

## **Frequently Asked Questions 200 – 299**

### **What types of buildings are included in house building?**

Generally, the construction of a dwelling unit falls under the house building sector and is covered by *The Employment Standards Code*. However, the construction of an apartment building or complex, whether the units are rented or owned, is part of the ICI sector.

### **Is the construction, renovation, or redecoration of a tenant space in a shopping mall part of the ICI sector?**

Generally speaking, all renovations and redecorations are excluded from the ICI sector unless the work involves the structural or architectural alteration or remodelling of the building or structure. The need for a blueprint is one sign that the work being done is likely part of the ICI sector.

### **Are journeypersons who perform maintenance part of the ICI or heavy sectors?**

No. The onsite maintenance of an industrial, commercial or institutional building is specifically excluded from the ICI and heavy construction sectors and is covered instead by *The Employment Standards Code*.

### **Are employees in a shop that prefabricate a structure used on a construction site included in the ICI sector?**

Employees who prefabricate a structure or part of a structure away from a construction site are excluded from the ICI and Heavy sectors. Employees who are required to build structures or parts of structures directly on the construction site are part of the ICI sector.

## **Are all farm buildings excluded from the heavy and ICI sectors?**

Construction of farm buildings is not part of the ICI or heavy sector. A farm building is a building or structure, other than a dwelling, situated on a farm and used in the actual farming operation. This includes buildings used to house equipment or livestock, or those used for production, storage, or processing agricultural produce or feeds. For example: the construction of a hog barn, milking centre, grain bin or silo would be excluded from the ICI and heavy sectors.

## **Can the cost of tools be deducted from wages?**

Some employees may want to buy tools from their employers. The tools may even be a condition of employment, which employees must have for that workplace. Common examples are automotive mechanics and construction workers. Employers can deduct the cost from an employees wages only if the employee agrees, and the tool:

- Remains the property of the employee
- Is not unique to this particular employer
- Is available for purchase from different suppliers
- Can reasonably be expected to be used at different employers in the same occupation
- Is voluntarily bought from the employer instead of another supplier
- Is not required by law to be provided by the employer to the employee

See the [Deductions](#) fact sheet for more information.

## **Can the cost of personal safety equipment be deducted from wages or made a condition of employment?**

Workplace Safety and Health legislation states any equipment, device, or clothing required to be worn to help with rescue or to provide protection from health and safety hazards at a workplace must be provided and paid for by employers. There are exceptions for safety headwear and some safety footwear.

Contact Workplace Safety and Health at 204-945-3446 for more information.

## **Who pays for damages to company vehicles, valuable equipment or other losses?**

Employers may not deduct wages to cover any costs for faulty work, poor quality work, loss of customers, cash shortages, or damages to their property. This includes: the cost of car accidents and parking tickets involving company vehicles, dishes broken by employees, customers leaving without paying. See the [Deductions](#) fact sheet for more information.

Employers have the right to take action against an employee who caused the damages in civil court. If a court issues an order of repayment, the employer can then garnish the wages of the employee.

## **Coverage**

Wage rates and hours of work for employees in the industrial, commercial, and institutional sector of the construction industry are regulated under *The Construction Industry Wages Act*. All construction employees, unless excluded by the code, are covered by *The Employment Standards Code*.

## **Lower rates prohibited**

Employers and employees cannot make deals, contracts or arrangements that result in payment at rates lower than those in this document. They cannot make agreements contrary to or less than the provisions of *The Employment Standards Code* or *The Construction Industry Wages Act*.

## **Payment of wages**

An employer must pay employees their wages within five working days after the end of each pay period or within five working days of the termination of employment.

## **Employment records**

Employers and subcontractors must maintain proper payroll records, including a record of hours worked by employees, for not less than three years after the record is made.

## **Vacations with pay**

For each year employees work for the same employer, they are entitled to a two week paid vacation equal to at least four per cent of wages earned during the qualifying year (excluding overtime). After five years this rises to a three week paid vacation equal to at least 6% of wages earned during the qualifying year (excluding overtime).

## **General holidays**

All construction employees are entitled to be paid general holiday pay based on four per cent of their total wages and vacation allowance (excluding overtime) over the period worked during the year. These wages must be paid no later than December 31 of that year or on termination of employment.

