

Overtime Averaging Agreements

I've recently received a number of questions from employers about the availability and details of so-called overtime averaging. It's been years since I last addressed this topic, so I thought I'd get back to basics and talk about wages, overtime, and averaging.

What Is Overtime Averaging?

One of the few provisions contained in the B.C. *Employment Standards Act* which employers view as being to *their* benefit is the overtime averaging provision (section 37). In essence, the overtime averaging provision allows employers to schedule employees to work non-standard shifts without having to pay them at overtime (time-and-a-half or double-time) rates.

The standard workday (for the purposes of the Act) is 8 hours in duration, and the standard workweek is 40 hours. Without an overtime averaging agreement, employers must pay at overtime rates for exceeding the standard day and week.

How Does It Work?

The overtime averaging provisions are intended for a situation in which employees are *regularly* scheduled to work a non-standard day. An example would be a consistent work week comprising 4 shifts of 10 hours' duration. Using an overtime averaging agreement, employers can use this sort of schedule without incurring any obligation to pay at overtime rates.

The overtime averaging provisions are not suited, however, to work schedules which are inconsistent or which feature random occurrences of overtime work. Put simply, overtime averaging doesn't eliminate overtime pay rates and does not protect employers who only sporadically require an employee to work a longer day or week.

Overtime Averaging Agreements

A key aspect of the overtime averaging provisions contained in the *Act* is that there must be a written, signed overtime averaging agreement in place *before the overtime averaging commences*. (Employers who seek to retroactively establish the existence of an agreement to average hours can expect to receive little sympathy from the Employment Standards Branch.)

Although there is no mandatory format for an overtime averaging agreement (and the agreement does not need to be filed with the Employment Standards Branch), there are certain requirements to be met. The agreement must specify...

- the duration of the agreement, and
- the start and expiry date of the duration of the agreement, and
- the number of times the duration of the agreement may be repeated, and
- the cycle (either 1, 2, 3, or 4 weeks) over which hours will be averaged, and
- the work schedule for each day of work covered by the agreement.

Hours may be averaged over cycles of 1, 2, 3, or 4 weeks. The number of hours may be different in each day or week during the averaging cycle. But, the average number of hours per week covered by the agreement must not exceed 40.

As long as the employee's average weekly hours, over the agreed-upon averaging cycle, do not exceed 40 and the employee never works more than 12 hours in a day there is no requirement to pay at overtime rates. So, my example of a workweek comprising 4 shifts of 10 hours' duration would not attract any overtime pay obligations.

Not A Get-Out-Of-Jail-Free Card

The presence of an overtime averaging agreement does not, however, completely eliminate the obligation to pay at overtime rates. Employers must pay...

- at the rate of time-and-a-half for time worked outside of the scheduled day (if it exceeds 8 hours),
- at double-time for all time worked over 12 hours in a day, and
- at time-and-a-half for all hours worked in excess of an average of 40 per week over the defined averaging cycle.

As an example, an employee scheduled for a workweek comprising 4 shifts of 10 hours' duration may be subject to an averaging agreement utilizing a 2 week averaging cycle. During the 2 week averaging cycle, the employee might work an additional 10 hour shift each week, for a total of 100 hours in the cycle. The employer would have to pay this employee at time-and-a-half for the 20 hours exceeding the 40 hour average during the averaging cycle.

The employer and the employee may agree to alter an overtime averaging agreement as long as the total hours scheduled in the agreement remains the same.

And, it is worth noting that pay obligations contained in the *Act* which are based on an "average day's pay" – such as statutory holiday pay – must be calculated using the employee's actual average day worked. So, using my "4 shifts of 10 hours' duration" example, an employee's statutory holiday pay entitlement would be based on his/her usual 10 hour shift.

There are many other nuances to the use of overtime averaging agreements and I strongly recommend obtaining prior advice on this topic or, at the very least, exploring the "Averaging Agreements" factsheet located on the B.C. Employment Standards Branch's website.

Used properly, averaging agreements can save employers a lot of money – why not take advantage of one of the few gifts for employer's contained in the *Act*?

This item is provided for general information purposes only and is not intended to be relied upon as legal advice. Informed legal advice should always be obtained about your specific circumstances.

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