

CONTRACT INTERPRETATION MANUAL

Article 27 OVERTIME

Interpretation Guidelines

Article 27.01 – Definition

Overtime applies to the following situations:

1. When an employee works beyond the normal daily full-shift hours either before or after their shift as set out in Article 26.01 or specified in the individual worksite memoranda of understanding for Extended Work Day schedules.
2. When an employee works on a scheduled day off as defined in Article 1.02 for all situations except for employees who are placed on-call, as Article 29.04 (C) contains a more expanded definition of scheduled day off for on-call purposes so it includes application to RPT and casuals.
3. When an employee works more than the normal full shift hours in a week as defined by Article 26.01. It is challenging to determine when weekly overtime applies, unless the employee is working a Monday to Friday schedule.
4. When the Employer changes a regular employee's schedule with less than 10 days notice (14 days for stat days).
5. When an employee on a flexible work schedule (Article 25.07) works more than 150 hours in a designated 4 week period.

Flexible Schedule

With a flexible work schedule, overtime is limited to 1.5 x for all hours and certain criteria have to be met before overtime can be paid:

1. The work schedule must be pre-planned in advance with the Employer for a specified 4 week period and posted (i. e. you should know in advance the days you are scheduled to work an 8 or 9 hour shift).
2. The scheduled hours in the 4 week schedule should total no more than 150 hours;
3. Hours worked in excess of the 150 hours in the previous 4 week schedule that remain untaken are to be included into the next 4 week schedule as time off (flex days);
4. If the flex time is not taken within the next 4 week schedule it is to be paid out at 1.5x overtime rate; and
5. The employee is required to keep an accurate record of actual hours worked and submit it to their supervisor (Article 25.07 (F)).

Need to differentiate between premium payments which are paid at an OT rate but are not hours over and above regularly scheduled hours and actual overtime. For example, Article 25.08 Insufficient Notice is a premium paid at OT rates for moving a shift with short notice it is not extra hours and therefore not OT.

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Article 27.02 – Authorization

The Employer must notify employees who can approve OT. Usually this is someone who is excluded from the bargaining unit; however, in some cases this could be the employee who has been designated in-charge (Article 59.12).

It is the responsibility of the Employer to make sure systems are in place to ensure OT is properly authorized in advance of it being worked.

Employees have a responsibility to make every effort to get authorization before working OT.

Employers have a responsibility to develop and publicize policies that specify the instances where an employee may work OT without prior authorization.

The Employer is obligated to offer OT by seniority for all hours booked more than 48 hours in advance of the start of the shift (Article 27.07). However, OT booked on less than 48 hours before the start of the shift does not have to be by seniority.

Article 27.03 - Employee's Right to Refuse Overtime

The Employer may ask employees to work “a reasonable amount” of overtime. The question of what would be considered “a reasonable amount” is partially defined by 27.03 (B) in that:

1. RFT employees may only be asked to work 1 of their scheduled days off;
2. Employees have the right to say no to overtime that results in working a double shift, particularly if the employee is working an extended work day schedule; and
3. Employees have the right to say no to working on a scheduled day off.

Employees may be required by the Employer to work overtime if it is an “emergency” situation. Employers often apply a wide application to the word “emergency” to try and compel staff to work OT (Standards of Practice, BCCNM and ESA)

Grievances need to be filed where employees either:

1. Believe they are required to work an unreasonable amount of OT, or
2. Believe the Employer is defining the situation as an “emergency” inappropriately in order to force them to work OT.

Article 27.04 – Application

Employees should advise the Employer whether they wish to bank their OT or take it in pay. The agreement is silent on this issue, so the process around notification is likely governed by Employer policies at each worksite.

If the employee chooses to bank their overtime, the Employer is required to keep an accurate record of the OT worked by each employee. It is recommended that each employee also keeps an accurate record of the OT they have worked. As of September 2019, the maximum that an employee may keep in their OT bank is 150 hours see Joint Interpretation between HEABC and the NBA included below.

