

## Article 26

### Article 26 - Hours of Work, Meal Periods, Rest Periods

Related Articles: 11.02, 11.03, 25.01, 25.02, 25.07, 27.05, Memorandum Extended Work Day/Compressed Work Week, Appendix R

#### Interpretation Guidelines

#### Article 26.01 - Hours of Work

1. Full-time employees work an average of **36 hours per week** calculated over the length of the rotation.
2. The **normal daily full- shift hours** shall be **7.5 hours** for all nursing positions that existed before June 1, 1997 - the effective date of the Merged Provincial Collective Agreement. For example: In **acute care and LTC worksites** previously covered by the Master, CCERA and Pricare agreements.
3. The normal daily full shift hours for **community based employees** who previously worked a 35 hour work week will **usually be 7.2 hours** (e.g. see 25.07).
4. **The Employer is required to follow the 6 steps to achieve mutual agreement** before changing a 7.5 hour schedule to a 7.2 hour schedule.
5. **Shifts longer than 7.5 hours are considered to be an Extended Work Day/Compressed Work Week rotation** and are covered by the Extended Work Day Memorandum in the PCA. Each employee is required to sign a Release of Overtime for Extended Hour Shifts for shifts greater than 8 hours in length.

**See: Interpretation guidelines on creating rotations at the end of Article 25 in this manual and also see the Shift Rotation Manual.**

6. **Regular part-time and casual employees** working on a unit with a mixed rotation of standard and extended work day shifts are entitled to overtime if they are called in for a standard shift and asked to extend their shift to an extended hour shift.

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**For example:** In a recent arbitration, the part-timer normally worked 7.5 hour shifts on the weekend but was called in 4 hours early for workload reasons, the Employer paid the employee at straight time saying she worked an extended hour shift. However Arbitrator Kelleher, in referencing the wording on the waiver form for over time, said that it was clear that a 7.5 hour is still a full shift and therefore the employee was entitled to overtime for working the additional 4 hours. See [Arbitration Award: *Simon Fraser health Region Eagle Ridge Hospital and Ridge Meadows Hospital*, February 8, 2002 (Kelleher)]

### Article 26.02 - Consecutive Hours of Work

Related Articles: Appendix Y

#### Interpretation Guidelines:

The daily hours of work must be consecutive for all employees with 2 exceptions:

1. **Community based employees** who work a flexible work schedule in accordance with the provisions in 25.07, may work a split shift, but only at the employee's request. In other words, the Employer cannot require an employee to work a split shift.
2. **\*Client specific nurses\*** working for a home support agency as long as two conditions are met:
  - a) The employee must be working more than one scheduled shift per day, and
  - b) The split shifts need to be confined to a 12 consecutive hour period.  
(Also see Employment Standards Act).

Client specific nurses have the right to refuse split shifts in circumstances that do not meet the above criteria.

**Note:** These positions may no longer exist in the PCA as Para Med the primary employer of client specific nurses has ceased operations in BC.

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### Article 26.03 - Meal Periods

Related Articles: 27, 28, 29, 30, Memorandum of Agreement Extended Work Day

#### Interpretation Guidelines:

Arbitrators have stated that Article 26.03 is held to be "a complete code" for meal breaks. In other words, in their view, no other article in the PCA can change the meaning of what it says in the meal break provisions in Article 26.03. [See Arbitration Award: Tahsis Hospital Society and BCNU, February 18, 1985 (Munroe) and Expedited Arbitration Award: *Vernon Jubilee Hospital and BCNU, April 6, 2000 (Kelleher)*]

Meal breaks are unpaid in the following circumstances:

1. The Employer is required to provide a meal period of at least 30 minutes away from the workplace. i.e. the employee is not required to be "available" and able to safely leave the workplace for 30 uninterrupted minutes for their meal break
2. The meal period must be scheduled so an employee doesn't work longer than 5 consecutive hours without an eating period (See Section 32 of the Employment Standards Act).
3. **Language was added in 2006 bargaining to confirm that Article 26.03 also applies to employees working overtime.**

Meal Breaks are paid at Straight Time in the following circumstances:

1. Where an employee is given explicit direction by the Employer that they are designated to be available for work during a meal period. (e.g. the directions could be found in the policy manual and/or employees are advised when they are hired that they are required to be available (on-call) during meal breaks.
2. Even where there hasn't been explicit direction, it is clear that the situation is such that it would be unsafe to leave the workplace during the meal break (e.g. where they are the only nurse on duty and there is no qualified person who would be available to deal with emergencies).

Meal Breaks are paid at Overtime Rates in the following circumstances:

1. Where the employee has not been designated to be available for work during the meal period and are called back to work during her/his period and are unable to "make up" the time taken from their meal break later in the shift. The employee is paid at 1.5X the regular rate for the day for the entire meal break. (i.e. 30 minutes)

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2. Where the employee has been designated to be "on-call" for the meal break and they work through their meal break and can't make up the time later in the shift. The employee is paid 1.5 x the regular rate for the day (i.e. 1.5x the stat rate if that is the regular rate for the day).
3. Shift premiums, weekend premiums and responsibility pay are not paid for the meal period unless the employee has been designated to be "on-call" and works during her/his meal break [See Arbitration Award: *Windermere District Hospital and BCNU, May 27, 1988 (Kinzie)*]. In other words, employees who receive overtime payment as provided in 26.03 should also receive the applicable shift, weekend premiums and responsibility pay for that 30 minute period.

