

## Frequently Asked Questions 300 – 399

### How are employees who are paid a flat rate (like many mechanics and automobile repair technicians) paid for overtime?

To calculate overtime for employees paid a flat rate, establish the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period and calculate the wages.

For example: a mechanic is paid once a week. He/she earns \$40 for each brake job completed. In this pay period, the mechanic does 30 brake jobs and actually works 47 hours, 40 regular hours and 7 overtime hours. The total pay for the 30 brake jobs is \$1,200.

To calculate the hourly wage use the formula:

$$\frac{\text{Incentive Pay (flat rate)}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$1200}{47} = \$25.53$$

The mechanic worked 40 standard hours and 7 overtime hours. The hourly wage (\$25.53) times the standard hours (40) equals the regular pay for the pay period (\$1,021.20).

The overtime wage is the hourly wage (\$25.53) times 1 ½ (\$38.31). The overtime wage (\$38.31) times the overtime hours (seven) equals the overtime pay for the period (\$268.17).

The total is the regular pay (\$1,021.20), plus the overtime pay (\$268.17), for a total of \$1,289.37.

Since the mechanic has already earned \$1,200 in incentive pay, the top up for the overtime would be \$89.37.

### How are employees paid for piece work, (like sewing machine operators), paid for overtime?

To calculate overtime for employees paid by the piece, determine the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period and calculate the wages.

For example: a sewing machine operator is paid once a week. He/she earns \$.50 for each pocket sewn. In the pay period, the employee sews 1,000 pockets, for a total pay of \$500 and works 45 hours.

To calculate the hourly wage use the formula:

***Incentive Pay (piecework)***

$$\frac{\text{Incentive Pay (piecework)}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$500}{45} = \$11.11$$

The employee works 40 standard hours and five overtime hours. The hourly wage (\$11.11) times the standard hours (40) equals the regular pay in the period (\$444.40).

The overtime wage is the hourly wage (\$11.11) times 1 ½ (\$16.67). The overtime wage (\$16.67), times the overtime hours (five) equals the overtime pay for the period (\$83.35).

The total is the regular pay (\$444.40), plus the overtime pay (\$83.35), for a total of \$527.75.

Since the operator has already earned \$500 in incentive pay, the top up for the overtime would be \$27.75.

**How are employees whose productivity can be measured every hour paid for overtime?**

In some cases, employers are able to measure exactly how productive employees are during the overtime hours. In the piece work example, where employees are paid \$.50 for each pocket sewn, the employer could show how many pockets were sewn during regular hours and how many pockets were sewn during overtime.

Employers can choose to calculate the hourly wage over the pay period as shown in the previous examples, or they may pay 1 ½ times the piece rate for work done in overtime hours. In this example, the employer could simply pay \$.75 for each pocket sewn in the overtime rather than calculate the hourly wage for the pay period.

**How are employees who earn a salary or wage and incentive pay paid for overtime?**

There are two ways to calculate overtime for employees who earn a salary or wage, and incentive pay.

1. If the salary or wage is more than twice the minimum wage, the overtime wage is calculated using only the salary or wage. The incentive pay is not used to calculate the hourly wage.  
  
For example if the employee earns \$30 per hour plus a commission, the overtime wage rate would be \$30 X 1.5 = \$45 per hour of overtime. The commission would not be used in the calculation.
2. If the salary or wage is less than twice the minimum wage, the overtime wage is calculated separately for the wage or salary and for the incentive pay. Then the two are added together.

**How are employees who are paid at least twice the minimum wage as a base and incentive pay, paid for overtime?**

To calculate overtime for employees paid a base wage greater than twice the minimum wage, use only the base salary or wage.

For example: a miner is paid a base wage of \$30 per hour plus incentive pay for the amount the mine produces in the period. The base wage is more than twice the minimum wage, so for each hour of overtime the miner is paid 1 ½ times the base wage (\$30). This equals an overtime wage of \$45 for each hour of overtime. The incentive pay is not included in the calculation.

## **How are employees, who are paid a salary or wage less than twice the minimum wage and incentive pay, paid for overtime?**

To calculate the overtime rate for employees who are paid a base salary or wage less than twice the minimum wage and incentive pay, establish the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period and calculate the wages.

For example: a salesperson is paid \$10 per hour and a sales commission. In this pay period, he/she works 40 standard hours, two hours overtime and earns \$80 in commission. The wage this salesperson makes is less than twice the minimum wage, so the hourly wage is calculated separately for both the base wage and the incentive pay; then the two are added together.

The base wage is \$10 per hour. If the employee had been paid on salary, an hourly wage is first calculated then used for overtime.

