OVERTIME AGREEMENTS

EMPLOYMENT STANDARDS FACT SHEET

An employee or the majority of a group of employees may enter into an overtime agreement
(a) as part of a collective agreement, or
(b) if there is no collective agreement, in a written agreement between the employee or group of employees and the employer,
that provides that, wholly or partly instead of overtime pay, the employer will provide, and the employee or group of employees will take, time off with pay instead of overtime pay.
[S. 23(1), Employment Standards Code]

What is an Overtime Agreement?
An overtime agreement allows overtime hours to be banked and subsequently taken off with regular pay instead of overtime pay. For every hour of overtime worked, one hour is banked.
The agreement can be between an employer and a single employee or with a group of employees. An overtime agreement can also be part of a collective agreement. The employees may be part-time or full-time.
An overtime agreement must be in writing. Employers must give a copy of the agreement to employees who are covered by it, including new employees. Before an overtime agreement can be cancelled, one party must provide the other with not less than one month’s written notice.
If a majority of employees agree to enter into an overtime agreement, the provisions of the overtime agreement will bind all employees of that particular group.

Provisions Deemed To Be In Every Overtime Agreement
The Employment Standards Code (Code) deems an overtime agreement to contain certain minimum provisions, whether they are actually mentioned in the agreement or not. These deemed provisions are:

- Time off with pay instead of overtime pay will be provided, taken and paid at the employee's regular wage rate at a time that the employee could have worked and received wages from the employer. The phrase “…at a time that the employee could have worked…” means that time off can be provided any time that the employee could have been scheduled to work non-overtime hours.

- If time off with regular pay is not provided, taken, and paid as required (within 3 months), the employee must be paid overtime pay of at least 1.5 times the employee's wage rate for the overtime hours worked.

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<tr>
<th>Overtime worked</th>
<th>Pay period ends</th>
<th>Banked time to be taken by</th>
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<tr>
<td>June 1st</td>
<td>June 30th</td>
<td>September 30th</td>
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<td>August 11th</td>
<td>August 12th</td>
<td>November 12th</td>
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<td>September 15th</td>
<td>September 15th</td>
<td>December 15th</td>
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For more employment standards information:
• Call: toll-free 310-0000 then dial 780-427-3731
• Visit: employment.alberta.ca/es

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**Employment Records**
Whenever an overtime agreement is in place, the employer must:
- record 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.

**Requesting A Permit To Bank Overtime For Longer Than 3 Months**
It is possible to request a permit extending the 3-month time limit for providing paid time off for any hours that have been banked. (Permits are not issued for periods longer than 6 months). Such a request should be submitted to:

Administrator, Permit Requests  
Alberta Employment, Immigration and Industry  
Employment Standards  
8th Floor, 10808 – 99 Avenue  
Edmonton, Alberta T5K 0G5  
or fax to 780/422-8944

A request must include the following information:
1. Name and address of employer.
2. Reason for the application.
3. Description of the employee(s) who would be subject to the extension.
4. Written consent to the extension request by the employee(s) who would be affected by it. This includes the name, signature and phone number of the affected employee(s).

(Note: A group overtime agreement requires the support of a majority (greater than 50%) of employees of that group.)

Where a collective agreement provides that overtime can be banked for longer than 3 months, it will prevail.

**Determining How Many Banked Overtime Hours can be used in a Day or a Week**
The general rule is that overtime is paid when an employee works more than 8 hours in a day or 44 hours in a week, whichever calculation results in the greater number of overtime hours. An employer can decide that overtime will be paid after fewer hours. In addition, under Employment Standards legislation, some variances to the 8/44 rule exist for certain industries. See Fact Sheet # 3, *Hours of Work and Overtime Compensation*, which explains the various rules on overtime, exceptions, and how overtime is to be calculated.

To determine how many banked overtime hours can be used in a day or week (when overtime is paid for working longer than 8 hours a day or 44 hours a week), the following rules apply:
- The total of hours worked in a day plus banked hours taken (with regular pay) on that day cannot exceed 8 hours.
- The total of hours worked in a week, plus banked hours taken (with regular pay) in that week, cannot exceed 44 hours.

This is because the employee’s banked time off must be provided and taken during non-overtime hours.

**Example 1:**
A group of employees have entered into an overtime agreement with their employer, who pays overtime after 8/44. The business is open 5 days per week, Monday to Friday. In a week, an employee works:

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<th>Total hours</th>
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<td>8</td>
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In this example, daily overtime is $1 + 2 = 3$ hours. There is no weekly total for overtime since the total weekly hours are less than 44. Therefore, 3 overtime hours are banked.

The employer and employee agree to use some of the banked hours in the same week they were earned, and the employee takes 2 hours of banked time off with pay on Friday.

Using Friday is acceptable because total hours worked that day were less than 8 hours. Including the 2 banked hours with the 6 hours worked on Friday brings the total weekly hours to 43. The total of hours worked plus banked hours used in that week cannot exceed 44. This is because the employee’s banked time off must be provided and taken during non-overtime hours.