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Time off is accumulated at OT rates (i.e. on the basis of 1.5x or 2x hours based on the OT rate that applies).

E&OE

HEABC-NBA Provincial Collective Agreement – Joint Interpretation

ARTICLE 27.04 – OVERTIME BANK

During negotiations for the 2019-2022 NBA Provincial Collective Agreement, the parties agreed to amend the language of Article 27 and limit the number of straight time hours an employee may have in their overtime bank at any time.

Subsequently, the parties agreed to increase the maximum amount of straight time hours that may be banked to 150 hours for the term of the 2019-2022 NBA Collective Agreement. The parties agree that either party can raise the issue in the next round of collective bargaining.

As of May 27, 2019, employees are not permitted to accumulate hours in excess of 150 hours. For clarity, any employee who currently has more than 150 hours in their OT bank cannot bank additional hours until their balance falls below 150 hours, at which point their bank may not then exceed the 150-hour maximum.

All accumulated hours shall remain in the employee's OT bank and may be taken as time off, or pay, prior to September 30, 2019. Any hours taken as time off must be taken at a time that is mutually agreed to by the employer and employee.

On September 30, 2019, all banked hours exceeding the 150-hour maximum will be paid out. No employee will have more than 150 hours in their OT bank as of October 1, 2019. Going forward, employees will not be subject to the biannual payout; accumulated OT will remain in the bank until such time as the employee request a payout or books time off in lieu.

Article 27.05 - Overtime Pay Calculation

To determine OT entitlement, casuals need to look in the PCA and the interpretation guidelines under Article 11.04 (I).

Entitlement to OT for work in excess of the normal daily full shift hours:

1. An employee has to work a minimum of 15 minutes OT in order to make a claim for OT pay. However, employees are entitled to straight time pay up to the 15 minute mark. New in 2019 an employee does not need preapproval to complete work at the end of a shift.
2. The definition of normal daily full shift hours depends on whether it is a standard or extended work day schedule (Article 27.05 in the Extended Work Day Memorandum).
3. Articles 25.07 and 27.01 (B) provide all the criteria for community-based employees working a flexible work schedule.

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Definition of a Day

This is an issue for RPT employees who work 2 shifts within a 24 hour period with a break in between. For example, a employee who works 0700-1500 and then is called in to work for the 2300-0700 shift – are they entitled to be paid OT for the entire 2300-0700 shift?

1. The day was defined as "within a 24 hour period commencing when the employee starts their regular shift even when that is earlier than scheduled" (Providence Health Care (Youville Residence) and BCNU, March 27, 2001 (Moore)).
2. The answer to the above question is that the employee is entitled to be paid overtime at 1.5x their regular rate for the first 2 hours starting at 2300 hours and 2x for the remainder of the shift.

Entitlement to OT for Work in Excess of the Normal Weekly Full Shift Hours

1. Employees do not usually work a Monday to Friday rotation. Therefore, the definition of a week needs to be individualized to each employee.
2. Arbitrators have therefore adopted the definition of a week as seven days starting with the first day of a consecutive run of shifts and any hours in excess of the weekly full shift hours in those seven days should be paid at a premium rate (HLRA (Vancouver General Hospital) and BCNU, November 21, 1988 (Munroe) and Providence Health Care (Youville Residence) and BCNU, March 27, 2001 (Moore)).

Payment of Shift Premiums

1. In Dawson Creek and District Hospital and BCNU, August 11, 1988 (Larson), it was determined that shift premiums are only payable if the employee works overtime after a shift that would normally attract shift premiums.
2. Responsibility pay and weekend premiums are also to be paid, as the language makes it clear they are paid for "all hours worked".

