

Hours of Work Compliance Game Plan

written by Tina Tsonis | February 27, 2024



With skilled labour in short supply, employers are asking employees to work longer hours. These demands have repercussions. Roughly 30% of Canadian employees report feeling tired and overworked, according to a recent study. More than half (53%) have a negative feeling about work and 23% say they're thinking about seeking opportunities elsewhere. In addition to burning out employees, demanding longer work hours from staff exposes you to risk of liability under employment standards laws. Here's a look at maximum work hour and break requirements across Canada and a 10-step game plan to comply with them.

Step 1. Determine If Your Employees Are Subject to Work Hour Restrictions

Employment standards statutes, or Acts, establish general requirements for non-union employees that are subject to industry- or sector-specific exemptions and variances set out in the regulations. For example, many provinces impose separate requirements for workers in transport, retail, construction, mining, farming, entertainment, etc., as well as for work performed by younger workers under age 21. So, be sure that your own work hour standards comply with the requirements that apply to your particular sector. The work hours restrictions discussed below typically don't apply to medical, ambulance, emergency response and other employees expected to provide crucial public services. This analysis targets employers and organizations running private, profit-based businesses outside of health care and scientific research.

Step 2. Be Aware of Limits on Daily Work Hours

In many jurisdictions, the standard work day after which overtime at time and a half is required is typically 8 hours. Several jurisdictions establish a specific maximum daily hourly limit:

- Federal: 8 hours;
- Alberta: 12 consecutive hours;
- Ontario: 8 hours (unless the employer properly establishes a standard work day of over 8 hours);
- Northwest Territories and Nunavut: 10 hours.

BC, Saskatchewan and Newfoundland don't have specific daily hour limits but achieve the same basic result by requiring a minimum of 8 consecutive hours between shifts,

which has the effect of capping daily work hours at 16.

Step 3. Be Aware of Limits on Weekly Work Hours

The same basic principles apply to weekly hours. The standard work week after which overtime at time and a half required is typically 40 hours. Jurisdictions with a specific limit on work hours per week include:

- Federal: 40 hours;
- Ontario: 48 hours;
- Québec: 50 hours (60 hours for employees in remote areas or St. James Bay);
- Saskatchewan: 44 hours; and
- Northwest Territories and Nunavut: 60 hours.

Step 4. Be Aware of Between-Shift Rest Period Requirements

In addition to maximum hour limits, in 6 jurisdictions (BC, Federal, Newfoundland, Ontario, Saskatchewan, Yukon), employers must provide employees a minimum of 8 consecutive hours between shifts during which employees must be totally free from work. However, between-shift rest requirements are subject to exceptions.

Step 5. Be Aware of Rest Day Requirements

Alberta, Ontario, Manitoba, Nunavut, Northwest Territories, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island limit work to 6 days per week by requiring that employees get at least one day/24 consecutive hours off per week. But there are variations:

- In Québec and BC, employees get a minimum of 32 hours free per week—although employers in BC have the option of paying time-and-a-half instead for each hour by which the weekly time off falls below 32;
- New Brunswick, Newfoundland, Nova Scotia, Nunavut and Prince Edward Island specify that wherever possible, the employee's day off should be Sunday;
- In Saskatchewan, the 1 day of rest per week covers only employees who usually work or at the employer's disposal for at least 20 hours during the week; and
- In Alberta, employees get at least: (a) one day of rest in each work week, (b) 2 consecutive days of rest in each period of 2 consecutive work weeks, (c) 3 consecutive days of rest in each period of 3 consecutive work weeks, or (d) 4 consecutive days of rest in each period of 4 consecutive work weeks; and
- Employees in Yukon are entitled to 2 full days of rest per week with one of them being Sunday if "practicable."

Step 6. Determine If Any Emergency Work Exceptions Apply

Employment standards laws in all but 2 jurisdictions (Prince Edward Island and Yukon) include exceptions that permit employers to require employees to work longer than normally allowed to deal with unforeseen emergencies. However, the scope of the emergency exception varies:

- Alberta, Manitoba, Ontario, Nova Scotia and Federal law define emergency as including prevention of disruption to the continuity of the business at the particular establishment;
- In Québec and Newfoundland, the definition of emergency is limited to imminent danger to health and safety or imminent threat of property damage; and
- In BC, Northwest Territories, Nunavut, Saskatchewan and New Brunswick, there is no definition of what constitutes an emergency.

Keep in mind that the emergency exception applies only for as long as the emergency lasts and that you must comply with the usual maximum hours and rest periods after the situation is resolved.

Step 7. Consider Entering Employment Agreement Imposing Longer Hours

In some jurisdictions, a potential alternative to relying on an emergency exception may be to contract with your employees or their unions to provide for longer work hours. Such arrangements may include:

- Averaging agreements (available in all jurisdictions except New Brunswick, Newfoundland and Prince Edward Island), although hours caps may apply during the averaging period; and
- Flexible, modified or staggered work schedules (available federally and in Alberta, Saskatchewan, Ontario and Québec).

