

CONSTRUCTION INDUSTRY OVERTIME OBLIGATIONS

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The construction industry faces unique challenges requiring employment standards that differ from other industries. Termination, general holidays, minimum wage and hours of work/overtime are examples of areas where legislated minimum standards are unique to the construction industry.

This article will explore the overtime obligations in the construction industry and provide employers with some suggestions on controlling overtime liability.

Overtime Obligations

All employers must pay overtime wages for any hours worked in excess of an employee's regular hours of work. *The Construction Industry Minimum Wage Regulation* (the "Regulation"), passed under *The Construction Industry Wages Act* (the "Act"), defines what an employee's "regular hours of work" are. Pursuant to the Regulation, "regular hours of work" differ according to the sector of the construction industry in which an employee works.

The "regular hours of work" in the Industrial, Commercial and Institutional Sector (the "ICI Sector") or on a "Major Building Construction Project", are forty (40) hours in a week and ten (10) hours in a day. This is now a Sector-wide standard. The distinctions between trades and locations of work have been removed from the legislation.

In the Heavy Construction Sector, the regular hours of work are forty-eight (48) in a week if the work occurs within the City of Winnipeg between November 1 and March 31 and fifty (50) if the work occurs within Winnipeg between April 1 and October 31. Outside of Winnipeg the standard weekly hours of work are always fifty (50). There are no legislated daily regular hours in the Heavy Construction Sector.

Any hours worked outside of the daily or weekly maximums described above must be paid at one and a half times the employee's regular wage rate. If an employment contract or a collective agreement provides for a greater overtime wage rate, the greater rate prevails.

"ICI Sector", "Heavy Construction Sector" and "Major Building Project" are all defined by Act or Regulation. Due to spatial constraints, the definitions as they appear in the legislation cannot be reproduced here. Generally, the Sectors are divided as follows:

ICI Sector - includes most onsite industrial, commercial and institutional construction projects in Manitoba including building, decorating, removing and relocating of buildings or other structures other than houses.

Heavy Construction Sector - includes the construction and maintenance of roads, sidewalks and parking lots, certain types of snow removal, certain project related transportation activities and the use, transportation and repair of heavy construction equipment for certain projects.

Major Building Construction Project - any building larger than 25,000 square feet. Some large scale projects, such as oil refineries, chemical plants and steel mills, are also considered major building projects, regardless of their size.

Not all construction work falls under the above noted specialized legislation. Residential house construction, renovations not requiring structural alternations, onsite maintenance by regular maintenance staff, in-shop pre-fabrication of structures and construction of farm buildings are examples of work that does not fall within the specialized legislation. If an employee is engaged in that kind of work, or any other work not falling within the definitions of the above noted terms, the regular hours of work are eight (8) in a day and forty (40) in a week pursuant to *The Employment Standards Code*.

Controlling Overtime Liability

There are steps employers can take to control overtime liability. Firstly, an employer should properly determine what Sector its work is in and schedule its employees accordingly. If it is unclear what Sector a specific project falls under, employers are encouraged to consult the Act and Regulation, the Employment Standards Branch or legal counsel before assigning hours to its employees.

Secondly, employers should have each employee acknowledge in writing that he or she has been notified they are not to work beyond their regularly scheduled hours without specific authorization. Employers should retain that acknowledgement and consistently enforce that policy as employees are not permitted to claim overtime wages for hours their employer has not authorized, allowed or acknowledged.

Lastly, employers are encouraged to keep a record of daily regular and overtime hours worked and paid for each employee. Too often an employee brings a claim for overtime wages based on a personal hours log he or she has created and the employer, despite its legislated obligation to create and maintain same, has no records of its own to refute that employee's claim.

Many employers never turn their attention to overtime concerns until it is too late. Employers who take the time to become informed of their legislated overtime obligations, take steps to ensure those obligations are met and document their compliance with same manage their workforce more efficiently and will be better prepared for the day when they are faced with an unexpected claim for overtime wages.

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