The generally accepted practice of paying four per cent holiday wages on each cheque meets the minimum standard. Employees who work on a general holiday are entitled to 1 1/2 times their regular rate of pay for hours worked on that day.

## **Termination**

Notice of termination of employment is not required by employers or employees employed in the construction

industry.

## The Heavy Construction Sector

*The Construction Industry Wages Act* states: the heavy construction sector includes employees engaged in:

- a. the construction and maintenance of highways, roads, railroads, or runways, together with minor drainage divider and retaining works incidental thereto,
- b. the construction and maintenance of wharfs, docks, sidewalks, curbs or gutters,
- c. the paving and maintenance of parking lots and the preparation thereof,
- d. the removal of snow from and blading of highways, roads, railroads, runways or parking lots,
- e. the construction and maintenance of the earth moving and fill portions of irrigation and drainage projects, and minor works incidental thereto,
- f. the use of heavy construction equipment for the construction and maintenance of dams, tunnels, bridges or overpasses, and works incidental thereto, including the moving of earth or rock relating thereto,
- g. the construction and maintenance of water lines, sewer lines, pipelines, sewage lagoons, sewage lift stations, and appurtenances, and underground service lines, but not including the contents thereof,
- h. the use of heavy construction equipment for piling, shoring, building excavation or site preparation, including the stripping of overburden and grading to new contours,
- i. the transportation of rock, gravel, sand, clay, asphalt, or concrete to and from batching plants for use in construction,
- j. the processing and batching of rock, gravel or sand aggregate,
- k. the use or operation of crushers, screeners, wash plants or heavy construction equipment associated with extractions of rock, gravel or sand aggregate for use in construction,
- l. the transportation of earth, soil, or rubble from a construction site, and the hauling of granular material to a construction site,
- m. the hauling of heavy construction equipment by heavy construction contractors to perform any or all of the tasks or activities described in clauses (a) to (l), (o) and (p),
- n. the repair and maintenance of heavy construction equipment by employees in heavy construction, whether the work is performed in a shop or on a construction site,
- o. the demolition of any building or structure, whether or not heavy construction equipment is used in the demolition,
- p. the construction and maintenance of transmission lines.

## Heavy Construction Industry Wages

The following table sets notes the minimum wages rates payable to employees in the heavy construction industry by regulation under *The Construction Industry Wages Act*. The rates came into effect January 1, 2007.

## Hours of Work and Overtime ( Heavy Construction)

All hours worked over the standard weekly hours must be paid at not less than 1 ½ times the regular wage rate. The standard weekly hours for heavy construction employees are:

- 50 hours outside of Winnipeg
- 50 hours in Winnipeg from April 1 to October 31 of each year,
- 48 hours in Winnipeg from November 1 each year to March 31 the following year.

To determine standard hours, Winnipeg is defined as all the land within one-half mile beyond the Perimeter Highway. The definition of Winnipeg also includes any land that is within the limits of *The City of Winnipeg Act*, even if that land extends more than one-half mile beyond the Perimeter Highway.

## Heavy Construction Industry Minimum Wages

	June 1, 2006	January 1, 2007
1. Mobile Crane Operator working on heavy construction	\$16.75	\$17.70
2. Heavy Duty Mechanic or Welder working on heavy equipment	\$15.30	\$16.20
3. Operator of a dragline, clam shell, shovel, hydraulic excavator, pile driver and other equipment requiring similar skills	\$15.10	\$16.00
4. Plant operator, Operator of paving machines, dozer, loader, loader backhoe, grader, scraper, hydro excavator, tractor with controlled attachments, and other equipment requiring similar skills	\$13.50	\$14.25
5. Truck Operator of trucks with four or more axles, fuel truck, distribution truck, truck with hydraulic boom hoist	\$13.30	\$14.00
6. Truck Operator of trucks with less than 4 axles and more than 2,500 kgs	\$12.50	\$13.20
7. Operator of light trucks (less than 2,500 kgs) ride on/tractor pulled compaction equipment and other equipment requiring similar skills	\$11.50	\$12.40
8. Skilled Labourer including Concrete Finisher, Pipelayer, Screedman and jobs requiring similar skills in the heavy construction industry	\$12.10	\$12.80
9. General labourer in heavy construction industry not otherwise classified	\$10.50	\$11.40
10. Watcher, Flagger and Rodman	\$ 9.00	\$ 9.90

