

## Article 29

### Article 29 - On-Call, Call-Back, and Call-In

**Related Articles:** 11, 25.02, 27.03, 27.05, 39.04 (B), 42.07, 57.02, Section 2, Memorandum Extended Work Day

#### Interpretation Guidelines:

**This provision includes discussion on the following:**

- The distinction between a call-back and a call-in;
- The definition of a scheduled day off for the purpose of call-back;
- When the on-call premium must be paid;
- Limitations on placing the employees on-call;
- Use of pagers;
- Compensation for on-call, call-back and call-in situations;
- Functions of employees on call-back;
- Payment of travel allowances;
- Insufficient off-duty hours; and
- The utilization of casuals for on-call.

### Article 29.01 - Definitions

Where Employers place employees on-call as part of a work schedule (e.g. in the operating room), it must be mutually agreed as per Article 25.02 following the 6 steps to mutual agreement (See Interpretation Guidelines for 25.02 and the **Shift Rotation Manual**).

**On-call - employee is entitled to be paid the on-call premium:**

Where an employee is off-duty and required to be available for work, the employee should also be getting paid the on-call premium.

**Call-Back - employee is generally entitled to overtime:**

This refers to the period of time where the employee is scheduled off-duty and is either:

- **On-call** (being paid the on-call premium) and called-back to work by the Employer. The **employee does not have the right to refuse** the Employer's request. (e.g. on-call to deal with emergency surgeries in the operating room); or
- **Is not on-call**, but is called back to duty by the Employer after the completion of his/her shift. The **employee can refuse** the Employer's request, unless it is an emergency situation as described by Article 27.03. (e.g. the employee has returned home and agrees to return to work for a few hours or a full shift at the Employer's request).

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**Call-in** - The employee is only entitled to overtime in certain circumstances:  
This provision only applies to regular part-time and casual employees.

A regular full-time employee only reports to work in accordance with their regular work schedule or under the call-back provisions of the PCA.

### Article 29.02 - On-Call Application

The on-call premium does not get paid for the period of time the employee is receiving the call-back pay.

### Article 29.03 - On-Call

#### A. Premium

1. An employee who is required to be on-call is paid an on-call premium to compensate the employee for having to be available for work, not for doing work.
2. Payment for actually doing work is governed by Article 29.04.
3. Where an employee is on-call, he/she is required to report to work when called by the Employer. Employees may also be required to carry out work duties by telephone.

#### B. On-Call Limited

1. Employers are required to make "every effort" to avoid placing an employee on-call the evening before days off.
2. This means Employers are required to explore all reasonable alternatives before placing an employee on-call before days off.
3. The Employer has the responsibility to demonstrate that "every effort" was made.

#### C. On-Call Pagers

1. Employers are responsible for all the expenses associated with beepers, pagers or cellular phones where the employee is required to use them while on-call.

### Article 29.04 - Call-Back

**Note:** This provision is not applicable to nurses working for home support agencies, or nurses working in home care assignments and prevention. See Section 2 of the PCA and the interpretation guidelines following this article).

It is the decision of the Employer to place the employee on-call. The potential of a call-back benefit occurs only where a nurse has already been required by the Employer to be on-call

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(See: Arbitration Award: *Delta Hospital and BCNU*, April 28, 1999 (Munroe) dealing with the entitlement of casual and part-time employees to call-back benefits).

There have been a number of arbitrations defining call-back:

On-call and called back:

- 1) Three arbitrations have confirmed that employees who are on-call and required to respond to work related telephone calls meet the definition of call-back. They are:
  - *Tumbler Ridge and BCNU*, November 21, 1994 (Taylor) - no 15 minute minimum for the telephone call to be eligible for call-back pay;
  - *Queens Park Hospital and BCNU*, July 2, 1997 (Larson) - 15 minute minimum for the telephone call to be eligible for call-back pay; and
  - *HEABC(Kootenay Lake Regional Hospital) and NBA*, July 26, 2002 (Hall) - no 15 minute minimum for the telephone call to be eligible for call-back pay.