To calculate the hourly rate for the incentive pay, use the formula:

$$\frac{\textit{Incentive Pay (commissions)}}{\textit{Total Hours}} = \textit{Hourly Wage} \quad \textit{or} \quad \frac{\$80}{42} = \$1.91$$

Adding the base wage (\$10) and the incentive wage (\$1.91) provides a total hourly wage of \$11.91.

The employee works 40 regular hours and two overtime hours. The hourly wage (\$11.91), times the standard hours (40), equals the regular wage for the pay period (\$476.40).

The overtime wage is the hourly wage (\$11.91) times 1 ½ (\$17.87). The overtime wage (\$17.97), times the overtime hours (two), equals the overtime pay for the pay period (\$35.74).

The total is the regular wage (\$476.40) plus the overtime wage (\$35.74) for a total of \$512.14.

Since the salesperson has already earned \$420 in wages and \$80 in incentive pay, the top up for the overtime would be \$12.14.

## **Must employers calculate the hourly wage in every pay period for each employee that works overtime?**

Yes; the hourly wage will often change in every pay period, since it depends on the productivity in that period and the number of hours worked. The hourly wage does not need to be calculated for employees who have not worked overtime hours in a pay period.

## **Are employees still entitled to minimum wage for all hours worked?**

Yes, employees are entitled to at least minimum wage in each pay period and cannot agree to work for less. The [Minimum wage](#) page has more information.

## **How is overtime calculated if incentive pay is not paid at the time of production or sale, but at some later date?**

Overtime is calculated based on the hours worked and the wages paid in each pay period. To calculate overtime, the wages paid in a pay period are averaged over the hours worked in that pay period, regardless of when the production actually occurred.

## **How do other incentives like bonuses and profit sharing affect the calculation of overtime pay?**

Incentives that are tied to the productivity of employees are considered part of the wage when calculating overtime. Incentives that are discretionary bonuses, which are not tied to employees' productivity in any way, are not considered part of the wage in calculating overtime.

## **Is there a time when overtime would not be considered?**

There are exceptions to the overtime rules for some employees. See the pages on [employees who generally perform management functions](#) or [employees who have substantial control over their hours of work and earn twice the industrial average wage](#). There are also situations when the hours of work can be varied or averaged, contact the Employment Standards Branch for details.

## **Who is exempt from overtime and hours of work under this provision?**

Employees who have substantial control over their hours of work and earn a regular annual income of at least two times the Manitoba average industrial wage are exempt from overtime. Both criteria are required for an employee to be exempt from overtime.

## **What is the Manitoba average industrial wage?**

Employment Standards will announce the Manitoba average industrial wage in June of each year. It is calculated using information available from Statistics Canada for the previous year. In 2010, the Manitoba average industrial wage was \$40,890.20. Therefore, to qualify for this exemption from after June 1, 2011 an employee must have a

regular annual wage greater than \$81,780.40 per year.

## **Will this apply to employees paid by the hour or the week?**

Yes, regardless of how employees are paid, if they earn more than twice the Manitoba average industrial wage per year they meet the earning criteria. This also applies to employees who receive a base salary that is under the required level, but receive production bonuses or commissions that would raise their earnings above the required level.

In any case, employees also need to have substantial control over their hours of work.

## **How is substantial control over hours of work defined?**

Most employees are told by the employer when they are required to work, what days they will work, and the hours they will work. Although these employees can request changes to their schedules, they do not have the final say if the request would be allowed. Most employees do not have substantial control over their hours of work.

Other employees have the ability to organize their work schedule to suit the needs of themselves and clients. They may need to check in with their employer occasionally, but the employer generally doesn't set the schedule or control their day-to-day activities. These employees would generally have "substantial control over their hours of work."

## **Who determines if employees have substantial control of the hours of work?**

The employer is responsible for establishing the terms and conditions of employment. If an employer believes that this exclusion applies to their employees, they must be able to show that the employee has substantial control over the hours of work.

Each work relationship is different. If an employee can choose to work or not work at their discretion, might have substantial control of their hours of work. When trying to determine if an employee has substantial control over the hours of work the employer should consider the entire working relationship.

## **Some employees establish their schedule based on their clients availability, not when the rest of the office works. Would they have substantial control over the hours of work?**

Many factors affect if employees controls their hours of work. When employees work is not as important as the flexibility to adjust a schedule without the need for approval from employers.

## **Do both criteria need to be met to be exempt from overtime?**

Yes, to be exempt from overtime, employees must have substantial control over their hours of work and earn an annual regular wage of greater than twice the Manitoba industrial average wage.

## **An employee only worked part of the year, making \$40,000 in five months. They control their own hours; does this provision apply to them?**

Generally, all employees are entitled to overtime. If an employer wants to use this exemption to exclude an employee from overtime, they must be able to show how the employee meets both criteria. The best way to show an employee has met the income threshold is their past performance.