## The Industrial, Commercial and Institutional Sector

*The Construction Industry Wages Act* states the industrial, commercial, and institutional sector includes employees engaged in:

- a. the on-site building, erection, decoration, removal or relocation of a building, structure, apartment building or complex whether or not the units contained therein are rented or owned, or other work, or portion thereof, not specifically defined in the Act or the regulations as constituting part of the heavy construction sector of the construction industry but not including the on-site maintenance, redecoration, renovation, remodelling or repair of an industrial, commercial, institutional, public building or structure or apartment building or complex whether or not the units contained therein are rented or owned, or portion thereof, unless the work involves the structural or architectural alteration or structural or architectural remodelling of the building or structure,
- b. the assembly, manufacture or installation on a construction site of any equipment, machinery or fixtures or components, including allied parts, that form an integral part of the building or structure but not including activity that is specifically defined in the Act or the regulations as being work constituting part of the heavy construction sector of the construction industry,

- c. the prefabrication of every item built to a custom design for a building or structure or portion thereof, but not including prefabrication work performed in a permanent shop or factory or a manufacturing plant by persons regularly employed therein.

## **Industrial, Commercial and Institutional Wages and Overtime**

There are two wage schedules for the industrial, commercial, and institutional sector in Manitoba: the Winnipeg/Major Building Project Schedule and the Rural Schedule.

The Winnipeg/Major Building Project Schedule applies in Winnipeg (the area within a 30-mile radius of the intersection of Osborne Street and Broadway in the City of Winnipeg) and on major building projects anywhere in Manitoba. A major building project is defined as:

- a. the construction of or an addition to
  - i. a power generating station or spillway
  - ii. an oil refinery,
  - iii. a chemical plant,
  - iv. a steel mill,
  - v. a pulp mill, paper mill, or pulp and paper mill,
  - vi. a brewery,
  - vii. a distillery,
  - viii. a compressor station,
  - ix. a mining installation above the surface of the ground,
  - x. a mineral refinery,
  - xi. a smelter, or
  - xii. a petroleum processing plant, a gas processing plant, a petroleum and gas processing plant, or a petroleum pumping station,
- b. the construction of an apartment building or a residential, commercial, industrial, community, government, municipal or school building or hospital where the total aggregate floor space exceeds 2,325 square metres (25,000 square feet) or an addition to such a building where the total aggregate floor space of the addition exceeds 2,325 square metres (25,000 square feet)
- c. the construction of several buildings of the types mentioned in clause (b) under a single contract or under several contracts between the same parties entered into at the same time in respect of the same project, where the total aggregate floor space of all the buildings under the contract exceeds 2,325 square metres (25,000 square feet).

The Rural Wage Schedule applies to all industrial, commercial and institutional construction carried out in Manitoba that is not covered by the Winnipeg/Major Building Project Schedule wage schedule.

The table at the end of this section notes the minimum wage rates payable to employees in the industrial, commercial and institutional construction sector by regulation under *The Construction Industry Wages Act*. The rates came into effect October 1, 2006. For the purposes of this table:

## What is a journeyperson?

A *journeyperson* is someone who:

- holds a certificate of qualification or proficiency from a recognized authority or
- acquires the skills of a trade by working in it for a period of not less than six years.

## What is a Skilled Tradesperson?

A *skilled tradesperson* is someone who has worked at least 2,400 cumulative hours in the applicable trade.

## Hours of Work and Overtime

The standard hours of work are 10 hours per day and 40 hours per week. All hours worked beyond that must be paid not less than 1 ½ times the regular wage rate.

## Ratio of Construction Workers to Employees

An employer can only employ one construction worker for up to the first 10 employees, onsite, and one additional construction worker for every 10 employees thereafter. This ratio applies to the number of workers employed by an employer on a particular worksite.

## Ratio of Trainees to Skilled Tradespersons

An employer can only employ one trainee for each skilled tradesperson employed by the employer at the worksite.

## Ratio of Apprentices to Journeypersons

Designated trades under *The Apprenticeship and Trades Qualifications Act* (ATQA) have ratios based on the number of apprentices allowable for each journeyperson. For more information on these ratios, contact the provincial Apprenticeship Branch (Contact information following.).

