

Hours of Work Quiz



QUESTION

The maximum number of hours employees can be required to work in a week is 48 hours. What are the procedures or steps where the maximum of 48 hours is exceeded?

ANSWER

The weekly maximum can be exceeded provided there is an electronic or written agreement between the employer and employee.

WHY IS IT RIGHT

Standard hours of work

The standard hours of work for an employee in a federally regulated industry are:

- eight hours in a day (any period of 24 consecutive hours)
- 40 hours in a week (the period between midnight on Saturday and midnight on the Saturday that immediately follows)

Federally regulated employees are all entitled to one full day of rest each week, which usually falls on a Sunday.

During a week when one or more holidays occur, the standard hours of work is reduced by eight hours for each holiday.

Regulations allow for different standard hours of work for certain industries and types of work, such as drivers in the [trucking industry](#); employees on ships in the East Coast and Great Lakes shipping industry and the West Coast shipping industry; running trades employees in the railway industry; the commission salespersons in the broadcasting industry; and the commission-paid salespeople in the banking industry.

Overtime hours of work

Any hours worked in excess of the standard hours of work are considered overtime hours.

Overtime pay at a rate of a minimum of 1.5 times the regular hourly wage for those hours would apply, with the following exceptions:

- Managers and professionals, such as doctors, lawyers, dentists, architects and

engineers, are exempt from overtime.

Maximum hours of work

In most cases, the maximum number of hours worked in a week is 48.

This can be exceeded in exceptional circumstances including permits, for emergency work, under an averaging plan or a modified work schedule.

Trucking

Hours of work for drivers including bus operators, city motor vehicle operators, and highway motor vehicle operators involved in the interprovincial and international transport of goods or passengers and in the transport of mail on contract with Canada Post are modified by the [*Motor Vehicle Operators Hours of Work Regulations*](#), replacing sections 169 and 171 of Part III of the [*Canada Labour Code*](#).

Maximum hours of work are defined by the [*Commercial Vehicle Drivers Hours of Service Regulations*](#) administered by Transport Canada.

Hours of work for operators classified in 4 different categories.

All employers must keep complete and accurate records that show the hours an employee has worked each day, and retain these records (such as detailed logs) for 36 months after the work is finished. These records can be used to calculate overtime pay, at a rate of a minimum of 1.5 times the regular hourly wage, and to demonstrate compliance should the need arise. For city and highway motor vehicle operators, certain hours do not need to be counted:

- authorized meals and rest stops while on route, after the employee has been relieved of duty;
- en route rest stops due to illness or fatigue;
- time spent resting as one of two operators when a vehicle has a sleeper berth while en route; and
- time spent resting in a place where sleeping accommodation is provided while en route.

For bus operators, time spent while the bus is in the garage, or parked if the employee is not required to stay with it, does not need to be counted.

All other time during an operator's shift must be counted.

A highway motor vehicle operator is defined as a motor vehicle operator who is not a bus operator or a city motor vehicle operator.

A city motor vehicle operator is defined as a motor vehicle operator who operates exclusively within a 10-mile (16 km) radius of his home terminal and is not a bus operator. The definition includes any motor vehicle operator who is classified as a city motor vehicle operator in a collective agreement or who is not classified in any such agreement but is considered to be a city motor vehicle operator according to the prevailing industry practice in the geographical area where he is employed.

The HRSDC – Labour Program conducts motor vehicle operator surveys for drivers employed by a federal jurisdiction employer to establish whether a driver is considered to be a city motor vehicle operator or a highway motor vehicle operator. The surveys also determine the prevailing industry practice in the geographical area where the driver is employed. If a driver is uncertain whether a particular survey applies to them, they should contact their local [*Labour Program office*](#).

WHY IS EVERYTHING ELSE WRONG

SPECIAL REGULATION/AVERAGING/MODIFIED WORK SCHEDULES

A. Special Regulations

1. Do the hours of work and overtime provisions apply to all employees?

No. Managers, superintendents, and employees who carry out management functions are exempted. Architects, dentists, engineers, lawyers, and medical doctors are also excluded. Special hours of work regulations in several industries exempt or set different standards for certain employees.

2. What are the standard hours of work under the Canada Labour Code?

Eight hours in a day and 40 hours in a week except in the case of averaging (see [question 8](#)), special regulations (see [question 1](#)), or modified work schedules (see [question 13](#)). Hours worked in excess of standard hours must be paid for at the overtime rate. In the Code and Regulations, standard hours are also referred to as "working hours".