The first two contradicted each other, therefore the **Kootenay Lake** arbitration award (which was upheld on appeal) provides the final word confirming that telephone calls do not need to be 15 minutes before the nurse is entitled to receive the two hour minimum for call-back pay.

- 2) Regular part-time employees and casual employees who are on-call and return to work also come within the definition of call-back [i.e. it is not a call-in as per 29.01(C)] - See Arbitration Award: *Delta Hospital and BCNU*, April 28, 1999 (Munroe) - the arbitrator considered the clear language of the collective agreement and the evolution of the language and concluded that casual and regular part-time employees were eligible for the call-back benefit under the collective agreement when they are called-back to work on a scheduled day off as defined by Article 29.04 (C).
- 3) Call-back premiums are not restricted to the actual hours worked - in the arbitration *HEABC (Delta Hospital) and BCNU*, June 6, 1997 (Munroe) - the Employer argued that call-back premiums should be based on the actual hours worked. This argument was rejected by the arbitrator who stated that the employee is entitled to double time for the second call-out period.
- 4) Employees do not have to work a minimum of 15 minutes before they are entitled to call-back pay - See Arbitration Award: *HEABC (Delta Hospital) and BCNU*, June 6, 1997 (Munroe)

Not on-call and called back:

**Expedited Arbitration (provided for information purposes only): *Powell River Hospital and BCNU*, March 31, 1999(Gordon)** - A regular part-time employee who worked 0830-1230 was called-back after she'd left work later on the same day for a shift from 1430-1930. The Employer argued it was a call-in and therefore she was not entitled to overtime, the arbitrator disagreed saying this fell within the definition of a call-back and awarded overtime.

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### (A) Compensation

1. On-call employees being paid the on-call premium receive a minimum of 2 hours pay at the appropriate overtime rates set out in Article 27.05 for each separate call-back.
2. Call-backs as defined above also include telephone calls from clients or the Employer regarding work (See Arbitration Awards:
  - *Tumbler Ridge and BCNU, November 21, 1994 (Taylor)*
  - *Queens Park Hospital and BCNU, July 2, 1997 (Larson)*
  - *HEABC(Kootenay Lake Regional Hospital) and NBA, July 26, 2002 (Hall)*
3. Under this provision, employees who are placed on-call are entitled to overtime based on the hours they are paid. The overtime premium is not based on the hours actually worked [See Arbitration Award: *HEABC (Delta Hospital) and BCNU, June 6, 1997 (Munroe)*]. To determine the appropriate overtime rate for each call-back you need to go to Article 27.05.

For example:

- A. An employee works a regular 7.5 hour shift at straight time and then is placed on-call:
  - The employee is called-back and works 30 minutes and is paid at the 1.5x the regular rate for the day for two hours; then
  - Later the same day the employee is called-back again and works another 30 minutes and is paid at the 2x the regular rate for two hours.

The employee is entitled to a minimum of 2 hours pay for each separate call-back.

Article 27.05 (A) (1) applies to the first 2 hours and Article 27.05(B)(1) applies to the second 2 hours because the employee has already worked the normal daily full-shift hours.

- B. An employee works a 4 hour shift at straight time and then is placed on-call.
  - The employee is called back and works 30 minutes and is paid 1.5x for 2 hours; then
  - Later the same day the employee is called back again and is paid 1.5x for 2 hours.

The employee is paid overtime because he/she was placed on-call.

However the employee only receives the 1.5x rate for both call-backs because it was not a scheduled day off and the employee worked less than the normal daily full-shift hours to start with so the second call-back did not exceed the threshold as set out in Articles 27.05 (A) (1). i.e. 4 hours + 2 hours pay for first call-back = 6 hours.

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C. An employee (casual/regular part-time/regular full-time) is on a scheduled day off as defined by Article 29.04 (C) and is placed on-call.

- The employee is called back and works 30 minutes and is paid 2x for 2 hours.

The employee receives the 2x overtime rate set out in Article 27.05 (B) (3) for 2 hours for each separate call-back.