## Trade Qualifications

The Manitoba government has established standards under *The Apprenticeship and Trades Qualifications Act* (ATQA) for journeyperson certification in most of the construction industry trades. The government strongly encourages everyone employed in the construction industry to obtain journeyperson certification. In trades designated under the ATQA, experienced workers may before certified by successfully challenging the certification examination, or workers at any level may train for certification through a formal apprenticeship training program.

For further information about trades certification, contact:

**The Apprenticeship Branch,**  
Room 1010 Norquay Building  
401 York Avenue  
Winnipeg, MB, R3C 0P8  
Phone: 945-3337  
Toll free: 1 – 877 – 978-7233  
Web: [www.gov.mb.ca/tradecareers](http://www.gov.mb.ca/tradecareers)

## **What are employment standards?**

*The Employment Standards Code* and *The Construction Industry Wages Act* set the minimum standards for workplaces that fall under provincial jurisdiction. These laws help all Manitobans by setting a basic level of rights and responsibilities that employees and employers must maintain in the employment relationship.

## **Who is protected by employment standards?**

Employment standards help balance the interests and needs of both employers and employees. Many of these protections and benefits improve working conditions for employees who do not have the bargaining power of unions or employee groups. This legislation also creates a level playing field for employers and ensures they all meet basic standards when directing their employees. The Employment Standards Code covers approximately 90% of employers and employees in Manitoba. See the [Who is Covered by the Employment Standards Code](#) page for more information on who we cover.

## **Can employers provide more than what the legislation sets as minimum standards?**

Yes. The legislation sets only the minimum workplace standards that must be met. Many employers provide more benefits, or pay higher wages.

## **Are employees entitled to a day off?**

Yes. Most employees are entitled to have at least one day of rest (24 hours) each week.

## **Are there exceptions to the weekly day of rest and breaks?**

Yes, employers can apply to the Employment Standards Branch to eliminate breaks or a weekly day of rest.



## **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. If employees work more than the standard hours in a week or in a day, this is overtime and must be paid at the overtime rate.

## **Are there industries where the standard hours of work are different?**

In some industries, like construction or landscaping, the standard hours of work are different. More information can be found on the [construction industry](#) page.

In some circumstances, employers can apply to change the standard hours of work. This is sometimes called averaging – where there is an increase in the number of hours that can be worked in each day or in each week but it still averages 40 hours per week.

## **Can a contract offer benefits that are lower than the Employment Standards?**

No. Employees cannot agree to work for less than the minimum standards, whether or not a contract exists. There are some provisions that allow employers and employees to agree to different terms, but they can never agree to less than the minimum standards.

## **Are the standards different for part-time employees?**

No. All employees are covered by *The Employment Standards Code* regardless of the number of hours they work. However, because certain wages (such as vacation pay and general holiday pay) are based on a percentage of total earnings, the wages paid to employees will be affected by the number of hours they work.

## **What can employees do if they believe they have not been paid correctly?**

Employees with concerns about their wages or who believe their employers might be violating a minimum standard should contact the Employment Standards Branch. Employees can file a claim with an officer who will investigate the situation. See the [Filing a claim](#) page for more details.

## **Who is covered by the Employment Standards laws in Manitoba?**

Most employees in Manitoba fall under provincial jurisdiction. Some employees work in industries regulated by the federal government. These employees must contact Canada Labour Program if they have concerns about how their wages have been paid.

Independent contractors are not employees and are not covered by employment standards legislation.

Other employees, such as some agricultural workers, construction workers, professionals, part-time domestic workers, landscape workers and, election workers are entitled to some employment standards but not all.

## **Who is covered by federal jurisdiction?**

Approximately 10% of employees in Manitoba fall under federal jurisdiction. They work in industries such as:

- Railways, highway transport, pipelines, ferries, tunnels, bridges, canals, telephone and cable systems
- Intra-provincial and international trucking, shipping and services connected with such shipping
- Air transport, aircraft, airports, and aerodromes
- Radio and television broadcasting
- Banks (except credit unions and trust companies)
- Flour, feed and seed cleaning mills, feed warehouses, grain elevators and uranium mining and processing
- Federal Crown corporations or agencies of the Crown, such as the Canadian Broadcasting Corporation and the St. Lawrence Seaway Authority

The laws affecting federally regulated industries are quite different from provincial employment standards. People unsure of which jurisdiction affects them should contact either Employment Standards or the federal government.