Note: The Code defines a day as any period of 24 consecutive hours. A week is the period between midnight on Saturday and midnight on the immediately following Saturday.

3. What is considered overtime?

Overtime means any hours worked in excess of the standard hours specified in the Code or Regulations, in most cases 8 in a day or 40 in a week. If the total of daily overtime hours differs from the total of weekly overtime hours, the greater of the two amounts is used in calculating overtime payments.

4. What is the overtime rate?

A minimum of one and one-half times the regular rate of wages.

5. When are employees entitled to overtime pay in a week in which a general holiday occurs?

The weekly standard hours (normally 40) must be reduced by 8 hours for each holiday. Therefore, in a week in which a holiday occurs, overtime would apply after 32 hours. Any time worked on a holiday is not counted in calculating overtime entitlement. (See [publication 4](#) on the pay requirements for hours worked on a holiday.)

6. What is the maximum number of hours that employees may work in a week?

The maximum time an employee may work each week is normally 48 hours.

7. Can the maximum hours of work be exceeded?

Yes, in the following situations:

a. Exceptional circumstances

- If the employer can satisfy the Minister of Labour that exceptional circumstances make extra hours necessary, a permit specifying the number of hours employees may work over a limited period can be granted.
- The permit may also exempt the employer from the "day of rest" requirement referred to in [question 12](#). Applications must normally be made 60 days in advance, and the employer must satisfy the Minister that the application

for the permit is being posted for employees to see for at least 30 days prior to its proposed effective date. Obtaining a permit does not exempt the employer from the obligation to pay overtime.

- The employer must report in writing to the Minister within 15 days after the permit expires or at another date specified in the permit. The report must show the number of employees who worked more than 48 hours in a week and the number of additional hours in a week each employee worked.
- Federally regulated employers may apply for a ministerial permit for [hours in excess of the maximum number of hours of work](#).

b. Emergency work

- In case of emergency, such as an accident or essential work to be done to equipment, the maximum hours may be exceeded without a permit. A written report to the regional director and to a trade union representing affected employees, if applicable, must be made within 15 days of the end of the month in which the emergency hours were worked. The report must state the nature of the emergency, the number of employees working in excess of the maximum hours, and the number of additional hours each employee worked.

B. AVERAGING

1. Can hours of work be averaged?

Yes. If the nature of the work in an establishment necessitates irregular hours due to seasonal or other factors, resulting in employees having no regularly scheduled hours or having regularly scheduled hours which vary from time to time, then the hours can be averaged. In such cases, the employer may average the working hours of employees over a selected period of 2 or more weeks.

Please refer to the [Canada Labour Standards Regulations](#) for specific information on implementing an averaging plan. Also, because of the complexities involved in the use of averaging, it is recommended that more detailed information be obtained from a [Labour Program office](#).

2. When does the overtime rate apply in an averaging situation?

Overtime applies after exceeding the standard hours in an averaging period. Standard hours are determined by multiplying the number of weeks in the averaging period by 40.

3. What happens if employment is terminated during an averaging period?

- a. If termination is at the employee's choice, the employee is entitled only to be paid at the regular rate for hours worked during the completed part of the averaging period.
- b. If termination is by the employer, the employee is entitled to overtime pay for all hours worked in excess of 40 times the number of weeks in the completed part of the averaging period.

4. How do general holidays and other leave affect the maximum and standard hours in an averaging period?

The maximum and standard hours are reduced as follows:

- For any holiday with pay – by 8 hours
- For any day of annual vacation – by 8 hours
- For any day of bereavement leave with pay – by 8 hours
- For any day that is normally a working day for a class of employee when he or

she is not entitled to the regular remuneration or salary (for example when an employee is off sick) – by 8 hours

- For every such week – by 40 hours
- If there are no fixed working days, for every such period of seven consecutive days – by 40 hours

5. What is the normal day of rest?

The Code provides for at least one full day of rest a week – Sunday where practicable. During an averaging period, hours may be scheduled and worked without regard to the normal requirement for weekly rest.

C. MODIFIED WORK SCHEDULES

1. What are modified work schedules?

The term “modified work schedules” includes such schemes as compressed work weeks and flexible hours of work. For example, employees scheduled to work 10 hours per day, 4 days a week can be said to be on a modified work schedule.