If a full year of work has not been completed it would be up to the employer to show that the employee would meet the threshold. In the example an employee who earns \$40,000 in five months would be on pace to earn \$96,000 a year. The employer may be able to show that this was likely and the employee would have earned more than the threshold.

## **Who is exempt from overtime and hours of work under this provision?**

Employees who perform management functions primarily are exempt from overtime under this provision. Management functions affect the control and direction of a business. A key factor is the amount of independent judgment and discretion employees have when operating the business. The more discretion and authority employees have to make business decisions, the more likely it is they are performing management functions primarily.

For example in a franchise business where all of the major decisions on staff, budget and marketing are made at the corporate office, employees might not be considered to be performing management functions primarily.

## **What do discretion and authority mean?**

The issue is how much independence the employee has when making decisions. Employees with the power to make a final decision on most issues would have significant discretion and authority. Employees who need to get approval from someone else, such as a general manager or a board of directors, have less. The more decisions employees can make without needing approval, the more discretion and authority they have. The more discretion and authority an employee has the more likely they perform management functions primarily.

For example a retail store manager who can hire additional employees or fire employees without consulting anyone else in the organization, or who is given a budget for marketing and can make decisions on how those dollars are spent, has substantial discretion and authority and would likely perform management functions primarily.

## **Are employees called "manager" or "supervisor" exempt from overtime and hours of work?**

Job titles have no impact on whether an employee is exempt or not. The determining factor is the role the person plays in the organization. The more independent authority and discretion employees have, the more likely they

perform management functions primarily.

## **Are employees who supervise other employees exempt from hours of work and overtime?**

It depends, but not likely. Supervisory duties alone are not primarily management functions. To determine if employees perform management functions primarily all of their job duties must be examined. An issue that must be investigated is who makes the final decision on things like terminations and discipline. Many supervisors make recommendations on these issues but someone with more authority in the company makes the final decision. Generally, supervisors would not perform management functions primarily.

## **Who determines if employees primarily performs management functions?**

If employers wish to exclude employees from overtime they must be able to show how the employees perform management functions primarily.

## **Are managers who take direction from a board of directors exempt from hours of work and overtime?**

It depends on the level of authority the managers are given and their independent discretion to make decisions affecting the business. Many questions need to be investigated including: how active the board of directors is in the day-to-day operation of the business, how involved they are in monitoring expenditures, and whether the manager has the authority to interpret and implement board policies and procedures.

## **What are the standard hours of work?**

Employers can require employees to work up to eight hours in a day and 40 hours in a week as standard hours of work.

Employees who work more than the standard hours are entitled to overtime pay for them.

## **Who controls scheduling?**

Employers make or approve work schedules. Sometimes employers involve employees in schedule decisions, but are not required to do so.

## **Can employers change employees schedules?**

Yes, employers make schedules that suit their businesses and can change work schedules at any time. This includes deciding to close on a certain day, or reduce the number of hours they are open each week.

## **Can employees change schedules?**

Employers control schedules. Some employers allow employees to switch shifts with co-workers or change schedules. For workplaces that do not allow this, schedule changes must be discussed with the employers.

## **Do employers need to pay overtime when schedules have been changed?**

If employees work overtime, they must be paid overtime wages. Employers cannot refuse to pay overtime because the overtime resulted from a switched shift. Employers who allow employees to switch shifts may set a policy that prevents employees from changing shifts in a way means other employees must work overtime.

## **Can employers change schedules even after shifts have started?**

Employers can ask employees to end their shifts, or start additional ones. As of April 30, 2007, employees generally must be paid for the length of their shifts or for three hours, whichever is less, once they have reported for work. More information can be found on the [Wages for reporting for work](#) page.

## **Do employees need permission to take bereavement or family leave?**

No, employees must provide employers with as much notice as possible when taking these leaves, but they do not need employers permission. Employees may take three unpaid days off, each year, to deal with the family needs or personal illness. They may also have three unpaid days off to deal with the death of a family member. More information about these unpaid leaves can be found on the [Family leave](#) or [Bereavement leave](#) pages.

## **How long can employees work without a break?**

Employees must receive a 30 minute unpaid break after every five hours of work. This is the only break required. Many employers will provide coffee breaks, cigarette breaks or other meal breaks. These are allowed as a benefit, but they are not required.

## **What is considered a break?**

Employees are on their own time during breaks. Employees must be free of all responsibility and be able to leave the workplace during their breaks.

## **Must employees be paid for their breaks?**

Employers do not need to pay for break periods, however they may choose to do so.

