the information used is subject to change. For detailed information, please refer contact the Employment Standards Branch at 945-3352 or toll-free in Manitoba at 1-800-821-4307. www.manitoba.ca/labour/standards

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