2. What is required in order to adopt a modified work schedule?

An employer may establish a modified work schedule or modify or cancel an existing schedule under which the hours of work may exceed the standard hours if certain conditions are met. Where there is a trade union involved, there must be written agreement between the employer and the union to adopt a new work schedule or to cancel or modify an existing one.

Where the employees are not subject to a collective agreement, the work schedule or its modification or cancellation must be approved by at least 70 per cent of the affected employees.

The employer is required to post a notice of the new schedule, or its modification or cancellation for at least 30 days before it comes into effect.

3. Are there any restrictions?

Yes. In any modified work schedule, the standard hours of work for a period of 2 or more weeks cannot exceed an average of 40 hours a week, and the maximum hours for the same period cannot exceed an average of 48 hours a week.

4. Is overtime paid after eight hours in a day?

Not necessarily. Overtime must be paid after the approved daily or weekly hours. For example, when the schedule is for a compressed work week consisting of 4 days of 10 hours each, overtime is payable after 10 hours in a day and 40 hours in a week. Overtime must also be paid after an average of 40 hours in a week where the schedule consists of 2 or more weeks.

TOPICS

- Daily and weekly limits on hours of work
- Work time
- Hours free from work
- Exceptional circumstances

A. DAILY AND WEEKLY LIMITS ON HOURS OF WORK

Interactive tools are available online; please refer to the “[Daily and weekly hours](#)

of work" section in the hours of work and overtime tool.

Daily limit

The maximum number of hours most employees can be required to work **in a day** is **eight** hours **or** the number of hours in an established regular workday, if it is longer than eight hours. The only way the daily maximum can be exceeded is by an **electronic or written** agreement between the employee and employer.

Weekly limit

The maximum number of hours most employees can be required to work in a week is 48 hours. The weekly maximum can be exceeded only if there is an electronic or written agreement between the employee and employer.

An agreement between an employee and an employer to work additional daily or weekly hours, does not relieve an employer from the requirement to pay overtime pay where overtime hours are worked.

B. WORK TIME

It is necessary to determine what counts as work time (hours of work) for the purposes of determining compliance with certain standards under the Employment Standards Act (ESA), including the minimum wage, overtime and hours of work (including rest entitlements) provisions.

Generally, work is considered to be performed when the employee is actually working or the employee is not working but is required to stay at the workplace. However, even if the employee is required to stay, he or she is not considered to be working during the time that he or she is entitled to take time off and does take time off for:

- an eating period;
- sleeping (provided that the employer provides the sleeping facilities and the employee is entitled to at least six uninterrupted hours off work); or
- engaging in private affairs or pursuits.

Note that an employee who is not at the workplace but is "on call" is not considered to be working unless the on-call employee is called into work.

Travel time

Commuting time and travel during the workday are treated differently under the ESA.

Commuting time is the time it takes an employee to get to work from home and vice-versa. This is **not** counted as work time for the purposes of the ESA.

However, there are a number of exceptions to this rule.

- If the employee takes a work vehicle home in the evening for the convenience of the employer, the work time begins when the employee leaves home in the morning and ends when he or she arrives home in the evening.
- If the employee is required to transport other staff or supplies to or from the workplace or work site, time so spent must be counted as work time.
- If the employee has a usual workplace but is required to travel to another location to perform work, the time traveling to and from that other location is counted as work time.

Time spent travelling during the course of the workday **is** considered to be work time.

Training time

Time spent by an employee in training that is required by the employer or by law **is** counted as work time. For example, where the training is required because the employee is a new employee or where it is required as a condition of continued employment in a position, the training time is considered to be work time.

Time spent in training that is not required by the employer or by law in order for an employee to do his or her job is **not** counted as work time. For example, where an employee hoping for a promotion with the employer takes training in order to qualify for it, time spent taking the training is not considered to be work time.

An employer and an employee can agree **electronically or in writing** that the employee will work more than:

- eight hours a day or their established regular workday – if it is longer than eight hours;
- 48 hours a week.

These agreements are valid only if, prior to making the agreement, the employer gives the employee the most recent [information sheet for employees about hours of work and overtime pay](#) prepared by the Director of Employment Standards that describes the hours of work and overtime pay rules in the ESA. In order to be valid, the agreement must include a statement in which the employee acknowledges receipt of the information sheet.