## **Can employers be excluded from the break requirement?**

Yes, prior to April 30, 2007, employers were required to apply to the Manitoba Labour Board for a meal break variance. Now they must apply to the Employment Standards Branch where the Branch will look at the



circumstances of the employer and the opinions of the employees when considering a meal break variance. Unionized workplaces may have different provisions for work breaks.

## **Are breaks included when calculating overtime?**

Breaks are not included in overtime calculations. For example: employees who work from 9:00 a.m. to 5:30 p.m. with 30 minutes for lunch, have worked an eight-hour day. Keeping accurate records will show when employees have worked and when they are on breaks.

## **Do employees get a day off each week?**

Most employees are entitled to a rest period of not less than 24 consecutive hours each week. Domestic and residential care workers must receive at least 36 consecutive hours of rest, when they are not required to perform work, each week. Employees can choose not to take the day off if there is work available from the employer.

## **Are employees entitled to the same day off each week?**

No, scheduling is the employer's responsibility. The weekly day of rest does not need to be the same day each week.

## **Are employees paid for the day of rest?**

No. Employers are not required to pay wages for a weekly day of rest.

## **Can employers apply to be excluded from the weekly day of rest?**

Yes. Prior to April 30, 2007 employers were required to apply to the Manitoba Labour Board for a variance to exclude them from the weekly day of rest. Now employers are required to apply to the Employment Standards Branch for a variance to exclude their workplace from the weekly day of rest. Employers need to show that a day of rest:

- is an undue hardship to the employer
- is of little or no benefit to the employees because of the remote location of the business
- unduly restricts the operation of the business that operates only part of the year
- causes severe loss to the business owing to the circumstances in which it operates

## **Who is excluded from a weekly day of rest?**

Security personnel, caretakers and power engineers who live in the buildings where they work are not required to have a weekly day of rest. Employees working during a declared emergency or employees who perform management functions primarily are also excluded.

## **How are employees' wages protected?**

- 1) Under the legislation, employees are entitled to be paid all wages earned.
- 2) Employees must be paid at least minimum wage, and may not agree to work for less.
- 3) Deductions from employees wages must directly and clearly benefit the employees.

## **What types of things cannot be deducted from employees wages?**

Employers cannot charge interest or fees for cashing cheques or providing payroll advances. Employers cannot recover business expenses from the wages of employees. For example an employer cannot deduct for cash or inventory shortages, uniforms, or damages.

## **What can be deducted from employees' wages?**

Employers can correct payroll errors, recover cash advances, and make any deduction required by provincial or federal law (statutory deductions). In addition employees can agree to pay for things they consider a direct benefit, like meals or purchases from the employer.

## **What is a direct benefit to employees?**

Examples of deductions that directly benefit employees include: health or insurance packages, social funds, voluntary purchases of goods or services from the employer and some types of educational expenses.

Common examples would be meals, rent or other purchases an employee wants to make from an employer.

The employee must agree to the deduction. This often happens at the start of employment. For example an employer will have a mandatory health insurance package. If the employee was aware of the health insurance package before they began to work for the employer, and chose to accept the job, Employment Standards would determine that the employee agreed to the deduction.

## **Can employees opt out of a group benefit plan or social fund?**

No, group benefits or services that employers may provide as a condition of employment are allowed because they directly benefit employees as a whole. It is an employees choice whether to use the benefit that is provided.

## **Can employers deduct the costs of a uniform, or require employees to buy uniforms?**

No, uniforms are a direct benefit to employers. Employers cannot make employees buy uniforms.

## **What is considered a uniform?**

Employers can require employees to wear a uniform; however, they cannot make an employee pay for it. Clothing unique to a business is a uniform. Uniforms are identified with the employers logo or symbol, name or colours; making it of no practical use outside of that workplace. Employees often have no choice in style, colour or where to buy it. Employers can require that items of clothing, in specific colours be worn, as long as employees could use them somewhere else.

## **Can employers have a dress code?**

Yes. Employers can have a dress code and set standards for the look of employees while they are working. This may include telling employees to remove jewellery while working. For example, a restaurant can require all serving staff to wear a clean, pressed white shirt and black pants at work.

If the dress code requires clothing that would be of no practical use to the employee out of the workplace, it is a uniform and not a dress code. Otherwise, the employees can wear their own clothes to work.

A common example of a dress code is the loose fitting clothing that identifies nurses in the workplace. Employers can require this outfit, and do not have to provide or pay for it unless they require a logo or emblem that identifies the company.

## **Can employers require special clothing?**

Employers can reasonably expect employees to provide some special clothing that is common in the industry. Similar to tools, special clothing must be useful with other employers. It may be specific to the job, but not to the employer. As with tools, employees must have choices about where and what to buy. The clothing cannot have a logo or other markings that make it useful only for one employer, and the clothing must remain the property of the employee.

