# The Mechanics of Termination: How to Report an Ex-Employee’s Overtime Earnings in the Record of Employment (ROE)

One of termination’s many unpleasantries is completing the Record of Employment (ROE) so the ex-employee can claim EI benefits. And one of the trickiest parts of the ROE is accurately accounting for overtime earnings.

## Record of Employment Overtime Reporting

Overtime earnings generally must be listed in 3 different ROE boxes or “blocks”:

- Block 15A, Total Insurable Hours;
- Block 15B, Total Insurable Earnings; and
- Block 15C, Insurable Earnings by Pay Period.

Adding to the complexity is that the means of reporting overtime earnings on the Record of Employment varies based on how overtime is actually paid.

**5 Potential Scenarios**

The first thing to consider in reporting overtime is whether overtime is paid when worked, banked or paid in arrears.

When overtime is banked, you must further consider whether payment is in cash or paid time off.

And when payment is in cash, you must consider whether it occurs during regular employment or as part of a layoff or loss of employment.

The interplay of these factors can result in 5 different overtime payment scenarios, each of which requires a different form of record of employment overtime reporting treatment:

1. Overtime is paid in cash in the period worked;

2. Overtime is paid in arrears in the pay period following;
3. Overtime is banked and taken as paid time off;
4. Overtime is banked and paid in cash in the course of regular employment; or
5. Overtime is banked and paid in cash upon layoff or loss of employment.

**HOW IT PLAYS OUT**

**HYPOTHETICAL**

Sid normally works 40 hours per week at the regular wage rate of $17.30 per hour for a company that uses a bi-weekly pay period. In a regular pay period, his EI insurable hours are 80 and his insurable earnings are $1,384. Each pay period ends on a Saturday and is paid the following Thursday. Sid has worked without interruption for the same employer for 5 years.

Assuming Sid has no other insurable earnings or overtime, his employer would list the following in his Record of Employment:

- **Block 15A, Total insurable hours:** 2,160. *Explanation:* The employer would use the maximum periods reportable for insurable hours in Table 1 of the record of employment instructions, e., 27 x 80 = 2,160;
- **Block 15B, Total insurable earnings:** $19,376.00. *Explanation:* The maximum number of periods reportable for insurable earnings (listed in Table 2) is 14; and 14 x $1,384 = $19,376;
- **Block 15C, Insurable earnings by pay period:** Leave blank. *Explanation:* According to the instructions, this block may be left blank because there are insurable earnings in each pay period.( It’s also common for applications to always print the insurable earnings for each period required by Table 2, whatever their amount.)

Let’s look at how the employer would use this data to report Sid’s overtime earnings on the ROE under each of the 5 overtime payments scenarios.

**Scenario 1. Overtime Paid in Cash in Pay Period Worked**
Assume that Sid has been laid off and his last day of work will be Friday, July 30. The ROE pay period ending date is Saturday, August 7. Sid worked 6 hours overtime on Saturday, February 27 , for which he was paid time-and-a-half. These overtime hours were processed in the pay period ending Saturday, March 6 and paid on Thursday, March 11. Sid’s record of employment would now list:

- **Block 15A, Total insurable hours:** 2,166 (27 x 80 = 2,160 + 6); and
- **Block 15B, Total insurable earnings:** $19,531.70 (14 x $1,384 = $19,376.00 + 6 x30 x 1.5 = $155.70).

Both the overtime hours and dollars fall into the periods reported in Blocks 15A and 15B, respectively.

**Scenario 2. Overtime Paid in Arrears in Pay Period Following**
Assume Sid’s July 30 layoff comes after a series of intermittent work shortages. During the year, he usually worked every week, but sometimes for only 1 or 2 days. When Sid applies for EI, the regional rate of unemployment where he lives is 8.3% and he needs 595 hours to qualify for benefits. Two years earlier, his employer changed its pay practices so that scheduled hours are paid current on the last day of each pay period, which now ends every second Friday. Exception pay, such as overtime, is processed in the next period.

July 30is now the last day of a bi-weekly pay period. So, this is the date shown on ROE Block 11 (Last Day for Which Paid) and Block 12 (Pay Period Ending Date). In the 27 bi-weekly pay periods covered by the Record of Employment, Sid had 615 regular hours of insurable employment. This block of 27 periods started Saturday, July 25, 2016* (although not accurate, we'll use these calendar dates for purposes of simplicity). He worked 8 hours of overtime on Friday, July 24, 2016. These exception hours were processed in payroll in the period beginning the next day and were paid on August 7, 2016, the pay day for that period. On that date, at time-and-a-half, Sid received $207.60 in gross pay for this overtime. In the 14 bi-weekly periods reported in Block 15B, Sid had $5,622.50 in insurable earnings from his regular hours. No other earnings were reportable on the record of employment. Sid applies for EI benefits as soon as he's laid off. His ROE should show:

* **Block 15A, Total insurable hours:** 615; and
* **Block 15B, Total insurable earnings:** $5,622.50.

Sid's overtime on July 24 isn't reportable on the ROE because those hours were worked before the start of the 27 bi-weekly pay periods reported in Block 15A. The dollars were paid before the start of the 14 bi-weekly periods reported in Block 15B.