**Example 2:**
An employee has entered into an overtime agreement with her employer, who pays overtime after 8/44. The business is open 5½ days per week, Monday to noon on Saturday. The employee does not usually work on Saturdays. In a two-week period, the employee works:

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In this example, overtime is calculated as follows:

**Week 1:**
- Daily overtime is $3 + 3 + 2 + 4 + 2 = 14$ hours.
- Weekly overtime is $61 - 44 = 17$ hours.

The employee is entitled to the greater amount of overtime. Therefore, 17 hours of weekly overtime are banked.

**Week 2:**

The employee has not worked any daily or weekly overtime in this week, however, the employee has 17 hours banked from the first week.

In the second week, the employer provides the employee with 8 hours of paid time off on Friday of the second week. As the employee could work on Saturdays, the employer also provides 4 hours of paid time off on Saturday of the second week at the employee’s regular wage rate.

A maximum of 12 hours can be withdrawn from the bank, as these 12 hours top up the employee’s total hours in week two from 32 to 44 hours. The total of hours worked in the second week, plus banked hours used in that week, cannot exceed 44. This is because the employee’s banked time off must be provided and taken during non-overtime hours.

This leaves a balance of $17 - 12 = 5$ hours in the bank. The employee can take these hours as paid time off within the next 3 months.

**Paying Out Banked Overtime On Termination**

When either the employer or employee ends the employment relationship by giving a written notice of termination, an employer can require the employee to use up some or all outstanding banked overtime during the notice period. When overtime is paid for hours worked over 8 hours in a day or 44 hours in a week, the total of any hours worked, plus banked overtime taken, cannot exceed 8 hours in a day or 44 hours in a week.

Whether or not any notice of termination was provided, any banked overtime not provided and taken with pay by the end of the last day of employment must be paid out at time-and-one-half the employee’s regular rate of pay at the time it was earned.

**Sample of Overtime Agreements**

Examples of both an Individual Overtime Agreement and a Group Overtime Agreement are attached.
INDIVIDUAL
OVERTIME AGREEMENT

1. It is agreed between:

______________________________ of _________________________________
Employee name                    Employee address

and

______________________________ of _________________________________
Employer/company name            Employer/company address

that either wholly or partly the employer will provide and the employee will take, time off with pay in place of overtime pay for those hours worked in excess of ______ in a work day or _______ in a work week, whichever is greater.

The work week is __________________________ to __________________________.
(Day of the week)                              (Day of the week)

2. The time off with pay in place of overtime pay shall be provided, taken and paid at the regular rate of wages at a time that the employee could have worked and received wages from the employer.

3. The time off shall be provided, taken and paid within 3 months of the end of the pay period in which it was earned unless,

   (i) the agreement is part of a collective agreement which provides for a longer period of time, or

   (ii) the Director of Employment Standards issues a permit providing for a longer period of time.

4. If the time off with pay instead of overtime pay is not provided, taken and paid in accordance with paragraph 2, the employee shall be paid overtime pay of at least 1.5 times the employee’s wage rate for the overtime hours worked.

5. Time off in place of overtime shall be treated as hours of work and remuneration paid in respect to time off in place of overtime pay shall be treated as wages.

6. The employer shall provide a copy of this agreement to the employee.

7. No amendment on termination of this agreement shall be effective without at least one month’s notice in writing by one party to the other.

Dated this __________ day of _________________________________ 20 __________

Signed ___________________________ ___________________________
For employer/company                  Employee

Fact Sheet # 9 Cont’d
GROUP

OVERTIME AGREEMENT

1. It is agreed between:

   The Employees Listed On Part A Attached

and

_________________________________________  of  ______________________________________

Employer/company name                             Employer/company address

that either wholly or partly the employer will provide and the employee will take, time off with pay in place of overtime pay for those hours worked in excess of _______ in a work day or _________ in a work week, whichever is greater.

The work week is _______________ to _______________.

   (Day of the week)                                    (Day of the week)

2. The time off with pay in place of overtime pay shall be provided, taken and paid at the regular rate of wages at a time that the employees could have worked and received wages from the employer.

3. The time off shall be provided, taken and paid within 3 months of the end of the pay period in which it was earned unless,

   (i) the agreement is part of a collective agreement which provides for a longer period of time, or

   (ii) the Director of Employment Standards issues a permit providing for a longer period of time.

4. If the time off with pay instead of overtime pay is not provided, taken and paid in accordance with paragraph 2, the employee shall be paid overtime pay of at least 1.5 times the employee’s wage rate for the overtime hours worked.

5. Time off in place of overtime shall be treated as hours of work and remuneration paid in respect to time off in place of overtime pay shall be treated as wages.

6. The employer shall provide a copy of this agreement to each employee affected by it.

7. No amendment or termination of this agreement shall be effective without at least one month’s notice in writing by one party to the other.

I certify that the employees who have signed Part B attached to this form are the majority of the employees in the group described and named on Part A attached.

Dated this ________________ day of ___________________________ 20 __________

Signed ________________________________________________

For employer/company

See Reverse
GROUP OVERTIME AGREEMENT – PART A and PART B

**Part A (To be completed by Employer)**

Description of Group: _________________________________________________________________

(Provide a complete description, e.g. "all office employees", or "all shipping and receiving employees").

Following is a complete list of all employees who together form the group described above as of

Day          Month          Year

**Type or Print names legibly**

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**Part B (To be completed by participating employees)**

The employees whose signatures appear below wish to join the group overtime agreement attached to this form.

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