For example: nurses may wear a certain type of loose fitting clothing. It identifies them as nurses, and is usually required for the job. Employers can expect these employees to have this outfit, and would not have to provide or pay for it unless they require a logo or emblem that identifies the company.

## **Can employers deduct the cost of cleaning special clothing or uniforms?**

Employers can provide a service, such as laundry or dry cleaning, and ask employees for payment if the service directly benefits employees. In most cases, employees must each have the choice to use the service, or not.

## **Can employers deduct payroll errors or advances from employees' wages?**

The employee and the employer should discuss when and how the cash advance or payroll error will be paid back. They can agree to any payment schedule, such as paying in regular instalments or in one lump sum.

If the employer and the employee cannot agree on how and when the cash advance or payroll error will be paid back, the employer can deduct the amounts equal to what would be allowed if they had a garnishment under The Garnishment Act.

## **How long can a deduction for a payroll error or advance continue to be taken from employees pay cheques?**

The amount that can be deducted on each paycheque is limited by *The Garnishment Act*. Deductions can continue until the overpayment or advance is repaid.

## **What if employees authorized the deduction?**

Employees can only authorize deductions where there is a direct benefit to them. If an employee agrees to pay for anything that the Employment Standards code will not allow, the employer may be ordered to pay the money back to the employee.

## **Who must keep records?**

Employers must keep records of their employees, the hours they work and the wages paid. Although it is not a requirement, it is strongly suggested that employees also keep records of when they work and what they have been paid.

## **What records are employers required to maintain?**

Employers must keep records for all employees that show:

- name, address, date of birth and occupation
- date the employee starts work
- regular wage and overtime wage when employment starts, the dates of changes to the wage and the new wage
- regular and overtime hours of work, recorded separately and daily
- dates wages are paid and the amount paid on each date;
- deductions from wages, dates and reasons for each deduction
- dates of time off taken instead of overtime wages
- dates each general holiday is taken
- dates and wages paid for hours worked or required to be worked on a general holiday;
- start dates of annual vacations, dates work resumes, period of employment in which it is earned, amount of vacation allowance paid and date paid
- amount of outstanding vacation allowance paid upon termination, and payment date
- copies of documents on maternity leave, parental leave, compassionate care leave or other leaves, including dates and number of days taken as leave
- dates of termination of the employment

Employment Standards requires employers to keep these records for at least 3 years. It is important to note that other agencies, such as the Canada Revenue Agency, may require employers to keep different types of records, for different lengths of time.

## **How often must employers update records?**

Employers must ensure their records are accurate and current . Some items, such as hours of work, need daily updates. Others, such as employee addresses, should be updated when there are changes.

## **How long must employers keep records?**

Employers must keep records for at least three years after records are made. Records showing addresses, dates of birth and wage changes are kept for three years after the termination of employment.

## **When must employees be paid?**

Employees must be paid within 10 working days of the end of a pay period, or 10 working days from the end of employment, if the employment is terminated.

## **How long can a pay period be?**

A pay period cannot be longer than 16 days because employees must be paid at least twice a month.

## **Can employees have monthly or annual salaries?**

Although employees must be paid at least twice a month, how that is paid out is up to employers. If an employee is paid based on a monthly salary, it must be divided into at least 2 payments

A monthly or annual salary can be divided into an hourly wage for record keeping purposes, employers must record the regular and overtime wage for each employee.

## **Can employers pay their employees differently?**

Employers must pay at least minimum wage, but they are free to offer and negotiate different wages and payment plans for each employee. However, employers cannot discriminate between male and female employees. Example: employers cannot pay men on a different wage scale than women, for work that is the same or substantially the same.

## **Do employers need to provide pay statements when they pay wages?**

Employers must give all employees written pay statements when they are paid wages. Pay statements are sometimes referred to as pay stubs.

## What must a pay statement show?

Pay statements must show:

- the regular wage and the number of regular hours worked in the pay period
- the overtime wage and any overtime hours worked in the pay period
- all deductions from wages, with a date and reason for each deduction
- the total amount of wages paid to the employee

## What are the standard hours of work?

Standard hours of work are the maximum number of hours employees may be required to work at regular wage. In most cases, it is eight hours in a day and 40 hours in a week. Hours worked over the standard hours are considered overtime hours.

## What are employees paid for overtime?

Employers who ask or allow employees to work longer than the standard hours of work must pay these employees 1 ½ times their regular hourly wage for each hour worked during overtime.

