

Overtime Exemptions - Workers Who Substantially Control Their Hours of Work

Most employees are entitled to be paid 1½ times their wages for hours worked beyond eight hours in a day and 40 hours in a week. Employees are only entitled to overtime for work that is requested, acknowledged or authorized by the employer. In some cases, employees are not entitled to overtime wages because they have substantial control over their hours of work and earn at least twice the Manitoba Industrial Average Wage.

Who is exempt from overtime and hours of work under this provision?

Employees who have substantial control over their hours of work and earn a regular annual income of at least two times the Manitoba average industrial wage are exempt from overtime. Both criteria are required for an employee to be exempt from overtime.

What is the Manitoba Industrial Average Wage?

Statistics Canada establishes the Manitoba Industrial Average Wage each year. If employees make twice that amount and have substantial control over their hours of work, they may be exempt from overtime.

| <i>Year</i> | <i>Manitoba Industrial Average Wage</i> | <i>Twice the Manitoba Industrial Average Wage</i> |
|------------------------------|---|---|
| June 1, 2023 - May 31, 2024 | \$54,939.04 | \$109,878.08 |
| June 1, 2022 - May 31, 2023 | \$53,238.12 | \$106,476.24 |
| June 1, 2021 - May 31, 2022 | \$51,612.08 | \$103,224.16 |
| June 1, 2020 -- May 31, 2021 | \$49,598.12 | \$99,196.24 |
| June 1, 2019 -- May 31, 2020 | \$48,716.20 | \$97,432.40 |
| June 1, 2018 -- May 31, 2019 | \$47,367.32 | \$94,734.64 |
| June 1, 2017 -- May 31, 2018 | \$46,203.04 | \$92,406.08 |
| June 1, 2016 – May 31, 2017 | \$45,768.84 | \$91,537.68 |
| June 1, 2015 – May 31, 2016 | \$44,869.24 | \$89,738.48 |
| June 1, 2014 – May 31, 2015 | \$43,134.00 | \$86,268.00 |
| June 1, 2013 – May 31, 2014 | \$42,021.72 | \$84,043.44 |

Does it matter if the employee gets paid by the hour, by salary, or by commission?

No matter how they are paid, if employees earn more than twice the Manitoba Industrial Average Wage per year, they meet the earning criteria for the overtime exemption. This also applies to employees who receive a base salary that is under the required level, but receive production bonuses or commissions that would raise their earnings above the required level. Employees must also have substantial control over their hours of work to meet the exemption for overtime.

How is "substantial control over hours of work" defined?

Some employees have the ability to organize their work schedule to suit the needs of themselves and clients. They may need to check in with their employer occasionally, but the employer generally does not set the schedule or control their day-to-day activities. These employees would be considered to have "substantial control over their hours of work."

Most employees are told by the employer what days and hours they are required to work. They can request changes to their schedules, but do not have the final say. These employees do not have substantial control over their hours of work.

Who determines if employees have substantial control of the hours of work?

Employers are responsible for establishing the terms and conditions of employment. It should be clear to employees they are allowed to control their hours of work. Also, employers must be able to show an employee falls under this exemption if they are not paying overtime wages.

When establishing the terms and conditions of employment, employers need to consider the entire working relationship and understand every situation is different. Employers should also remember the employee needs to make two times the Manitoba Industrial Average Wage to satisfy the exemption for overtime.

Are employees who establish their own schedule based on clients' availability exempt from overtime?

For employees to be exempt from overtime, they must have the flexibility to adjust a schedule themselves without the need for approval from employers.

Will the overtime exemption apply if an employee controls the hours, but has only worked part of the year and not earned twice the Manitoba Industrial Average Wage?

If an employer wants to use this exemption to exclude an employee from overtime, they must be able to show that the employee meets both criteria (ie. has substantial control over hours of work and would earn more than twice the Manitoba Industrial Average Wage). Past performance is the best way to show the employee would have made the income criteria.

The determination for the income criteria is based on wages over the course of a year. If a full year of work has not been completed, it is up to the employer to show the employee would have met the income criteria.

For more information contact Employment Standards:

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

Fax: 204-948-3046

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, The Construction Industry Wages Act , The Worker Recruitment and Protection Act, or contact Employment Standards.

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