

Do Employees Get Time-and-a-Half for Overtime Worked Without Permission? – Quiz



If you permit employees to work overtime, you must pay for them.

SITUATION

Myra Ward is a billing clerk at the I.C. Bones Radiology Clinic. She works a 40-hour schedule, Monday through Friday from 9 AM to 5 PM. At least those are supposed to be her hours. But times are tough and Myra needs extra money to pay her bills. She's also not as productive as she should be and has fallen behind in her work. So, without telling her supervisor, Myra remains in the office until 7 PM catching up on her workload. After 5 days of illicitly working late, she claims 10 hours in overtime. The Clinic bans employees from working overtime without prior authorization from their supervisor. Assume that Myra is an "employee" under the province's employment standards law and that employees are entitled to overtime pay of at least time and a half for each hour worked over 40 hours per week.

QUESTION

Does the Clinic have to pay Myra time and a half for the 10 overtime hours she worked?

1. No, because it didn't authorize her to work those additional hours.
2. Yes, because it permitted her to work those additional hours.
3. No, because the reason Myra needed to work those additional 10 hours was her own inefficiency.
4. Yes, because an employee's right to overtime for hours worked beyond ESA standards (in this case, 40 hours per week) is absolute and not subject to exceptions.

ANSWER

2. The Clinic has to pay Myra overtime because it permitted her to work those 10 additional hours.

EXPLANATION

Some employees head for the exits the moment their shift comes to an end. Others ignore the clock and work as late as necessary to get the job done. While dedication

is a laudable trait, it can cause trouble if employees expect to be paid for those extra hours, especially if those hours are compensable at overtime rates under the law. A policy requiring prior authorization to work overtime is par for the course at most companies. This scenario, which is purely hypothetical, illustrates what employers can and can't do to enforce these policies.

Many employment standards laws, including in BC, Fed, NT, NU, ON and SK, say or imply that overtime is payable if employers require or "permit" employees to work more than a designated number of hours per week or day. Other jurisdictions may interpret mandatory overtime as applying to hours employers permit employees to work. "Permit" doesn't mean authorize; it means not actually stopping the employee from working the additional hours. Accordingly, while it didn't authorize Myra to work overtime, the Clinic permitted her to do so. Consequently, it has to pay her time and a half for the 10 overtime hours she worked.

WHY WRONG ANSWERS ARE WRONG

1 is wrong because a company policy requiring employees to get authorization to work overtime can't take away the employee's legal right to overtime for additional hours they actually do work. However, while it must pay Myra time and a half for 10 hours, the Clinic can discipline and perhaps even fire her for working overtime without authorization in violation of its overtime policy.

3 is wrong because employees' right to overtime for excess hours worked has nothing to do with the reason they work those additional hours. Thus, Myra is entitled to time and a half for the 10 extra hours she put in even though she should have gotten that work done during her normal hours.

4 is wrong. More precisely, D is the right answer for the wrong reason. Yes, Myra is entitled to overtime. But employees don't have an "absolute right" to overtime pay for the extra hours they work. Exceptions exist. For example, in most jurisdictions, employees can enter into agreements allowing their employers to average their hours over a certain period. Luckily for Myra, no exceptions apply to this case.