In most cases, an employee can cancel an agreement to work more hours by giving the employer two weeks' notice **in writing or electronically**, while an employer can cancel the agreement by providing reasonable notice. Once the agreement is revoked, an employee is not permitted to work excess daily or weekly hours.

C. HOURS FREE FROM WORK

Employees are entitled to a certain number of hours free from having to work.

Daily

Interactive tools are available online; please refer to the "[Daily rest](#)" section in the hours of work and overtime tool.

In most cases, an employee must receive at least 11 consecutive hours off work each day. Generally, an employee and an employer cannot agree to less than 11 consecutive hours off work each day. The daily rest requirement applies even if:

- the employer and the employee have agreed in electronically or writing that the employee's hours of work will exceed the daily limit.
- the employer and employee have agreed in electronically or writing that the employee's hours of work will exceed the weekly limit.

This rule does not apply to employees who are on call and called in to work during a period when they would not normally be working.

This requirement cannot be altered by an electronic or written agreement between the employer and employee.

Between shifts

Interactive tools are available online; please refer to the “[Rest between shifts](#)” section in the hours of work and overtime tool.

Employees must receive at least **eight** hours off work between shifts.

This does not apply if the total time worked on both shifts is not more than 13 hours.

An employee and employer can also agree **electronically or in writing** that the employee will receive less than eight hours off work between shifts.

Split shifts

An employee who works a split shift (e.g. 6:00 a.m. to 11:00 a.m. and 2:00 p.m. to 7:00 p.m.) does not have to receive eight hours off between shifts.

Weekly or bi-weekly

Interactive tools are available online; please refer to the “[Weekly and bi-weekly rest](#)” section in the hours of work and overtime tool.

Employees must receive at least:

- **24** consecutive hours off work in each work week; **or**
- **48** consecutive hours off work in every period of two consecutive work weeks.

D. EXCEPTIONAL CIRCUMSTANCES

In exceptional circumstances, and **only so far as is necessary to avoid serious interference with the ordinary operation of the business**, an employer can **require** an employee to work:

- more than the normal limit of eight hours a day, or the established regular work day if that is longer;
- more than the 48 hours per week (or the greater number of weekly hours agreed to);
- during a required period free from work (see “[Hours free from work](#)”).

Exceptional circumstances exist when:

- there is an emergency;
- something unforeseen occurs that interrupts the continued delivery of essential public services, **regardless of who delivers these services** (for example, hospital, public transit or firefighting services, even if the employee only indirectly supports these services, such as an employee of a company that is contracted to prepare and deliver patient meals to a hospital);
- something unforeseen occurs that would interrupt continuous processes;
- something unforeseen occurs that would interrupt seasonal operations (that is, operations that are limited to or dependent on specific conditions or events – such as winter ski operations);
- it is necessary to carry out urgent repair work to the employer’s plant or equipment.

Here are some examples:

- natural disasters (very extreme weather);
- major equipment failures;
- fire and floods;

- an accident or breakdown in machinery that would prevent others in the workplace from doing their jobs (for example, the shutdown of an assembly line in a manufacturing plant).

Here are examples of situations that do not fall under the exceptional circumstances exemption:

- when rush orders are being filled;
- during inventory taking;
- when an employee does not show up for work;
- when poor weather slows shipping or receiving;
- during seasonal busy periods (such as Christmas);
- during routine or scheduled maintenance.

Eating periods and breaks

Interactive tools are available online; please refer to the "[Eating periods](#)" section in the hours of work and overtime tool.

Employers are required to provide eating periods to employees, but they are not required to provide other types of breaks.

Eating periods

An employee must not work for more than five hours in a row without getting a 30-minute eating period (meal break) free from work. However, if the employer and employee agree, the eating period can be split into two eating periods **within** every five consecutive hours. Together these must total at least 30 minutes. This agreement can be oral or in writing.

Meal breaks are unpaid unless the employee's employment contract requires payment. Even if the employer pays for meal breaks, the employee must be free from work in order for the time to be considered a meal break.

Note: Meal breaks, whether paid or unpaid, are not considered hours of work, and are not counted toward overtime.

Coffee breaks and breaks other than eating periods

Employers are required to provide employees with eating periods as described above. Employers do not have to give employees "coffee" breaks or any other kind of break.

Employees who are required to remain at the workplace during a coffee break or breaks other than eating periods must be paid at least the minimum wage for that time. If an employee is free to leave the workplace, the employer does not have to pay for the time.