Overtime Pay for Work on a Scheduled Day Off

1. RFT employees receive 2x OT rate for work on any of their scheduled days off.
2. The OT provisions for RPT employees were changed in 2001 as a result of a legislatively imposed agreement. As a result, the application of the imposed language needed to be settled through arbitration (Consent Award: HEABC and NBA (IWAD), October 1, 2004 (Ready)).
3. RPT employees get the 2x overtime rate:
 - (a) For all hours worked over 4 consecutive extended (8hr+) shifts;
 - (b) For all hours worked over 6 consecutive standard (7.5 to 8hr) shifts;
 - (c) For all hours worked over 5 consecutive shifts where 3 or more are extended shifts;
 - (d) For all hours worked over 6 consecutive shifts where 4 or more are standard shifts; or
 - (e) For all hours worked over 225 straight time hours over the course of 3 bi-weekly pay periods.

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OT for part time

The Consent Award dealt with the application of “over 225 straight time hours” as follows (HEABC and NBA (IWAD), October 1, 2004 (Ready)):

1. The 225 straight time hours does not include any hours paid as OT in previous 3 consecutive bi-weekly pay period calculations.
2. Paid leaves shall be included in the 225 straight time hour calculation so that RPT employees are treated the same as RFT employees.

How to apply the language:

1. OT Hours:
 - (a) The Consent Award basically ensures there is no double-counting of OT hours.
 - (b) They are calculated either as part of Article 27.05 (B) (3) (a) or as part of Article 27.05 (3) (b). Not both. For example, the employee is paid OT in the 1st of a block of 3 consecutive pay periods for working more than 4 extended hour shifts in a row (Article 27.05 (B) (3) (a) (i)); as a result these OT hours cannot be counted as a part of the calculation of 225 hours that group of 3 pay periods.
2. Paid Leaves:
 - (a) Vacation, sick leave, special leave, union leave, etc. will all be counted towards the 225 hours.
 - (b) For example, if an employee has a sick day within a block of 3 pay periods, it will not be subtracted from the straight time hours worked for the purpose of calculation of the 225 hours.

Suggestions for keeping track of the straight time hours worked:

1. Keep a record of all hours worked in a year.
2. Mark in your regular schedule and any additional shifts that are scheduled and accepted at straight time rates.
3. Keep a running count of the straight time hours worked as you move through each block of 3 pay periods.
4. Subtract any hours paid at OT rates from your total.
5. If your total straight time hours are over 225 hours in any block of 3 consecutive pay periods put in a claim for OT at 2x rates. For example, if you have worked 226 hours in a 6 week period, you get paid 2x for 1 hour:
 - (a) Subtract the 1 hour paid at OT rates from the hours worked in pay period number 3, of that block, and then
 - (b) Use that new hour count in each ongoing count that would include pay period number 3.

OT on a Statutory Holiday

OT at 1.5x rate is applied to the premium rate paid for OT hours worked either:

1. On the actual stat holiday; or
2. On a day that was originally marked as a stat holiday on the work schedule and changed by the Employer with less than 14 days' notice.

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For OT worked on a regular stat holiday the employee should receive 3 times the employee's regular wage rate, calculated as follows:

1. $1.5 \times 2 = 3$ times the employees regular wage rate; and
2. On a day that was originally marked as a stat holiday on the work schedule and changed by the Employer with less than 14 days' notice. These are the days scheduled in lieu of the actual stat that should be marked and numbered from 1-12 on the employee's work schedule

For OT worked on a super stat holiday (e.g. Good Friday, Labour Day and Christmas Day), or super stat days marked on the work schedule (e.g. 3, 8, or 11), the employee should receive 3.75 their regular wage rate, calculated as follows:

1. $1.5 \times 2.5 = 3.75$ the employee's regular wage rate.

