

## Article 27

**Related Articles:** 1.02, 6.03, 11.04(J), 18.05, 25, 26.03, 28, 29, 32, 35.01, 35.02, 39, 56.04 (C), 57.01 B) (1), Memorandum of Agreement Extended Work Day, Appendix S

### 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 regular part-time and casual employees.
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 (see Article 25.07) works more than 144 hours in a designated 4 week period.

However 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:

- 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).
- The scheduled hours in the 4 week schedule should total no more than 144 hours;
- Hours worked in excess of the 144 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);
- If the flex time is not taken within the next 4 week schedule it is to be paid out at 1.5x overtime rate;

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- The employee is required to keep an accurate record of actual hours worked and submit it to their supervisor (See Article 25.07 (F)).

### Article 27.02 - Authorization

1. The Employer must notify employees who can approve overtime. Usually this is someone who is excluded from the bargaining unit; however in some cases this could be the nurse who has been designated in-charge (See Article 59.12).
2. It is the responsibility of the Employer to make sure systems are in place to ensure overtime is properly authorized in advance of it being worked.
3. Employees have a responsibility to make every effort to get authorization before working overtime.
4. Employers have a responsibility to develop and publicize policies that specify the instances where an employee may work overtime without prior authorization.
5. There is no obligation in the PCA requiring Employers to offer overtime to employees on the basis of seniority. However it is recommended that where there is no consistent process already in place, that worksite Stewards negotiate a mutually agreed policy with the Employer on the process for offering overtime.

### Article 27.03 - Employee's Right to Refuse Overtime

1. The Employer may ask employees to work "a reasonable amount" of overtime. The question of what would be considered "a reasonable amount" is somewhat defined by 27.03 (B) in that:
  - Regular full-time employees may only be asked to work 1 of their scheduled days off.
  - 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.
  - Employees have the right to say no to working on a scheduled day off.
2. 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 overtime.
3. Grievances need to be filed where employees either:
  - Believe they are working an unreasonable amount of overtime, or

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- Believe the Employer is defining the situation as an "emergency" inappropriately in order to force them to work overtime.

### Article 27.04 - Application

1. Employees should advise the Employer whether they wish to bank their overtime 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.
2. If the employee chooses to bank their overtime, the Employer is required to keep an accurate record of the overtime work by each employee. It is recommended that each employee also keeps an accurate record of the overtime she/he has worked.
3. Time off is accumulated at overtime rates (i.e. on the basis of 1.5x or 2x hours based on the overtime rate that applies) and should be paid out every 6 months as per 27.04 (B).

### Article 27.05 - Overtime Pay Calculation

**Note:** To determine overtime entitlement, casual employees need to look in the PCA and the interpretation guidelines under Article 11.04 (I).

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

1. An employee has to work a minimum of 15 minutes overtime in order to make a claim for overtime pay. However, employees are entitled to straight time pay up to the 15 minute mark.
2. The definition of normal daily full shift hours depends on whether it's a standard or extended work day schedule (check Article 27.05 in the Extended Work Day memorandum).
3. Article 25.07 and 27.01 (B) provide all the criteria for community -based employees working a flexible work schedule.

#### Definition of a day:

This is an issue for regular part-time employees who work 2 shifts within a 24 hour period with a break in between.

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**For example:** A nurse who works 0700-1500 and then is called in to work for the 2300-0700 shift - is she/he entitled to be paid overtime for the entire 2300-0700 shift?

The day was defined in the arbitration award: *Providence Health Care (Youville Residence) and BCNU, March 27, 2001 (Moore)* as: "...within a 24 hour period commencing when the employee starts their regular shift even when that is earlier than scheduled".

So the answer to the above question is that the nurse is entitled to be paid overtime at 1.5x her regular rate for the first 2 hours starting at 2300 hours and 2x for the remainder of the shift.

### Entitlement to overtime for work in excess of the normal weekly full shift hours

Nurses do not usually work a Monday to Friday rotation. Therefore the definition of a week needs to be individualized to each nurse.

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 (See Arbitration Awards: *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

In the Arbitration Award: *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.