Step 8. Consider Obtaining Government Permit for Longer Work Hours

Most jurisdictions allow employers to apply to the employment standards agency for a permit authorizing longer work schedules and exemptions from hour maximums and minimum rest periods.

Jurisdiction	Daily Hours
	8 hours maximum EXCEPT for:
Federal	*Modified work schedule in collective agreement as long as average weekly hours for period of 2 or more weeks don't top 40 *Flexible work schedule, averaging agreement or govt. permit as long as average weekly hours for period of 2 or more weeks don't top 48(1)
Alberta	12 consecutive hours maximum EXCEPT if accident occurs, or urgent work necessary to a plant or machinery, or other unforeseeable or unpreventable circumstances occur but only to extent necessary to avoid serious interference with the ordinary working of a business, undertaking or other activity
British Columbia (2)	No specific limit on hours per day subject to minimum 8 hours between shifts, which doesn't apply in an emergency

Notes

(1) Under federal law, where hours to be worked in excess of the maximum hours of work are agreed to in writing, the work schedule must include no fewer days of rest than the number of weeks in the work schedule; where excess hours approved under permit, MOL may prescribe alternative days of rest to protect employees' welfare

(2) BC specifies that employer may not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety

(3) In NB and PEI, retail workers also have the right to refuse to work on Sundays

(4) In Sask, averaging agreements can provide for average work hours of 40 hours over one week, 80 hours over 2 weeks, 120 hours over 3 weeks and 160 hours over 4 weeks

Source: Bongarde

Step 9. Provide Proper Notice of Schedule or Shift Changes

Under Federal, Alberta, Nova Scotia and Saskatchewan law, employers must provide employees advance notice of changes to work schedules and shifts. These requirements may come into play when the extended hours you want employees to work involve changes to normal work schedules or routines:

- Federal: 24 hours' notice required to add a work period or shift to be provided 24 hours before added period or shift is to begin;
- Alberta: 24 hours' notice and at least 8 consecutive hours of rest required before shift changes;
- Nova Scotia: Government decides what and how much notice is required for shift or schedule changes; and
- Saskatchewan: One week notice required for shift or schedule changes unless changes are due to unexpected, unusual or emergency circumstances.

Step 10. Account for Employees' Work Refusal Rights

Be aware that some employment standards laws give employees the right to refuse to work a shift without reprisal in certain circumstances that vary by jurisdiction:

Table 2. Employee ESA Work Refusal Rights by Jurisdiction

Jurisdiction	Employee May Refuse to Work If	Exception
Federal	Employee may refuse to work any work period or shift in their schedule that starts within 96 hours from the time that the schedule is provided to them	No refusal to work a work period or shift if employer needs them to work to deal with a situation that it couldn't have reasonably foreseen and that presents or could reasonably be expected to present an imminent or serious: (a) threat to life, health or safety; (b) threat of damage to or loss of property; or (c) threat of serious interference with the ordinary working of the employer's industrial establishment
Alberta	N/A	N/A
British Columbia	N/A	N/A
Manitoba	N/A	N/A
New Brunswick	Employee may refuse to work on a Sunday if the work is in a certain kind of retail business that's exempt from the Days of Rest Act by giving employer verbal or written notice of refusal at least 14 days before Sunday on which the employee refuses to work	None specified
Newfoundland	N/A	N/A

Jurisdiction	Employee May Refuse to Work If	Exception
Nova Scotia	An employee that works in a retail business on a uniform closing day that agrees to work on uniform closing days may refuse to work on uniform closing days or a particular uniform closing day if the employee gives the employer at least 7 days notice to that effect before the employee is scheduled to begin such work or, where the employee receives less than 7 days notice of being scheduled for such work, the employee gives the employer notice to that effect within 2 days of receiving the notice from the employer	None specified
Northwest Territories	N/A	N/A
Nunavut	N/A	N/A
Ontario	N/A	N/A
Prince Edward Island	Employees engaged in a retail business to which the Retail Business Holidays Act applies may refuse to work on any Sunday if they give the employer verbal or written notice of refusal at least 7 days before any Sunday to which the refusal applies	None specified
Québec	Employee may refuse to work: (a) more than 2 hours after regular daily working hours or more than 14 working hours per 24 hour period, whichever is shortest or, for an employee whose daily working hours are flexible or non-continuous, more than 12 working hours per 24 hour period; (b) more than 50 working hours per week or, for an employee working in an isolated area or in the James Bay territory, more than 60 working hours per week; (3) if the employee wasn't informed at least 5 days in advance that the employee would be required to work	<p>No refusal allowed if:</p> <ul style="list-style-type: none"> *Nature of employees' duties requires them to remain available *The employee is a farm worker *There's a danger to the life, health or safety of employees or the population, a risk of destruction or serious deterioration of movable or immovable property or in any other case of superior force *The refusal is inconsistent with the employee's professional code of ethics
Saskatchewan	N/A	N/A
Yukon	N/A	N/A

Source: Bongarde