

# Overtime Rules For Commercial Drivers In Ontario



The Ontario *Employment Standards Act, 2000* (“ESA”) and the federal *Canada Labour Code* (“CLC”) specify the overtime rules for provincially-regulated and federally-regulated employees, respectively. Pursuant to the legislation, higher overtime thresholds may apply for commercial drivers.

This article summarizes the special overtime rules that apply to commercial drivers regulated by the government of Ontario and the government of Canada.

## **Provincially-regulated or Federally-regulated?**

Most industries in Canada are covered by provincial employment standards laws. The following industries are exceptions and, instead, subject to federal employment laws:

- Federally regulated private sectors, including:
  - Air transportation
  - Chartered banks
  - Grain elevators, feed and seed mills, and feed warehouses
  - First Nations band councils and Indigenous self-governments
  - Federal Crown corporations, like Canada Post
  - Port services, ferries, tunnels, bridges and pipelines that cross international or provincial borders
  - Radio and television broadcasting
  - Railways that cross provincial or international borders
  - Road transportation services, including trucks and buses, that cross provincial or international borders
  - Telecommunications
  - Uranium mining
  - Any business that is vital, essential or integral to the operation of one of the above activities
- Federally regulated public sector, including:
  - Federal public service
  - Parliament
- Private-sector firms and municipalities in Yukon, the Northwest Territories and Nunavut

Commercial trucking operations are typically subject to federal legislation if they regularly cross provincial or international borders. Where they don't, they are subject to provincial legislation.

## Ontario overtime rules for drivers

Generally, employees of provincially-regulated businesses in Ontario are entitled to overtime pay at 1.5 times their regular hourly wage for each hour worked in excess of 44 hours per week, unless they are exempt, or a different threshold is prescribed.

Section 18 of *Ontario Regulation 285/01* under the ESA sets higher thresholds for overtime pay for “highway transport” drivers, who drive trucks “for-hire”.

Overtime pay applies to each hour worked by a “highway transport” driver in excess of 60 hours per week, assuming that the employee drives one of the following:

1. A truck whose operator held an operating licence under the [*Truck Transportation Act*] on December 31, 2005.
2. A truck whose operator held a certificate of intercorporate exemption under the [*Truck Transportation Act*] on December 31, 2005, if after that date the truck is operated to carry, for compensation, goods of another person who is not an affiliated corporation under the [*Truck Transportation Act*], such that the operator would be required to hold an operating licence under the [*Truck Transportation Act*] if it were still in force.
3. A truck that is operated to carry goods of another person for compensation, if the operator,
  1. did not hold an operating licence or a certificate of intercorporate exemption under the [*Truck Transportation Act*] on December 31, 2005, and
  2. would be required to hold an operating licence under the [*Truck Transportation Act*] if it were still in force.

An operating licence was required under the *Truck Transportation Act* prior to December 31, 2005 when a company carried goods of another person for compensation.

Only those hours during which highway transport drivers are directly responsible for the public truck are included when calculating the entitlement to overtime.

Section 17 of *Ontario Regulation 285/01* under the ESA set the threshold for overtime pay for local cartage drivers, who transport goods for hire within a municipality, at 50 hours per week.

“Local cartage drivers” is defined as follows:

1. drivers of vehicles used in the business of carrying goods for hire within a municipality or to any point not more than five kilometres beyond the municipality’s limits; or
2. drivers’ helpers on such vehicles.

Any non-driving hours, if they can be established to have been worked, must also be included in the total number of hours worked. However, hours that the employee is not directly responsible for the truck are not included for overtime purposes.

## Federally-Regulated drivers

Under the CLC, employees of federally-regulated businesses are generally entitled to overtime pay at 1.5 times their regular hourly wage each hour worked in excess of 40 hours in a week, unless exempt.

The *Motor Vehicle Operators Hours of Work Regulations* under the CLC create a higher overtime threshold for federally-regulated “highway motor vehicle operators.” Overtime pay for them is only required after 60 hours of work per week. An employer cannot cause or permit a highway motor vehicle operator to work longer hours than 60

hours in a week.

In a week in which a general holiday occurs that entitles a highway motor vehicle operator to a holiday with pay in that week, the standard hours of work of the highway motor vehicle operator may exceed 32 hours but cannot exceed 50 hours.

A highway motor vehicle operator who does not normally drive on public roads may, pursuant to an authorization made under the *Commercial Vehicles Drivers Hours of Service Regulations*, apply for a permit that allows the highway motor vehicle operator to exceed 60 hours of work in a week.

These Regulations under the CLC also set a higher overtime threshold for “city motor vehicle operators.” “City motor vehicle operators” operate exclusively within a 10 mile radius of their home terminal, and excludes bus operators. Overtime pay for them is only required after 9 hours of work per day or 45 hours of work per week. An employer cannot cause or permit a city motor vehicle operator to work longer hours than 9 hours in a day or 45 hours in a week.

During a week in which a general holiday occurs that entitles a city motor vehicle operator to a holiday with pay in that week, the standard hours of work of the highway motor vehicle operator may exceed 32 hours but cannot exceed 36 hours.

## **Conclusion**

Due to the differences between the overtime rules for local cartage and highway drivers under the ESA and the CLC, it is important for trucking companies to confirm whether they are covered by provincial or federal employment laws, and which thresholds apply to their drivers.

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