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. **Regular full-time employees** receive 2x overtime rate for work on any of their scheduled days off.
2. **The overtime provisions for regular part-time 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 [See **Consent Award: HEABC and NBA (IWAD), October 1, 2004 (Ready)**].

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Regular part-time employees get the 2x overtime rate:

1. For all hours worked over 4 consecutive extended (8hr+) shifts;
2. For all hours worked over 6 consecutive standard (7.2 to 8hr) shifts;
3. For all hours worked over 5 consecutive shifts where 3 or more are extended shifts;
4. For all hours worked over 6 consecutive shifts where 4 or more are standard shifts.
5. For all hours worked over 216 straight time hours over the course of 3 bi-weekly pay periods.

The Consent Award dealt with the application of "over 216 straight time hours" as follows:

- The 216 straight time hours does not include any hours paid as overtime in previous 3 consecutive bi-weekly pay period calculations.
- Paid leaves shall be included in the 216 straight time hour calculation so that regular part-time employees are treated the same as regular full-time employees.

How does this work in practice?

1. **Overtime Hours:**

The Consent Award basically ensures there is no double-counting of overtime hours.

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 overtime in the 1<sup>st</sup> 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 overtime hours cannot be counted as a part of the calculation of 216 hours that group of 3 pay periods.

2. **Paid Leaves**

Vacation, sick leave etc. will all be counted towards the 216 hours.

**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 216 hours.

Suggestions for keeping track of the straight time hours worked are:

1. Keep a "year at a glance" calendar.
2. Mark in your regular schedule and any additional shifts that are scheduled/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.

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4. Subtract any hours paid at overtime rates from your total.
5. If your total straight time hours are over 216 hours in any block of 3 consecutive pay periods put in a claim for overtime at 2x rates.

**For example:** Say you discover you have worked 217 hours in a 6 week period, you get paid 2x for 1 hour:

- Subtract the 1 hour paid at overtime rates from the hours worked in pay period number 3, of that block, and then
- Use that new hour count in each ongoing count that would include pay period number 3.

### Overtime on a Statutory Holiday

1. Overtime at 1.5x rate is applied to the premium rate paid for overtime hours worked either:
  - On the actual stat holiday or
  - 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 1-11 on the employee's work schedule.

**For example:** For overtime worked on a regular stat holiday or stat days marked on the work schedule as 1, 3, 4, 5, 6, 8, 9 and 11 the employee should receive 3 times the employees regular wage rate. Calculated as follows:

$$1.5 \times 2 = 3 \text{ times the employees regular wage rate.}$$

**For overtime worked on a super stat holiday or super stat days marked on the work schedule as 2, 7, 10 the employee should receive 3.75 their regular wage rate. Calculated as follows:**

$$1.5 \times 2.5 = 3.75 \text{ the employee's regular wage rate.}$$

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### Additional References:

### Arbitration Awards:

*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 overtime worked in conjunction with the day shift.

*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 overtime 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

*Providence Health Care (Youville Residence) and BCNU, March 27, 2001 (Moore)* - The arbitrator agreed with the definition of a week for the purpose of overtime 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.

*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".

**Consent Award: HEABC and NBA (IWAD), October 1, 2004 (Ready)** - clarified the application of overtime for regular part-time employees who work over 216 straight time hours within 3 consecutive pay periods.

### Troubleshooter Recommendations - Provided for information purposes only

*Queen's Park Centre and BCNU, October 30, 2000 (McPhillips)* - Grievance dismissed. The same issue of payment of shift premiums for overtime 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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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 2hrs 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 216 hrs or more (excluding previously paid OT) in 3 consecutive pay periods 2x	Worked on stat 1.5x holiday rate	When stat moved by employer with 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	✓	✓	✓	✓	✓	✓	✓
Casual* *See 11.04 (I)	✓	✓	N/A	✓	✓	✓	✓	N/A	✓*	beyond regular hours
Flexible work schedule (applies to some community based nurses) Art 25.07 (B) Art 27.01 (B) & Appendix S	Flexible to 144 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	✓	✓

Stewards: See overtime checklist in the "Tools" section at the back of this manual. This provides a reference to use in the collection of information for an overtime grievance.