## **Where do employees who fall under federal labour laws file complaints?**

Employees who are covered federally fall under the Canada Labour Code, which is administered by Human Resources and Social Development Canada (HRSDC). They can be reached at 1-800-641-4049.

## **Are self-employed persons/independent contractors covered by The Employment Standards Code?**

No. Self-employed persons/independent contractors are not covered by *The Employment Standards Code*, but this type of employment relationship can be complicated. The nature of the relationship between both parties would determine whether someone is truly an independent contractor. Several details need to be considered, such as:

- Who controls duties and schedules
- The ability to negotiate payment
- The method of payments

Individuals who are owed wages and feels they may be an employee, can file a claim with Employment Standards. An officer will make a determination if the person is an independent contractor or an employee for the purposes of *The Employment Standards Code*.

## **Are people employed in agriculture covered by Employment Standards legislation?**

Many employees working in agriculture are covered by Employment Standards legislation, but there are still some exceptions. Employees working on a farm owned by a family member are excluded from most standards. Other employees working in agriculture are covered by some or all standards. See the [Agriculture](#) fact sheet for more information.

## **Can employers or employees agree to lower provisions than those outlined in the legislation?**

No. The legislation sets the minimum standard for all employers and employees. They cannot agree to minimum standards that are less than those set out in the law. Some provisions allow employers and unions to agree to different terms in a collective agreement.

## **Are all aspects of employment law covered by The Employment Standards Code?**

No. The Employment Standards legislation sets the minimum standards employers and employees must follow. Employers and employees may sue through civil court for items like breach of contract or unjust dismissal. Anyone with questions regarding civil law should contact a lawyer.

## **What can employees do if they believe they are owed wages?**

Employees should first discuss their concerns with their employers. There may have been a mistake or the employer may not realize there is a problem. Employment Standards can provide general information through its inquiry line to help employers and employees understand their rights and obligations.

If the dispute cannot be resolved, employees who believe their employer is not following the law can file a complaint with Employment Standards. It is important to know that Employment Standards can only consider complaints that are filed within 6 months from the last day worked or 6 months after the wages were due to be paid.

A complaint form must be filled out and submitted to the office for an investigation to begin. Forms are available from any Employment Standards Office, or online at the [Claim Form](#) page.

## **Does a claim have to be filed when contacting Employment Standards?**

No. Anyone can call Employment Standards to get information. Employment Standards Officers will answer general questions and offer help understanding the rights and responsibilities in the workplace. This is not a formal investigation.

## **When can employees file claims?**

Employees who believe their employers did not pay them correctly can file a claim with Employment Standards. Claims must be filed within 6 months of the last day of work or 6 months after the wages were due to be paid. Employment Standards can only investigate and collect up to 6 months of unpaid regular and overtime wages, and up to 22 months for unpaid vacations and general holiday pay.

## **What if workplaces are unionized?**

Workplaces with unions have specific rules for resolving disagreements. In unionized workplaces, employees should contact their union representatives to find out the proper way to resolve employment standards concerns.

## **How do employees file claims?**

Filing a claim can be done in person at an Employment Standards office, or claim forms can be downloaded from the website and returned to Employment Standards in person, by fax or mail. The office address and fax number are on the forms. An Employment Standards Officer will contact both the employer and employee to gather more information after a claim is received.

## **Are appointments needed to file claims?**

Appointments are not needed to file claims. Claims can be filed in person at any time during office hours, or claim forms can be downloaded from the website and returned to Employment Standards by fax or mail. The office address and fax number are on the forms.

## **Are claims confidential?**

The Employment Standards general inquiry line is confidential, but once a claim is filed, Officers must investigate and speak to anyone who has information about the claim, including the employer. This allows Officers to make proper decisions based on their investigation.

## **How long before employees are contacted after filing a claim?**

Sometimes it can take several weeks for investigations to begin. It depends on the number of claims Employment Standards is processing at the time. When claims are received by Employment Standards, Officers start the investigation by contacting the employer and employee to get more information.

## **How long before decisions are made?**

Some claims are settled as soon as employees and employers learn about their rights and obligations. Other claims are more complicated and can take months or years to complete.