## How are overtime hours determined?

Overtime is determined by the number of hours worked in a day and the number of hours worked in a week. Days where overtime hours are worked are shown in bold:

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total	Regular	Overtime
	8	8	8	8	8	8	48	40	8
	8	6	6	8	<b>10</b>		38	36	2
	<b>10</b>	6	<b>10</b>	6	<b>10</b>		42	36	6
7	6	8	7	7	8		43	40	3

## Who decides when overtime will be worked?

Employers control scheduling in the workplace. Employees cannot work overtime without the knowledge or permission of their employers. If employers ask, allow or acknowledge the overtime work, it must be paid at 1½ times their regular wage rate.

Employees and employers can agree as part of the terms of employment, that a certain amount of overtime is required. Except in declared emergencies, overtime is voluntary or by agreement.

More information can be found on the [Overtime](#) page.

## **Can employees bank overtime and take time off later?**

Yes, employers and employees can agree in writing, to bank overtime. They can make their own rules regarding how this time is provided or paid out as long as the agreement recognizes these minimum rules:

- For each hour of overtime worked, employees get 1 ½ hours off work with regular pay;
- Employers must schedule time-off during regular hours;
- Employers must provide the time-off within three months of it being earned, unless the Director of Employment Standards authorizes a longer period.

## **What if the banked time off is not taken?**

Employees must take the banked time off within three months. If the time is not taken within three months, employers must pay out the overtime wages, at 1 ½ times the regular wage for each hour of overtime worked.

## **How does overtime affect payment for vacations and general holidays?**

General holiday pay and vacation pay are calculated as a percentage of total earnings. Overtime pay is normally not included in the calculation. There is an exception when these wages are banked and taken as time off: they are then included in the calculation for general holiday pay and vacation pay.

## **Do salaried employees receive overtime?**

Yes, employees who are paid by salary are entitled to overtime. For salaries, an hourly wage may be calculated to determine the overtime pay per hour.

For example: employees who earn a salary of \$400 per week and are expected to work a 40-hour week are paid \$10 per hour for the standard hours. If they work overtime, they are paid 1 ½ times their regular wages. In this case, \$15 per hour.

## **Can a salary include some overtime?**

Yes, employers and employees can agree on a salary that includes a specific amount of overtime. Agreements should be made before any overtime is worked. The agreement must clearly identify what the employees are paid for working more than the agreed standard hours. Written agreements can save future disagreements.

For example: employees who earn a salary of \$550 per week and are expected to work a 50-hour week are paid \$10 per hour for the standard hours (40) and \$15 for each hour of overtime (10). If the employees work more than 50 hours, they are paid the overtime rate of \$15 per hour.

## **Do employees who are paid by commission receive overtime?**

Yes, employees who are paid by an incentive plan, such as commission are entitled to receive overtime pay. Employees earning incentive pay are entitled to at least minimum wage and the correct overtime pay for any

overtime hours worked.

As of April 30, 2007, employees who are paid on an incentive plan are entitled to overtime based on their average hourly wage, instead of minimum wage. See the [Incentive-based overtime](#) page for more information.

## **Are there employees who are not entitled to overtime?**

As of April 30, 2007 there are some groups of employees who are not entitled to overtime. Employees who perform management functions primarily and employees who substantially control the hours of work and earn twice the Manitoba average industrial wage are excluded from standard hours of work and overtime. More information can be found on those pages.

## **Are there exceptions to the standard hours of work?**

There are exceptions, which include:

- areas of the construction industry
- companies with collective agreements containing different hours
- companies with a variance order from the Manitoba Labour Board or the Employment Standards Branch
- the landscaping business

## **What are the standard hours of work for the construction or a landscaping business?**

The standard hours of work for the construction industry are established in The Construction Industry Wages Act. Information can be found on the [Wage Schedule ICI Construction](#) and [Wage Schedule Heavy Construction](#) pages.

For employees working in the landscaping business, the standard hours are varied from April 15 to November 30 each year. During that period, the standard hours are 10 hours a day, 50 hours a week and 2,080 hours a year.

## **What is a landscaping business?**

Landscaping businesses involve construction or maintenance of a landscape, including lawn cutting, fertilizing, applying sod and controlling weeds. They do not include the maintenance or cleaning of parking lots or snow removal, or working with inventory or customers at a gardening/ landscaping retail outlet.

## **What types of construction activities are included in the industrial, commercial and institutional sector?**

The industrial, commercial, and institutional sector (ICI) is defined by *The Construction Industry Wages Act*. It



includes most industrial, commercial and institutional construction projects in Manitoba and is often called the building construction sector.

Activities under the ICI sector must take place onsite and include building, decorating, removing and relocating of buildings or other structures other than houses.

Employers and employees who need information about their individual situations should see the [ICI Wage Schedule](#) page or contact the Employment Standards Branch directly.