D. An employee (casual/regular part-time/regular full-time) is placed on-call on a paid holiday listed in Article 39.

- The employee is called back and works 30 minutes and is paid 3x for two hours on a regular stat holiday and 3.75x for 2 hours on a super stat holiday.

The employee receives the overtime rate set out in Articles 27.05 (C) (1) and 29.04 (B) times on the stat holiday rates set out in Article 39.03 for 2 hours for each separate call-back.

4. The definition of scheduled day off is expanded in Article 29 for the purpose of call-back. A scheduled day off is defined as "any day on which an employee is not scheduled to work". This means a casual or part-time employee who is placed on-call on a day they are not scheduled to work is entitled to be paid overtime at the 2x rate for 2 hours for each separate call-back [See Arbitration Award: General Application Dispute, *Delta Hospital and BCNU*, April 28, 1999 (Munroe)].

Section 2 contains different provisions for two different categories of employees:

### Section 2 - Article 29.04 - On-Call, Call-Back and Call-In for Home Support Agency Nurses Providing After Hours Service

1. The language in this provision originated in the 1998 bargaining round and was effective April 1, 1999. Before April 1, 1999, the nurses were covered by a variety of compensation practices that existed before they were brought into the PCA.
2. "After hours" service is defined in Section 2 of the PCA as services provided after regular agency hours of operation that require "intermittent administration, supervision and coordination of services to ensure the needs of the clients and field staff emergencies are met". For example: replacing sick calls, dealing with after hours changes in client scheduling such as client is hospitalized and dealing with emergency situations encountered by home support workers in the home during the evening. This is primarily telephone work and the nurses are generally supplied with a computer at home to access files etc.
3. Employees who are placed on-call to provide "after hours" service to home support clients do not receive a call-back premium. Instead they are paid 1 hour at straight time rates for each 4 hours they are on-call. For example: a nurse who is on-call from 1600 hours to 0800 hours the next morning will receive 4 hours pay at straight time rates.

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### Section 2 - Article 29.04 - Employees Working in Home Care Assignments and Prevention and Placed On-Call:

1. Receive 2 hours minimum at the appropriate overtime rate in Article 27.05 for call-back, though there is no reference to separate call-backs.
2. These on-call employees are compensated differently for dealing with telephone calls from clients - they get paid 1.5x their regular rate of pay:
  - for a minimum of 30 minutes for calls lasting less than 30 minutes; or
  - for the duration of the call if it exceeds 30 minutes.
3. Past practice is that the compensation for telephone calls also covers calls about clients from a central paging system or ambulance personnel, etc.

### Article 29.05 (A) - Functions of Employees on Call-Back

**Note:** This applies to all employees who are placed on call, including those referenced by Section 2 of the PCA.

1. Employees on call-back are **only required to perform the functions related to the situation that gave rise to the call-back**; they cannot be required by the Employer to perform unrelated, non-emergency functions. For example, an operating room nurse cannot be required to provide workload relief on the surgical floor.
2. If the functions related to the call-back have been completed and the Employer determines the emergency to be over, the employee who was called-back must be sent home. That is to say, **the Employer cannot keep the employee at work to do other non-emergency functions simply because the Employer will be paying the employee a minimum of 2 hours at the applicable overtime rate.**
3. In other words, the nurse is generally placed on-call for a specific purpose e.g. to deal with after hour emergency surgeries. The limitation on the functions to be performed in a call-back is to ensure that the employee is available to fulfill the primary purpose for being placed on-call and that their off-duty time is not being unnecessarily abused.
4. Nevertheless, the **employee must perform the functions as directed by the Employer** and grieve later if she/he believes that the functions weren't related to the original reason for the call-back or didn't meet the definition of an emergency.

### Article 29.05 (B) - Employee Option: Time Off or Cash for Call-Back

1. The employee has the choice of taking the hours worked in call-back situations as time off or pay.

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2. The employee needs to advise the Employer of their choice and then the time is accumulated to be taken at a mutually agreeable time.