## **What happens if complaints aren't settled voluntarily?**

If complaints are not settled voluntarily, Employment Standards Officers can either dismiss employees claims, or order employers to pay wages when wages are owed. If employers are ordered to pay wages, administration fees are added to the payment order.

## **What if employees or employers disagree with a decision by Employment Standards?**

Employers or employees can appeal orders to the Manitoba Labour Board. Employers who wish to appeal an order must send a written request to Employment Standards within seven days after the order is served. A deposit for the full amount of the order must accompany the request.

Employees who wish to appeal an order dismissing their claim must also do so in writing within seven days of receiving the order, but are not required to provide a deposit.

Employment Standards Officers will provide employers and employees with complete information about appealing a decision and will answer any questions about the process.

## **Who answers questions about things like wages, hours of work, holidays, or terminating employment?**

Employment Standards can answer your questions. It investigates complaints and gives employers and employees information about minimum standards like general holidays, vacations, hours of work, leaves of absence,

terminations and the minimum wage. Employment Standards is a neutral party required to enforce the legislation without taking sides.

## **What is the Manitoba Labour Board?**

The Manitoba Labour Board is a special three–person board (tribunal), separate from Employment Standards. It's powers are like those of a judge or court, which re–hears disagreements that could not be resolved by the Employment Standards Branch. *The Employment Standards Code* is one of several acts the board administers.

## **How do employees and employers file a complaint?**

Employees and employers should first discuss the issue to see if it can be settled without an Employment Standards investigation. Either party can call Employment Standards to get more information or explanation about an issue.

If employers or employees cannot settle a matter and believe their rights are being violated, it is best to speak with Employment Standards and perhaps file a claim. A complaint form must be filled out and sent to Employment Standards to begin an investigation. Forms are available from any Employment Standards Office, or online at the [Claim Form](#) page. More information can be found on the [Filing a Claim](#) page.

## **How are complaints investigated?**

Employment Standards Officers investigate the complaints. Both the employee and the employer involved are generally contacted to gather information. After investigating, the Employment Standards Officer determines if the legislation has been followed.

## **How are complaints resolved?**

Officers try to settle complaints by explaining the legislation to employers and employees. Often the parties involved voluntarily agree once they understand the legislation. If the matter is not settled this way, or is too complicated, there will be an investigation and Employment Standards will order the payment of any owed wages and an administration fee.

## Can an order be appealed?

Yes. Either party named in an order has the right to appeal. An appeal must be made within seven days of receiving an order. Employers who appeal must include a deposit equal to the wage amount owing.

A request must be made in writing to have the matter heard by the Manitoba Labour Board. It must include detailed reasons for the appeal. Send the request to the director of the Employment Standards Branch by the appropriate date.

## What are residential caregivers?

Residential caregivers care for or supervise minors or adults who need help to live independently. They provide care and supervision in the clients residence, not the employers private residence, and they must reside in the clients home during periods of work.

## Are residential caregivers covered by Employment Standards legislation?

Residential caregivers are covered by *The Employment Standards Code*. However, there are different requirements related to the hours of work and the length of the weekly rest period.

## What does it mean to reside in the home of the person requiring care?

Employees who help people live independently generally need to stay with them in their homes for many hours. Residential Caregivers live, at least during working hours, in the homes of the people in their care.

Residential Caregivers generally stay in the homes, have their own rooms or places to sleep, leave personal belongings, and freely use appliances and common things around the house. Employees who come in only during sleep or rest periods do not live in the homes.

## How are residential caregivers paid?

- Residential caregivers are to be paid for 12 hours a day consisting of 8 hours at regular wages and 4 hours at the overtime rate, regardless of how many hours are worked that day.
- If a caregiver works more than 12 hours in a day, the additional hours worked must be paid at overtime, up to a maximum of 4 additional hours.
- If, by agreement or arrangement with the employer, the caregiver is not required to perform duties for all or part of a day, then regular wages are paid for time worked if *less* than 8 hours. If the caregiver works *more* than 8 hours under this arrangement, regular wages are paid for the first 8 hours and the overtime rate for any additional hours.

Overtime is paid at 1 ½ times the employees regular wage rate.

## **Do residential caregivers get a day of rest?**

Employers must ensure residential caregivers get 36 consecutive hours of rest each week where they are free from all work duties. Residential caregivers may agree to work during their rest period if requested to do so by the employer; however employers must:

- Pay overtime wages for these hours (whether or not they are hours of overtime), or
- Pay regular wages for these hours and, within the next 8 weeks, lengthen one of the caregivers rest periods by the number of hours worked.