## **What construction activities are excluded from the ICI sector?**

The following construction activities are specifically excluded:

- house building
- onsite maintenance, redecorating, renovating, remodeling and repair of an ICI building or other structure that does not require a blueprint or a structural or architectural change.
- prefabrication of structures away from the building site.
- regular maintenance and repair of buildings, which is paid by the owner, tenant or occupant
- construction of farm buildings

## **What is the minimum wage in the ICI construction sector?**

The minimum wage depends on employees job classifications, where the jobs are located and size of the jobs. The classifications and wage rates can be found in the [ICI Wage Schedule](#).

## **How are the ICI classifications categorized?**

1. Journeyperson: anyone with a journeyperson certificate from a recognized authority (usually a provincial apprenticeship branch) or anyone who has learned the skills by working in the trade, for at least six years
2. Skilled tradesperson: anyone who has worked at least 2,400 hours in one of the following trades: asbestos abatement; elevator construction; floor covering; insulating; specialty labour (assistant bricklayer); general construction; marble, tile and terrazzo installation; plastering; pre-fabricated metal building erecting; sheeting, decking and cladding; and scaffolding.
3. Trainee: anyone training to become a skilled tradesperson There are two trainee wage levels:
  - Trainee 1 for less than 1,200 hours of work in a trade
  - Trainee 2 for between 1,200 and 2,400 hours in a trade.Employers may not have more than one trainee for each skilled tradesperson.
4. Construction worker: anyone working on a construction site who is not a journeyperson, skilled tradesperson, trainee, or apprentice

## **Can employers have unlimited numbers of trainees and construction workers on a job site?**

No, legislation limits the number of trainees and construction workers. Employers can only employ one trainee for each skilled tradesperson working on a job site. They can also only employ one construction worker for every 10 employees working on a site. Staff not working in construction, (Ex: administrative or bookkeeping), should not be counted in the ratio.

For example: if an employer has three carpenters, two carpenter apprentices, two plasterers and one plasterer trainee on a worksite, there can also be one construction worker at that site.

## What do trainees in the journeyperson trades get paid?

People in training to become journeypersons are called apprentices. The wage rates and staffing ratios are set by *The Apprenticeship and Trades Qualifications Act*. For more information contact the Apprenticeship Branch in Winnipeg at 945-3337; 1-877-978-7233 toll free, or visit their website at [www.gov.mb.ca/tradecareers](http://www.gov.mb.ca/tradecareers).

## Are the minimum wages for ICI the same for all projects across Manitoba?

Yes, as of June 1, 2009 the minimum wage rates for ICI projects are the same regardless of where the project is in Manitoba.

## What are the hours of work and overtime rules for the ICI sector?

The standard hours of work are 10 hours per day and 40 hours per week. All additional hours are overtime and must be paid at the overtime rate. More information on calculating the regular and overtime hours can be found on the [Overtime](#) page

Before 2006, different trade classifications and areas in Manitoba had different hours of work and overtime standards. The standards are now the same for all employees working in the industrial, commercial and institutional construction sector.

## Industrial, Commercial and Institutional Minimum Wages

<i>Classifications</i>	<i>Winnipeg/ Major Building</i>		<i>Rural</i>	
	<i>June 1, 2006</i>	<i>October 1, 2006</i>	<i>June 1, 2006</i>	<i>October 1, 2006</i>
1. Asbestos Abatement Worker Skilled Tradesperson	\$19.00	\$19.50	\$15.20	\$17.55
(a) Trainee 2 (1,201 to 2,400 hours)	\$15.20	\$15.60	\$12.16	\$14.04
(b) Trainee 1 (0 to 1,200 hours)	\$11.40	\$11.70	\$9.12	\$10.53
2. Boilermaker Journeyperson	\$25.10	\$25.80	\$20.08	\$23.22
3. Bricklayer Journeyperson	\$26.60	\$26.90	\$21.28	\$24.21
4. Carpenter Journeyperson	\$24.15	\$24.50	\$19.32	\$22.05
5. Concrete Finisher Journeyperson	\$20.85	\$21.15	\$16.68	\$19.04

