

10 FAQs about Averaging of Overtime



Employment standards, 101: Employees are entitled to overtime pay of at least 1.5 times their regular wage rate for working longer than a standard workday (typically 8 hours) or work week (typically 40 hours). But while it may be a bedrock requirement, most provinces now allow employees and employers to contract out of it by negotiating “averaging agreements.”

Averaging agreements can save your company thousands of dollars in wage costs. But they can also get you into legal hot water if you don’t follow the strict rules that apply to such agreements. Here are 10 FAQs to help you maneuver the intricacies of averaging agreements.

Question 1: What Is Overtime Averaging?

Answer: You normally count hours worked on a straight line basis to figure out if employees have worked long enough to qualify for overtime pay. With averaging, hours worked are averaged over an averaging period consisting of multiple days or weeks. You then use these averages to determine if employees have met the overtime threshold.

Example: Joe works 45 hours in Week 1 and 35 hours in Week 2:

- Normal calculation: Joe is entitled to 5 hours of overtime pay in Week 1 and 0 hours of overtime in Week 2:
- Averaging: Since Joe worked an average of 40 hours in the 2-week averaging period, he qualifies for overtime pay in neither Week 1 nor Week 2.

Question 2: Are Employers Allowed to Do This?

Answer: Because it often results in the loss of overtime to which employees would be entitled under employment standards law, employers are not allowed to average overtime **unless** the law specifically allows them to.

Question 3: Where Is Overtime Averaging Legal?

Answer: In fact, most jurisdictions do allow overtime averaging—Federal, BC, Saskatchewan, Manitoba, Ontario, Québec, Northwest Territories, Nunavut and Yukon.

In Nova Scotia, averaging agreements aren’t mentioned in the actual statute. But [Labour and Advanced Education guidelines](#) say employers and employees can average work hours where there’s a “pre-determined, fixed cycle of work that repeats over a

specific period of time.” Twist: The averaging agreement must give employees extra time off so that employees end up getting a “greater benefit,” i.e., the value of the extra time off must be greater than the overtime pay given up.

Averaging is **not** allowed in Alberta, New Brunswick, Newfoundland or PEI—although some of those provinces do let employees trade overtime pay for extra time off.

Question 4: Can Employers Unilaterally Impose Overtime Averaging?

Answer: No. Employers need either government approval or employees’ consent (and in some cases, both) to implement overtime averaging arrangements:

- **BC:** Individual employee consent;
- **Sask:** Collective agreement or approval of Labour Standards Branch Director;
- **Manitoba:** Collective agreement or approval of Employment Standards Director;
- **Ontario:** Individual employee consent **and** approval of Employment Standards Director;
- **Québec:** Collective agreement or approval of Commission des normes du travail;
- **Nova Scotia:** By written agreement between the employer and affected employees;
- **Northwest Territories:** By order of an Employment Standards Officer with consent of a majority of affected employees;
- **Nunavut:** By order of the Labour Standards Officer; and
- **Yukon:** By order of the Director of Employment Standards.

Exception: Under Federal law, employers can unilaterally implement overtime averaging as long as they post the proper notices.

Question 5: Do Averaging Arrangements Have to Be in Writing?

Answer: Yes.

- **BC:** ESA law says averaging agreements must be in writing;
- **Ontario and Nova Scotia:** Government guidelines say agreement must be in writing;
- **Manitoba:** Guidelines say that when applying to the government for an averaging permit, employers must include a written “opinion” of affected employees indicating that they understand and accept the averaging arrangement;
- **Yukon:** An averaging agreement with a non-union workforce must be in writing and include a majority of employees.

The other jurisdictions don’t address the issue. But even in these places, employers are highly advised to put the averaging arrangement in writing and not rely on oral agreements.

Question 6: What Should Averaging Agreements Include?

Answer: A written averaging agreement should:

- Specify the duration of the averaging period;
- List the start and end date of the averaging period;
- Indicate how many times, if any, the averaging period or cycle may be repeated;
- List the work schedule for each day in the averaging period (mandatory in BC); and
- Describe how much extra time off, if any, employees receive as consideration for agreeing to the arrangement;
- Indicate how many times, if any, the averaging period cycle may be repeated; and
- Be signed by the employer and affected employees before the start date.

Question 7: Are There Any Limits to How Long the Overtime Averaging Period Can Last?

Answer: No, with one exception: In BC, the averaging period can last no longer than 4 weeks. And even though the laws don't specify a maximum, as a practical matter, authorization of averaging, whether by individual employee consent, collective agreement or government approval, often sets a limit on how long the averaging period can last.

Question 8: Is Averaging Subject to Daily Overtime Requirements?

Answer: Seven of the jurisdictions that allow overtime averaging have not only weekly but daily overtime thresholds: Federal, BC, SK, MB, YT, NT and NU. The rules for calculation of daily overtime under averaging arrangements vary depending on the jurisdiction:

- **Federal and Manitoba:** There is no daily overtime where overtime is averaged over multiple weeks;
- **BC:** Daily overtime must still be calculated on actual hours worked each day. Thus even when weekly overtime is averaged, daily hours of work in excess of either scheduled hours or 8 hours per day must be paid at overtime rates. If scheduled work hours are greater than 8 per day, hours greater than scheduled must be paid at time-and-a-half. If scheduled work hours are less than 8, hours greater than 8 must be paid at time-and-a-half. In both cases, hours greater than 12 in a day must be paid at double time;
- **Sask and the 3 territories:** The employment standards order approving the averaging agreement specifies whether daily overtime is still required under the arrangement;
- **Nova Scotia:** While there's no daily overtime threshold, overtime of at least 1.5 times of regular pay is due if total weekly hours during the averaging period exceed 48.

Question 9: Do Employers Have to Post Averaging Agreements?

Answer: Yes. Regulations or guidelines in 7 of the 10 averaging jurisdictions (the 3 territories are the exception) require employers to give affected employees a copy of the agreement and/or post it where they can see it. Federally regulated employers must create a special notice called a Schedule IV and post it in the workplace, send a copy to the union and file another copy with HRSDC at least 30 days before the agreement takes effect. Employers must also meet posting and distribution requirements before changing the agreement.

Question 10: Are There Any Limits to How Long Averaging Agreements Can Last?

Answer: Yes. Overtime averaging agreements or orders must have a fixed expiry date. Again, rules vary:

- **Ontario:** An employee's individual consent to average overtime is only good for up to 2 years—but there's no such limit for employee agreement under a collective agreement (unless the collective agreement itself sets such an expiry date);
- **Federal and Manitoba:** Overtime averaging agreements are good for 3 years—although in MB, the Employment Standards Director may specify a shorter time limit;
- **BC and Nova Scotia:** There's no pre-determined maximum but the length of time that an averaging agreement is good for must be stated in the agreement itself;
- **Sask and Québec:** There's no specific expiry date, but in SK, where averaging is approved by the Labour Standards Branch, the authorization may set an expiry date; and
- **Northwest Territories and Nunavut:** An expiry date may be given in the government

order by which the overtime averaging arrangement is approved.