## **Can employers charge for room and board?**

Employers can charge for room and board and employees can agree to have those charges deducted from their wages. The amount employers can charge for room and board is limited. The deductions for room and board cannot reduce an 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.

More information can be found on the Deductions fact sheet.

## **Can employers charge for uniforms?**

Employers can require employees to wear a uniform; however, they cannot make an employee 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. For more information on required clothing see the Deductions fact sheet.

## **Do residential caregivers get vacations?**

Residential caregivers get vacations just like all other employees. Employees start earning vacation pay from the first day of work with that employer based on 4% of their regular wages and are entitled to two weeks of vacation each year after completing one year with the employer. After completing 5 years of work with the same employer, employees must receive a minimum of 3 weeks of vacation each year and be paid 6% of their regular wages as vacation pay. More information can be found on the Vacations & Vacation Pay fact sheet.



## **Do residential caregivers get general holidays?**

Residential caregivers are entitled to have the day off and to be paid general holiday pay. If they work they are entitled to 1 ½ times their regular wages for the day. More information can be found on the [General Holidays](#) page.

## **Are residential caregivers protected during unpaid leaves?**

Residential caregivers have the same job protection as other employees when taking unpaid leave. The ten unpaid leaves are Maternity Leave, Parental Leave, Family Leave, Compassionate Care Leave, Leave for Organ Donation, Bereavement Leave, Leave for Reservists, Leave for Citizenship Ceremony, Leave Related to the Death or Disappearance of a Child, and Leave Related to Critical Illness of a Child. More information can be found on the [Unpaid Leaves](#) page.

## **What are domestic workers?**

Domestic workers are employed mainly to perform activities such as cleaning, laundering, cooking, gardening, and other such activities, in the employers private residence. Employees who live in homes to take care of, or supervise, a member of the employers household, while residing in the employers residence are also domestic workers (including live-in nannies).

## **Are domestic workers covered by Employment Standards legislation?**

Domestic workers who work more than 12 hours per week are covered by all aspects of *The Employment Standards Code*, although they are entitled to a longer period of rest each week than most other employees.

Domestic workers who work less than 12 hours per week, and persons who care for, or supervise a member of the household in their employers residence, but do not live with the employer are *not* covered by most areas of *The Employment Standards Code*, except for unpaid leaves and the employment of children. More information can be found on the [Young Employees](#) and [Unpaid Leaves](#) fact sheets

## **What is the minimum wage for domestic workers?**

The current minimum wage for domestic workers is \$7.60 per hour. On April 1, 2007, it will increase to \$8 per hour.

## **Do domestic workers get a day of rest?**

Employers must ensure domestic workers get 36 consecutive hours of rest each week where they are free from all work duties.

If requested, domestic workers may agree to work during their rest period; however employers must:

- Pay overtime wages for these hours (whether or not they are hours of overtime), or
- Lengthen one of the rest periods by the number of hours worked within the next 8 weeks.

## **Are domestic workers paid for overtime?**

Domestic workers get overtime pay like other employees. Time that is free from work duties, such as eating, resting, sleeping, or attending to private business or interests, is not included in the calculation of overtime because it is not time that has been worked. More information can be found on the Overtime fact sheet.

## **Do domestic workers get vacations?**

Just like most other employees, domestic workers are entitled to vacations. Domestic workers are entitled to a minimum of two weeks of vacation each year after completing one year with the employer and must be paid 4% of their regular wages as vacation pay. After completing the fifth year with the same employer, domestic workers are entitled to a minimum of three weeks of vacation and 6% vacation pay. More information can be found on the Vacations & Vacation Pay fact sheet.

## **Do domestic workers get general holidays?**

Domestic workers are entitled to have the day off and to be paid general holiday pay, which is calculated at 5% of their gross regular wages in the 28 days before the general holiday. If they work, they are entitled to 1 ½ times their regular wages for the day or another regular day off with pay within the next 30 days. More information can be found on the General Holidays fact sheet.

## **Are domestic workers protected during unpaid leaves?**

All domestic workers have the same job protection as other employees when taking unpaid leave. More information can be found on the Summary of Unpaid Leaves fact sheet.