When Service Canada gets Sid's Record of Employment, it will prorate the 615 hours reported to the 52 weeks used to determine his qualifications for EI benefits. The proration is done on a daily basis since there are always 14 days in each bi-weekly period; but it can also be done using whole pay periods (26 bi-weekly pay periods = 52 weeks). 615 ÷ 27 x 26 (for 52 weeks) = 592.22 hours, rounded to 593. In any case, since Sid doesn't have the 595 hours required, he doesn't qualify for EI regular benefits.

You may also be wondering why the 8 overtime hours processed in payroll in the pay period starting Saturday, July 25 weren't in the record of employment. Although these hours were paid in the period beginning July 25, they were worked in the period ending July 24. Hours for that period aren't reported on the ROE since it falls outside of the 27 periods required by Table 1. Hours worked and paid are allocated to the pay period worked, not to the period when paid.

**Scenario 3. Overtime  Banked and Taken as Paid Time Off**

Assume that Sid's employer allows employees to bank overtime to be taken later as paid time off. Each overtime hour worked at time-and-a-half goes into the overtime bank as 1.5 hours. Double time hours go into the bank at 2 hours for each hour worked. When paid time off is taken out of the overtime bank, each hour taken off work is paid at the current straight time rate.

By June, 2016, Sid had accumulated 450 hours in his overtime bank for 300 overtime hours worked in 2015 and the first part of 2016 that were banked at time-and-a-half. When work became slow later in 2016, he requested that any shortfall in his regular hours be made up from this overtime bank as paid time off. Before the start of the 14 periods reported in Block 15B, all of the 450 hours in his overtime bank had been used up in this fashion. Sid actually did work in each of these 14 periods, although he only had $4,528 in insurable earnings from regular hours. No other insurable earnings were reportable. In the 27 periods reported in Block 15A, Sid had only 275 hours of regular time actually worked. His record of employment would show:

* **Block 15A, Total insurable hours:** 725 (275 regular hours + 450 hours of paid time off);  and

* **Block 15B, Total insurable earnings:** $4,528.

When overtime hours are banked and later taken as paid time off, the insurable hours aren't hours actually worked but the paid time taken later. Since each overtime hour worked must be converted to paid time off at overtime rates, this usually produces an increase in the insurable hours reported on the ROE. This could have serious implications for EI benefits. Thus, under *this* scenario, Sid does qualify for EI benefits.

**Scenario 4. Overtime Banked and Paid in Cash during Regular Employment**
Same as Scenario 3 but now assume that Sid was able to maintain his regular 40 hours of work per week right up to layoff and thus didn't need to draw down his banked overtime hours to make up any shortfall in regular hours. But Sid's daughter went off to university starting in January, 2017 and he needed money to pay her tuition. The employer allowed him to withdraw the equivalent of 400 hours out of his overtime bank as cash. Sid continued to work his regular 40 hours per week up to layoff on July 30. He received $6,920 as gross pay for withdrawing these 400 hours out of his overtime bank. This was paid to him on January 29, 2017. This was the pay day for the first of the 14 bi-weekly pay periods included in Block 15B of the ROE for his layoff. His Record of Employment would now show:

- **Block 15A, Total insurable hours:** 2,160 (27 x 80 = 2,160); and
- **Block 15B, Total insurable earnings:** $26,296.00 (14 x $1,384 + $6,920).

The overtime hours themselves don't appear on the ROE. They were worked before the beginning of the 27 periods reported in Block 15A. However, the overtime dollars paid are allocated to the pay period for the January 29 pay day, according to the rules on allocation (in Sec. 23 of the *EI Regulations*). Because there are no comparable rules for insurable hours, paid hours are allocated to the pay period worked.

**Scenario 5. Overtime Banked and Paid in Cash upon Layoff or Loss of Employment**
When Sid was laid off on July 30, he filed a lawsuit for wrongful dismissal. Assume he was banking overtime but hadn't drawn down any of his overtime bank before layoff. Instead, any payment of his 450 hours of banked overtime was delayed by his employer pending settlement of the lawsuit. In October, 2017, the parties settled and the employer paid Sid his banked overtime. So his employer had to issue an amended ROE to reflect the additional payments. To keep things simple, we'll only show the payment of banked overtime (450 hours at $17.30 or $7,785). His ROE would now show:

- **Block 15A, Total insurable hours:** 2,160 (27 x 80 = 2,160);
- **Block 15B, Total insurable earnings:** $27,161 (14 x $1,384 + $7,785); and
- **Block 17C, Other Monies:** $7,785.

Because of the time gap between layoff and payment of t banked overtime, Sid's employer must check with Service Canada to see if the banked overtime would create an overpayment of EI benefits.
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**AT A GLANCE**

| Overtime Insurable Hours and Earnings | | | | |
|---|---|---|---|---|
| **Employer Practice** | **Hours Allocated to Pay Period of Work or Leave** | **Earnings Allocated to Pay Period** | | |
| | | **Of Work or Leave** | **In Which Paid** | **Of Last Regular Wages** |
| • Overtime paid in cash, in the period worked | Yes | | Yes | |
| • Overtime paid in arrears, in the period following | Yes | | Yes | |
| • Banked overtime taken as paid time off (leave) | Yes | Yes | | |
| • Banked overtime paid in cash, during regular employment | Yes | | Yes | |
| • Banked overtime paid in cash, on lay-off or loss of employment | Yes | | | Yes |