6. Construction Electrician Journeyperson	\$28.00	\$28.95	\$22.40	\$26.06
7. Crane and Hoisting Equipment Operator Journeyperson	\$23.84	\$24.20	\$19.07	\$21.78
(a) Mobile Crane Operator	\$25.65	\$26.15	\$20.52	\$23.54
(b) Tower Crane Operator	\$20.60	\$21.00	\$16.48	\$18.90
(c) Boom Truck Hoist Operator				
8. Elevator Constructor Skilled Tradesperson	\$30.00	\$30.00	\$24.00	\$27.00
(a) Trainee 2 (1,201 to 2,400 hours)	\$24.00	\$24.00	\$19.20	\$21.60
(b) Trainee 1 (0 to 1,200 hours)	\$18.00	\$18.00	\$14.40	\$16.20
9. Floor Coverer Skilled Tradesperson	\$21.95	\$22.50	\$17.56	\$20.25
(a) Trainee 2 (1,201 to 2,400 hours)	\$17.56	\$18.00	\$14.05	\$16.20
(b) Trainee 1 (0 to 1,200 hours)	\$13.17	\$13.50	\$10.54	\$12.15
10. Glazier Journeyperson	\$22.80	\$23.40	\$18.24	\$21.06
11. Industrial Mechanic (Millwright) Journeyperson	\$26.05	\$26.70	\$20.84	\$24.03
12. Insulator Skilled Tradesperson	\$22.40	\$23.10	\$17.92	\$20.79
(a) Trainee 2 (1,201 to 2,400 hours)	\$17.92	\$18.48	\$14.34	\$16.63
(b) Trainee 1 (0 to 1,200 hours)	\$13.44	\$13.86	\$10.75	\$12.47
13. Ironworker Journeyperson	\$26.20	\$26.90	\$20.96	\$24.21
(a) Structural Steel Erector	\$22.65	\$23.35	\$18.12	\$21.02
(b) Reinforcing Iron (rebar)	\$25.20	\$26.49	\$20.16	\$23.84
(c) Miscellaneous Metal Worker/ Ornamental Worker				
14.1 Specialty Labourer Skilled Tradesperson (assisting bricklayer)	\$19.80	\$19.85	\$15.84	\$17.87
(a) Trainee 2 (1,201 to 2,400 hours)	\$15.84	\$15.88	\$12.67	\$14.30
(b) Trainee 1 (0 to 1,200 hours)	\$11.88	\$11.91	\$9.50	\$10.72
14.2 General Construction Labourer Skilled Tradesperson	\$18.60	\$18.90	\$14.88	\$17.01
(a) Trainee 2 (1,201 to 2,400 hours)	\$14.88	\$15.12	\$11.90	\$13.61
(b) Trainee 1 (0 to 1,200 hours)	\$11.16	\$11.34	\$8.93	\$10.21
	\$22.25	\$22.25	\$17.80	\$20.03

15. Lather (Interior Systems Mechanic) Journeyperson				
16. Marble, Tile and Terrazzo Skilled Tradesperson	\$21.20	\$21.30	\$16.96	\$19.17
(a) Trainee 2 (1,201 to 2,400 hours)	\$16.96	\$17.04	\$13.57	\$15.34
(b) Trainee 1 (0 to 1,200 hours)	\$12.72	\$12.78	\$10.18	\$11.50
17. Painter, Decorator Journeyperson	\$20.85	\$21.35	\$16.68	\$19.22
18. Plasterer Skilled Tradesperson	\$22.25	\$22.30	\$17.80	\$20.07
(a) Trainee 2 (1,201 to 2,400 hours)	\$17.80	\$17.84	\$14.24	\$16.06
(b) Trainee 1 (0 to 1,200 hours)	\$13.35	\$13.38	\$10.68	12.04
19. Plumber Journeyperson	\$28.00	\$28.60	\$22.40	\$25.74
20. Pre-fabricated Metal Building Erector Skilled Tradesperson	\$22.20	\$24.00	\$17.76	\$21.60
(a) Trainee 2 (1,201 to 2,400 hours)	\$17.76	\$19.20	\$14.21	\$17.28
(b) Trainee 1 (0 to 1,200 hours)	\$13.32	\$14.40	\$10.66	\$12.96
21. Refrigeration and Air Conditioning Mechanic Journeyperson	\$27.10	\$27.80	\$21.68	\$25.02
22. Roofer Journeyperson	\$22.65	\$23.15	\$18.12	\$20.84
23. Sheeter, Decker and Cladder Skilled Tradesperson	\$25.50	\$25.95	\$20.40	\$23.36
(a) Trainee 2 (1,201 to 2,400 hours)	\$20.40	\$20.76	\$16.32	\$18.69
(b) Trainee 1 (0 to 1,200 hours)	\$15.30	\$15.57	\$12.24	\$14.02
24. Sheet Metal Worker Journeyperson	\$28.55	\$29.50	\$22.84	\$26.55
25. Sprinkler System Installer Journeyperson	\$30.75	\$31.05	\$24.60	\$27.95
26. Steamfitter/ Pipefitter Journeyperson	\$28.00	\$28.60	\$22.40	\$25.74
27. Scaffolder Skilled Tradesperson	\$24.15	\$24.50	\$19.32	\$22.05
(a) Trainee 2 (1,201 to 2,400 hours)	\$19.32	\$19.60	\$15.46	\$17.64
(b) Trainee 1 (0 to 1,200 hours)	\$14.49	\$14.70	\$11.59	\$13.23

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