

Flexible Wage Arrangements: Overtime Banking



Like regular wages, overtime wages are normally payable during the pay period in which they're earned. But unlike regular wages, the employment standards laws of most jurisdictions give employers leeway to defer payment of overtime hours worked, provided that they do it under a proper overtime banking arrangement. Here's how the overtime banking rules work and what you must do to take advantage of them.

Overtime Banking

Overtime banking is an arrangement under which employees agree to receive the overtime they earn in one pay period in a later pay period. The standard overtime calculation still applies, e.g., the daily or weekly overtime thresholds; all that banking changes is the timing of payment.

Banking is legal in all but 2 jurisdictions: Federal and New Brunswick. However, the banking arrangement must be agreed to by affected employees, meet strict limitations and, in some instances, be approved by the jurisdiction's ESA regulatory authority.

Banking Time v. Banking Hours

There are 2 basic ways to bank overtime:

- Bank the overtime worked as units of time; or
- Bank the dollars owing for the overtime hours worked.

In both cases, overtime must be banked at overtime rates. For example, each overtime hour worked that would otherwise be paid at time-and-a-half must be banked as 1.5 hours. Where dollars are banked, dollars earned for overtime must be banked at overtime rates. For example, an employee making \$20 per hour straight time who works overtime payable at double time must have \$40 banked for each such overtime hour worked.

There's no difference between the banking 2 methods when employees draw down overtime out of the bank as dollars paid, with no other time off. This may happen when:

- Employees get terminated while they're still owed banked overtime;
- The maximum time limit that overtime may stay in the bank is reached; or
- An employee requests to be paid out of the bank in cash.

When employees are paid out of an overtime bank without taking time off they must be paid the same amount they'd have been paid had the overtime not been banked, i.e., at the employee's regular hourly rate when the overtime was worked multiplied by 1.5 or 2 for overtime at time-and-a-half or double time rates.

However, these 2 methods do differ in terms of payment amount required when employees take overtime out of the bank as paid time off (termed "time in lieu"):

- When *time* is banked, time in lieu is paid using an employee's hourly rate at the time of payment;
- When *dollars* are banked, any payment out of the bank, by definition, is based on rates in effect when overtime was worked.

Example 1: Donna works 4 hours overtime on November 15, 2018, when her regular hourly rate of pay is \$15 and the overtime worked is payable at time-and-a-half. Donna's employer banks overtime hours worked as units of time. On February 18, 2019, Donna takes 6 hours paid time off as time in lieu of this November overtime. Each of those 6 hours must be paid at the regular rate of pay at which Donna would otherwise have been paid on February 18. Since her regular rate of pay on that date is \$20, she'd get \$120 for the 6 hours of time in lieu.

Example 2: Ken, who also makes \$15 per hour at a different company works the same overtime hours as Donna did on November 15, 2018. Ken's rate of pay is the same as Donna's; and like her, he's entitled to overtime at time-and-a-half. The difference is that Ken's employer banks overtime not as units of work the way Donna's employer does but as dollars earned. Thus, for his November overtime, Ken's employer banked \$90, or $\$15 \times 4 \times 1.5$. And when he takes his paid time off on February 18, his employer pays him that \$90 for the 6 hours taken in lieu.

Limits on Banking Methods

As the above examples show, banking time results in employees being paid more than when overtime dollars are banked (assuming the employee's regular hourly rate of pay doesn't decrease). Accordingly, 5 jurisdictions specifically require that when overtime is banked, employers must bank *time*: AB, SK, MB, YK and NT. BC is the only banking jurisdiction that explicitly requires employers to bank *dollars*. The remaining jurisdictions that permit overtime banking—ON, QC, NS, PE, NL and NU—don't expressly require employers to bank time or bank dollars, seemingly leaving either option open.

Limits on How Long Overtime Can Be Banked

Some jurisdictions limit how long employers may hold the overtime in the bank and defer either the time in lieu or cash payment ultimately owing:

- 3 months: MB, ON, PE, NL and NT;
- 6 months: AB and NS; and
- 12 months: QC, SK and YK.

In ON and NL, the 3-month limit may be extended to a total of 12 months, if employees give consent. In NT and NU, the maximum may be set in the government employment standards order authorizing the banking arrangement. In BC, there's no statutory limit after which an employer must either grant time in lieu or cash out the overtime banked.

Where such a time limit does apply, it's a rolling limit that applies to each overtime entry in the bank.

Example: Marco works the following overtime hours in March 2018:

- 4 hours on March 8;
- 3 hours on March 18; and
- 6 hours on March 29.

Assume that his employer banks overtime hours worked and hours kept in the bank are subject to a 3-month limit. Marco's employer must either grant him time in lieu or pay out the banked overtime as cash no later than:

- June 8, for the hours worked March 8;
- June 18, for the hours worked March 18; and
- June 29, for the hours worked March 29.

TABLE 1: OVERTIME BANKING LAWS ACROSS CANADA

Jurisdiction	Permission Required	Maximum Length of Time Hours May be Banked	What May be Banked
Federal	Overtime banking not allowed	NA	NA
BC	Employee written request	No limit	Dollars
AB	Individual, group or collective agreement	6 months	Time
SK	Individual or collective agreement	12 months	Time
MB	Individual or collective agreement	3 months	Time
ON	Individual agreement	12 months with employee consent, otherwise 3 months	Time or Dollars
QC	Individual or collective agreement	12 months	Time or Dollars
NB	Overtime banking not allowed	NA	NA
NS	Individual or collective agreement	6 months	Time or Dollars
PEI	Employee written request	3 months	Time or Dollars
NL	Individual agreement	12 months with employee consent, otherwise 3 months	Time or Dollars
YK	Individual, group or collective agreement	12 months	Time
NT	Individual, group or collective agreement	3 months, unless a longer period provided by collective agreement or Employment Standards Officer's order	Time
NU	Order of the Labour Standards Officer	Only as given in the order	Time or Dollars

TABLE 2: EMPLOYMENT STANDARDS OVERTIME REQUIREMENTS

Jurisdiction	Daily Overtime	Weekly Overtime	Work Week	Overtime Rate
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Federal	8	40	Calendar	Time and a half regular rate
BC	8	40	Calendar	Double time for daily hours > 12
AB	8	44	Employer defined	Time and a half regular rate
SK	8	40	Calendar	Time and a half regular rate
MB	8	40	Employer defined	Time and a half regular rate
ON		44	Employer defined	Time and a half regular rate
QC		40	Employer defined	Time and a half regular rate
NB		44	Employer defined	Time and a half minimum wage
NS		48	Employer defined	Time and a half regular rate
PE		48	Employer defined	Time and a half regular rate
NL		40	Employer defined	Time and a half minimum wage
YT	8	40	Employer defined	Time and a half regular rate
NT	8	40	Employer defined	Time and a half regular rate
NU	8	40	Employer defined	Time and a half regular rate