### Extended Work Day/Compressed Work Week

1. Employees working 10 hours or more are entitled to 2 meal periods of 30 consecutive minutes each away from the workplace during each shift. (See Memorandum Extended Work Day).
2. The same rules apply with respect to payment for meal breaks as set out above.

### The following questions have not been fully addressed by arbitration:

1. Has the Employer violated the collective agreement when an employee (on-call) and works call-back work shifts of longer than 5 consecutive hours without a scheduled meal break?
2. If an employee does not get a meal break due to emergent circumstances in their unit as set out in point 1 above, is the employee entitled to be paid for an additional ½ hour pay for the lost meal period?
3. What rate of pay should apply to this extra ½ hour?

### Additional References:

### Legislation:

### Employment Standards Act - Section 32

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### Arbitration Awards:

*Golden and District Hospital and CRNBC (RNABC), November 1980 (Owen-Flood)* - the nurses on night shift are entitled to be paid for their meal periods and shall receive payment at straight time where they actually receive their 30 minute meals break and time and a half for the 30 minute meal period where they do not receive the meal break but have to work during it.

*Tahsis Hospital Society and BCNU, February 18, 1985 (Munroe)* - the arbitration panel ruled that nurses alone on the night shift are entitled to straight time rates of pay for meal periods (for being "on-call") and not overtime as claimed by the Union.

*Windermere District Hospital and BCNU, May 27, 1988 (Kinzie)* - the Union made the claim that the grievors were entitled to get shift premiums and responsibility pay for the meal periods as having to be available to work was the same as actually working. The grievance was dismissed as the arbitrator stated that the collective agreement was clear that employees are only entitled to shift premiums and responsibility pay for time actually worked.

### Expedited Arbitration Award: Included for information purposes only

*Vernon Jubilee Hospital and BCNU, April 6, 2000 (Kelleher)* - The Union made the claim that nurses working overtime shifts (on call-back in the operating room) of over 5 hours were denied meal breaks or compensation in lieu of meal breaks. The Union was asking they be paid an additional half hour for their missed meal break. However the Union argued that Article 26.03 did not apply to overtime shifts on call back as it wasn't "scheduled" work. The grievance was dismissed, as in the view of the arbitrator; Article 26.03 provides the "complete code" for meal periods so therefore he was unable to find a violation of the collective agreement.

## Article 26.04 - Rest Periods

Related Articles: Memorandum of Agreement Extended Work Day

### Interpretation Guidelines:

1. Unlike meal breaks, all rest periods (i.e. coffee breaks) are paid.
2. Employees working a standard shift (e.g. 7.5 hours) are entitled to a rest period of 15 minutes in each half of the shift.
3. Employees working 4 hours or more are entitled to one 15 minute rest period.
4. Employees working a shift of 10 hours or more are entitled to 3 paid rest periods that need to be evenly scheduled throughout the shift.

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5. BCNU takes the position that rest periods are an entitlement and therefore failure to get rest periods should be compensated. HEABC does not agree that employees are entitled to extra pay in lieu of missed rest periods. This issue has yet to be finally determined by arbitration.

**Stewards:** Missing one or more coffee breaks on a consistent basis is often the first indication of an unmanageable workload and should therefore be investigated further with a view to filing a Professional Responsibility Form and filing a Workload Grievance. Article 26.04 should be cited as one of articles on the grievance form.

There may be a relatively easy solution to the problem. For example: It may be that only the morning workload is unmanageable on a particular unit and having extra staff for workload for 4 hours may resolve the issue.

### Article 26.05 - On-Call Time

**Related Articles:** 11.03, 11.04 (G) (4), 38.06, 42.01 (C), 45.01 (D), 55.03 (B)

#### Interpretation Guidelines:

Hours of work do not include hours where an employee is not on shift but on-call being paid the on-call premium. This speaks to the determination of benefit entitlement for casual and regular part-time employees.

### Article 26.06 - Standard/Daylight Savings Time Change

**Related Articles:** 28, 30

#### Interpretation Guidelines:

This language was negotiated in the 1998 PCA. Previously nurses who worked night shift during the "fall-back" time change did not receive an extra hour's pay and nurses working night shift during the "spring forward" time change did not receive an hour's less pay. This was viewed as unfair by many nurses, particularly those who consistently worked nights during the "fall-back" time change as they felt they were working one hour for free whereas nurses in the spring forward time change got paid one hour for not working.

The change in 1998 means that nurses will receive straight time pay for hours actually worked.

In other words, nurses working the night shift in the "fall-back" time change will receive pay for the extra hour worked at straight time rates and the nurses working the night shift in the "spring forward" time change will receive an hour's less pay.

**Shift premiums and responsibility pay are also to be paid on all straight time hours worked during the time changes in the fall and spring.**