Arbitration Awards

1. Dawson Creek and District Hospital and BCNU, August 11, 1986 (Larson). It was determined that shift premiums are only payable if the employee works overtime after a shift that would normally attract shift premiums (i.e. evening or night shift). Shift premiums are not payable for OT worked in conjunction with the day shift.
2. Vancouver Hospital and BCNU, November 3, 1996 (Munroe). The primary issue in this case was mutual agreement on work schedules. However also discussed was the definition of a week for the purpose of OT entitlement as being seven days starting with the first day of a consecutive run of shifts and any hours in excess of the weekly full shift hours in those seven days should be paid at a premium rate
3. Providence Health Care (Youville Residence) and BCNU, March 27, 2001 (Moore). The arbitrator agreed with the definition of a week for the purpose of OT entitlement as being seven days starting with the first day of a consecutive run of shifts and any hours in excess of the weekly full shift hours in those seven days should be paid at a premium rate.
4. Providence Health Care (Youville Residence) and BCNU, March 27, 2001 (Moore). The definition of a day was set out in this award as "within a 24 hour period commencing when the regular part-time employee starts their regular shift even when that is earlier than scheduled".
5. Devsi Williams (Ready) 2017 clarified that working on scheduled paid holiday or on scheduled vacation day is OT and therefore bankable.

Consent Awards

1. HEABC and NBA (IWAD), October 1, 2004 (Ready). Clarified the application of OT for RPT employees who work over 216 straight time hours within 3 consecutive pay periods.

Troubleshooter Recommendations – Provided for information purposes only:

1. Queen's Park Centre and BCNU, October 30, 2000 (McPhillips). Grievance dismissed. The same issue of payment of shift premiums for OT worked in conjunction with a day shift was already adjudicated in Dawson Creek and District Hospital. Therefore, the Troubleshooter ruled it was "res judicata".

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27.06 OT Offered and Accepted

New in 2019 there was clarification that if OT was offered by the Employer and accepted by the employee as pre booked, (meaning offered and accepted more than 24 hours before the start of the shift) that OT cannot be cancelled by the employer. OT offered and accepted less than 24 hours prior to the start of the shift may be cancelled by the employer if they find someone to work it at a lower rate of pay or if the workload is not needed.

Scheduled Overtime Article 27 and 11.04(I)										
Overtime Rate	Greater than full shift hours		Scheduled Day Off	Unscheduled Day				Stat Day Article 39.04		
	1.5 x 2 hrs overtime worked	After 2 hrs. worked 2x overtime hours worked	2x all hours worked	>4 shifts of >8 hrs in length 2x	>6 shifts of 7.2 hrs to 8 hrs in length 2x	>5 shifts where 3 or more >8 hrs 2x	>6 shifts where 4 or more are 7.2 hrs to 8 hrs	Work 225 hrs or more (excluding previously OT) in 3 consecutive pay periods 2x	Worked on stat 1.5x holiday rate	When stat moved by employer less than 14 days notice 1.5x holiday rate plus another day off
Regular full-time	✓	✓	✓	N/A	N/A	N/A	N/A	N/A	✓	✓
Regular part-time	✓	✓	N/A	✓	✓	✓	✓	✓	✓ *See 27.05(B)	✓
Casual* *See 11.04(I)	Hours worked over the shift offered and accepted		N/A	✓	✓	✓	✓	N/A	✓ *See 11.04(I)	✓
Flexible work schedule (applies to some community based nurses) Art 25.07 (B) Art 27.01 (B) & Appendix S	Flexible to 150 hrs in 4 wks. Must try to schedule flexed time off within next 4 wks. If not then paid at 1.5x at end of next 4 wk period.		✓	N/A	N/A	N/A	N/A	N/A	✓	✓

Footnotes

Article	27
Sub-Article	27.01, 27.02, 27.03, 27.04, 27.05, 27.06, 27.07
Last Update	31-03-21
Related Articles	1, 6, 11, 25, 26, 28, 29, 32, 35, 39, 56, 57, Memorandum of Agreement Extended Work Day, Appendix N

The interpretations in this manual are provided on a *without prejudice, errors and omissions basis* to any position Unions in the Nurses' Association of Bargaining Agents may take in any arbitral proceeding or any other forum.