Overtime rules in Ontario

A how-to guide for employers to comply with employment standards

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First Edition: March 2011
Updated: June 2011

A First Reference Compliance & Best Practices Guide
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Part A: Introduction

Is your business complying with overtime rules?

Employee claims to unpaid overtime have become a hot issue in Canada. First Reference Inc. continually receives questions from employers about overtime. In addition, the number of class-action lawsuits by employees seeking to recover unpaid overtime has increased dramatically in the past couple of years. These are lawsuits consisting of one or several employees acting as a “representative” and making a large claim against their employer on behalf of other similarly situated employees that the employer hasn’t paid for overtime worked in excess of the employees’ standard working hours.

With the extensive media attention on the issue of overtime, more employees may be making claims. And with the recent proliferation of class-action lawsuits for unpaid overtime, employers are facing risks of claims for enormous damages.

Although most overtime class-action lawsuits affect larger corporations, small to medium-sized employers experience overtime claims from misclassifying employees as exempt or letting employees work overtime even though workplace policies state that they may not work overtime without prior authorization.

All of this is a reminder that you must keep your overtime practices and procedures up to date. You must ensure they comply with employment standards laws in your jurisdiction.

As with many employment issues, prevention is key. To prevent claims for unpaid overtime, employers need to know the law and the practical solutions to achieve compliance. A summary of the legislative requirements in Ontario and best practices with respect to overtime pay are set out in this guide.

The guide provides easy-to-understand explanations of what employers need to know and do to comply with employment standards overtime rules in Ontario. It also includes practical guidelines, tips, techniques, sample policies, forms and checklists needed when dealing with an employee overtime issue.

After reading this guide, you and your colleagues will learn:

» How many hours worked must be counted as overtime hours?
» What is the overtime rate?
» How is overtime calculated?
» Is overtime calculated on a daily or weekly basis?
» When is an employee exempt from overtime pay?
» How to determine if managers/supervisors entitled to overtime pay
» Is there a difference between salaried and hourly paid employees?
» What is the definition of a workweek for overtime purposes?
» Can the employer and employee agree that overtime will be paid in a different way?
» How to communicate overtime rules to employees
» What industry sector has a different overtime threshold?
» Why is tracking regular and overtime hours of work essential? And much more

This guide was written by Yosie Saint-Cyr, LL.B., and reviewed by the employment law experts at Stringer Brisbin Humphrey, the legal editors for The Human Resources Advisor — Ontario Edition. For over 40 years, Stringer Brisbin Humphrey has represented and advised employers in all areas of employment, labour and human resources law.
Part B: Legal requirements

Is overtime pay mandatory?

The Ontario Employment Standards Act requires employers to pay an employee overtime pay of at least one and one-half (1½) times the employee’s regular rate for each hour worked in excess of 44 hours per week or another threshold prescribed or agreed upon between the employer and employee as part of the terms of employment.

There is a widespread misconception that salaried employees are not entitled to overtime pay. According to the Human Resources Professional Association of Ontario, 44.75 percent of organizations said their non-management, salaried employees are expected to work overtime without pay.

Whether an employee is paid on an hourly or salary basis is not a criterion for overtime entitlement. Salaried employees have the same entitlement to overtime as hourly employees. Salary and hourly pay are merely methods by which wages are paid and affect how the entitlement to overtime is calculated, not whether the entitlement exists.

Thus, overtime must be paid to all employees (regardless of the method or type of payment, meaning if they are paid an hourly, weekly, monthly, or annual wage, except if they are exempt). For the definition and detail information on exemption, refer to Employees who are exempt from overtime pay section of this guide.

In Ontario, unless a contract of employment or a collective agreement states otherwise, an employee doesn’t earn overtime pay on a daily basis by working more than a set number of hours a day. Overtime is calculated only on a weekly basis, or over a longer period under an averaging agreement (see Averaging of hours section of this guide).

Some industries have different overtime daily and weekly hours for the purpose of calculating overtime pay (see below).

In addition, overtime pay must be paid to all employees who work overtime, regardless of whether or not that overtime work was ever actually authorized. The employer is liable and must pay that employee overtime pay for all work in excess of the overtime threshold of 44 hours per week. The onus is on the employer to manage and monitor hours of work and overtime hours consistently with all employees. The Best practices section of the guide provides some guidelines.

It’s illegal for an employee to contract out of his or her right to be paid overtime pay for hours worked in excess of 44 hours per week. This means that any agreement between an employer and employee not to claim overtime is invalid and unenforceable.

Industries with different prescribed overtime thresholds

Some industries have different overtime daily and weekly hours for the purpose of calculating overtime pay. Special overtime rules apply to some workers.