How to Create Overtime Banking Agreements

Many employees prefer trading overtime pay for paid time off. Banking of overtime, aka time-off in lieu, is an arrangement that enables employees to earn paid time off by working overtime hours. The way it works: For each hour of overtime worked, the employee earns 1.5 hours of time off paid at their regular wage rate. The earned hours (or, in BC, dollars) go into an overtime bank that the employee can draw from within a certain period. But employment standards laws impose strict limitations on overtime banking; some jurisdictions even ban it altogether. Here are the 6 things you must consider before entering into overtime banking arrangements with your own employees.

1. Whether Overtime Banking Is Legal in Your Jurisdiction

The first thing you must do is determine whether overtime banking is even an option for your organization. **Explanation:** Employees generally can’t contract out of their employment standards rights, such as by agreeing to work for less than the minimum wage. However, the laws allow for some flexibility with regard to overtime rights, including overtime averaging. All but 3 jurisdictions also permit overtime banking.

Exceptions: New Brunswick. Nova Scotia and Nunavut don’t expressly allow overtime banking but do permit overtime averaging, which may open a side door for overtime banking during the averaging period.

Example: An employee in Nova Scotia, where overtime is required for work longer than 48 hours per week, agrees to let her employer average her hours worked over 2 weeks, agreeing to work 10 hours per day over the averaging period. In Week 1, she works 10 hours per day on Monday through Thursday and 2 extra hours on Friday. In Week 2, she works 10 hours on Monday through Thursday but takes 2 hours off on Friday.

Week 1: 52 hours worked

Week 2: 48 hours worked

Average: 48 hours worked.

The employer and employee have effectively traded 2 hours of paid time off (at the employee's regular wage) for 2 hours of overtime.

2. The Method of Creating the Overtime Banking Arrangement

With limited exceptions that we'll discuss later, overtime banking agreements generally doesn't require government approval the way averaging agreements do. However, the agreement must be entered into in accordance with the methods specified in the employment standards laws:

- **Written Agreement:** In AB, MB, NT, ON, SK and YK, employers and employees can agree to such an arrangement in the collective agreement or a separate written agreement. Newfoundland also requires an agreement but doesn't specify that it must be in writing. The Ontario *Employment Standards Act* doesn't say an agreement must be in writing but Ministry of Labour (MOL) guidelines say that agreements must be written or made electronically;
- **Written Request:** Under FED, BC and PEI law, employees may submit a written request asking the employer to agree to overtime banking; and
- **Agreement or Request:** Québec allows for overtime banking in either the collective agreement or by employee request.

Practical Guidance: Putting your overtime banking agreement into a written document signed by both parties is advisable even if your province doesn't specifically require it. Similarly, providing each affected employee a copy of the agreement is a legal requirement in AB, NT, SK and YK, and advisable as a best practice in any other jurisdiction where overtime banking is allowed.

3. How Overtime Is Banked

The next thing to consider is how to enter the overtime the employee earns into the employee's account or "bank." Experts advise that as a matter of best practice, you can simplify calculations by converting the overtime on a straight time basis. How you do that depends on what you're banking. In most provinces, you bank time, at the rate of 1.5 hours paid time off for each hour of overtime worked. **Example:** An employee who banks 10 hours of overtime gets 15 hours' paid time off at her regular wage rate.

In BC, you bank not overtime hours but dollars, with employees receiving time-and-a-half for each hour of overtime over 8 hours, and double wages for each hour of overtime over 12 hours worked in one day. **Example:** A BC employee earns 10 hours of overtime at time-and-a-half and 4 hours at double time. That equals 23 hours altogether (15 + 8). Because Employee A's wage is $20 per hour, she'd have $460 in the bank. This doesn't change even if her wages later go up to $21 per hour. But if the employee is in Alberta where hours are banked, she'd have 23 hours in the bank payable at her regular $20 per hour wage.

4. How Overtime Is Withdrawn

There are 2 basic ways employees can withdraw their credits from the overtime bank:

Withdrawal Method 1: Paid Time Off

The most common form of withdrawal is as paid time off:

- **If time is banked,** withdrawals and balances are kept in hours. **Example:** An Alberta employee who works an 8-hour day at $20 per hour has 25 hours in the bank. If he takes a day off, he gets $160 for the day. The employer would then subtract 8 hours from his bank, leaving a new balance of 17 hours.
- **If dollars are banked,** withdrawals and balances are kept in dollars. **Example:** A BC employee with $500 in the bank earns $20 per hour for an 8-hour workday. If he takes a day off from work, he withdraws $160 (8 hours at $20 per hour) from the bank, leaving a new balance of $340 ($500 – $160).

Withdrawal Method 2: Cash

The other way for employees to withdraw overtime from the bank is in cash. In general, cash withdrawals may take place in 3 circumstances:

- **Employee is fired:** In most jurisdictions, employees must be paid cash for any overtime remaining in their bank when they get terminated;
- **Employee reaches banking limit:** Employers may limit how much overtime an employee's bank can contain at any given time. Overtime accrued in excess of that time can't be banked and must be paid in cash; and
- **Employer lets employee cash out:** In BC and Saskatchewan, employers must allow employees to cash out their overtime credits. In addition, some companies let employees withdraw their banked overtime as cash even if the employment standards law doesn't require it.

If hours are banked, the cash payout is at the rate of overtime that the employee would have earned if the hours hadn't been banked. **Example:** An Alberta employee making $20 per week who has a balance of 15 hours would get 15 hours at time and a half—$450. If dollars are banked the cash payment is the dollar balance in the bank. **Example:** A from BC employee with a balance of $300 gets $300.

5. The Deadline for Withdrawal

With the exception of BC, employees must use the overtime they bank by a specific deadline:

Table 1. Deadline for Employees to Use Banked Overtime

Jurisdiction	Deadline
Federal	3 months after pay period earned unless collective agreement or employment contract provides longer period, subject to 12-month cap for employment contract
Alberta	6 months after pay period earned unless collective agreement or government permit allows longer period
British Columbia	No deadline

Jurisdiction	Deadline
Manitoba	During regular working hours within 3 months after end of pay period it’s earned unless regulation or director of employment standards branch permits longer time
Newfoundland & Labrador	3 months of work week in which it’s earned unless employee agrees to 12-month period
Ontario	3 months of week it’s earned, or 12 months if the employee agrees
Prince Edward Island	3 months of work week in which it’s earned
Québec	12 months after it is earned
Saskatchewan	During employee’s regularly scheduled work hours at time(s) agreed to by employer and employee (or, absent an agreement, as scheduled by employer) within 12 months after end of pay period in which overtime hours were banked
Northwest Territories	3 months of end of pay period in which it’s earned unless collective agreement or Employment standards officer permits longer period
Yukon	Within 12-month period if agreed or within calendar year if no period agreed to

6. Whether the Agreement Can Be Changed

Some jurisdictions provide for termination or adjustment of overtime banking agreements:

- In Alberta, Northwest Territories and Yukon, either party can amend or terminate the agreement by giving one month’s written notice to the other;
- Saskatchewan follows the same rule but requires notice of at least one pay period; and
- In BC, the employee can require the employer to pay the time off in the time bank as overtime wages; the employer can also close down the employee’s time bank on 1 months’ notice, provided that it pays off the balance or lets the employee use the banked overtime within 6 months.

Conclusion

Wages are rising, labour is scarce and values are also changing. Where once it was about maximizing earnings, today, increasing numbers of employees are primarily interested in balancing work and family. Arrangements that enable employees to trade overtime for more time off are ideally suited for these economics and lifestyle preferences.