## **How much are employees paid for reporting to work?**

When an employer decides to cancel shifts or to send employees home early, those scheduled to work more than 3 hours, and

- Work less than 3 hours, must be paid for at least 3 hours
- Work more than 3 hours, must be paid for all hours worked

If employees are scheduled to work less than 3 hours, they must be paid for their entire scheduled shift.

## **Employees are scheduled to work five hours, but are sent home when they arrive at work. Are they paid for this shift?**

Yes. The employees must receive three hours of pay at their regular wage for reporting for work.

## **Employees are scheduled to work five hours later this week, but the schedule changes and they are no longer working that shift. Are they paid for the shift?**

No. Reporting pay only applies when employees report to work when requested or scheduled. When employees know or should know that a shift is canceled or changed, they are not entitled to reporting pay.

## **If a shift is scheduled for two hours, does this mean employees must be paid for three hours?**

No. Employers can schedule shifts of less than three hours and pay employees for the hours scheduled.

## **Employees report for their two-hour shift, but are sent home after an hour because business was slow. What are they paid?**

The employees are paid for their scheduled shift, which was two hours.

## **Employees are scheduled to work eight hours, but are sent home after five hours. What are they paid?**

Since the employees worked more than the three hour minimum for reporting pay, they are paid for the five hours worked.

## **Employees were supposed to have the day off, but are asked to come into work for one hour. What are they paid?**

The employees are paid for one hour. Reporting pay protects employees from unknown changes after they report to work. In this case, the employees knew before reporting how long the shift would be, and agreed to come in. They are paid for the hours worked.

## **An employer regularly schedules employees to work less than three hours, but they usually work longer than three hours. If they work less than three hours, what are they paid?**

Although an employer can schedule shifts under three hours and pay for only the scheduled shift, in this case, the short shift schedule does not reflect what is actually happening once the employees report to work. Reporting pay would apply here. The employees must be paid for the hours worked or for three hours, whichever is greater.

## **Employees are scheduled to work a six-hour day, but are asked to stay for an extra hour. Does reporting pay apply?**

No. Since the shift is longer than three hours, and the employees worked more than three hours, reporting pay does not apply. The employees are paid for the hours worked. If the extra hours make the shift longer than eight hours in a day or more than 40 hours in a week, overtime will likely apply. Please see the [Overtime](#) page for more details.

## **What is incentive pay?**

Incentive pay is based on how productive employees are rather than the number of hours they work. Common examples include commission salespeople, flat-rate mechanics, and pieceworkers.

## **How is overtime pay calculated for employees who are paid by incentive?**

For incentive pay, calculating overtime is a two-step process:

1. Calculate the regular hourly wage by dividing the total incentives earned in the pay period by the total number of hours worked in the pay period.
2. Calculate the overtime pay wage rate by multiplying the regular hourly wage by 1 ½ times.

In each pay period, employees must be paid their hourly wage for all standard hours worked and their overtime wage (1 ½ times the regular hourly wage) for all overtime hours worked.

Overtime hours are those worked over the standard hours. In most cases, standard hours are eight hours in a day and 40 hours in a week. The [Overtime](#) page provides more details on how to determine overtime hours.

## How is overtime calculated for employees who are paid only on commission?

To calculate overtime for commission employees, establish the hourly wage for the pay period, determine their standard and overtime hours worked in the pay period, and calculate the overtime wages.

For example: in this pay period a commission salesperson who is paid once a week earned \$1000 commission and worked 50 hours.

Calculate hourly wage by dividing the commissions earned by the total number of hours worked:

$$\frac{\text{Commissions}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$1,000}{50} = \$20$$

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

$$\text{Hourly Wage} \times \text{Regular Hours Worked} \quad \$20 \times 40 = \$800$$

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

$$\text{Hourly Wage} \times 1.5 = \text{Overtime Wage} \quad \$20 \times 1.5 = \$30$$

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

$$\text{Overtime Wage} \times \text{Overtime Hours} \quad \$30 \times 10 = \$300$$

Adding the two amounts together gives the total amount the salesperson earned during the pay period.

$$\$800 + \$300 = \$1100$$

Since the salesperson already earned \$1000 in commissions, the employer pays the employee an additional \$100 to account for the hours worked that have not yet been paid.

Date Published: September 3, 2015