### Article 29.06 - Call-Back Travel Allowance

An employee (including those covered by Section 2 provisions) called-back to work, **whether or not they've been placed on-call**, should remember to claim for the appropriate travel allowance (See definition of call-back at 29.01 (B)).

### Article 29.07 - Call-In

1. This provision does not apply to regular full-time employees, or regular part-time and casual employees who are placed on-call.
2. The purpose of this provision is to provide some compensation to regular part-time and casual employees who report to work and are sent home either before the employee has had a chance to start working or shortly after the employee has begun the shift.
3. Regular part-time and casual employees reporting to work as a result of a call-in do not get the call-back travel allowance.

**Note:** While the minimum 2 hour overtime provisions in call-back don't apply to call-in, regular part-time and casual employees can claim for overtime pay pursuant to Articles 11.04 (I) and 27.05 (B) (3) (a) and (b) or Article 29.08 Insufficient Off-Duty Hours.

### Article 29.08 - Insufficient Off-Duty Hours

**Note:** This provision does not apply to Nurses Working in Home Care Assignments and Prevention - See Article 29.08 in Section 2 of the PCA.

1. The employee who works overtime following her/his shift or is called-back to work is required to have at least 8 consecutive hours off in the 24 hour period beginning from the start of the employee's shift.
2. To get the 8 consecutive hours off, the employee can start her/his next scheduled shift later than originally scheduled but finishes at their usual time and gets paid as though they've worked the whole shift.
3. The employee needs to advise the Employer when they are not reporting to work at their scheduled time.

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4. Article 29.08 does not apply to employees who have less than 8 consecutive hours off because they've requested a particular shift arrangement e.g. Voluntary Shift Exchange (Article 25. 09).

### Some examples:

- a. Regular shift (day 1) -----1200 hours to 2000 hours  
 Call-back-----0300 hours to 0500 hours  
 Next Shift (day 2) -----1200 hours to 2000 hours

Employee only has 7 consecutive hours off in the 24 hours between day 1 and day 2. Therefore the employee does not have to report to work on day 2 until 1300 hours works until 2000 hours as usual but gets paid for the full shift.

- b. Regular shift (day 1) -----1200 hours to 2000 hours  
 Call-back-----0600 hours to 0700 hours  
 Next Shift (day 2) -----1200 hours to 2000 hours

Because the employee had 8 consecutive hours between 2000 hours and 0600 hours, he/she must report at 1200 hours on day 2.

- c. Regular shift (day 1) -----1200 hours to 2400 hours  
 Call-back-----2400 hours to 0500 hours  
 Next Shift (day 2) -----1200 hours to 2400 hours

Because the employee did not have 8 consecutive hours off-duty between 1200 hours on day 1 and 1200 hours on day 2, he/she does not have to report to work until 1300 on day 2 and then gets paid for the whole shift.

### Section 2 - Article 29.08 - for Nurses Working in Home Care Assignments and Prevention

1. Employees who are called-back after midnight and required to report to work later the same day may choose to take time off in place of compensation.
2. Employees who decide to take time off (i.e. come in to work later), need to advise their supervisor either personally or through the answering service (voice mail).

### Additional References:

### Arbitration Awards:

*Delta Hospital and BCNU, June 6, 1997 (Munroe)* - arbitrator rejected the Employer's claim that call-back premiums should be based on actual hours worked and also rejected the Employer's position that a minimum of 15 minutes had to be worked before call-back premiums are paid.

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**General Application Dispute, *Delta Hospital and BCNU*, April 28, 1999 (Munroe)]** - confirmed the Union's position that the different definition of a "scheduled day off" in Article 29.04 (C) meant that call-back premiums apply to regular part-time and casual employees who are placed on-call in the same way as to regular full-time employees.

***Industry Wide Application Dispute - HEABC(Kootenay Lake Regional Hospital) and NBA*, July 26, 2002 (Hall)** - the final decision confirming the Union's position that telephone calls, received by nurses who are covered by the Section 1 provisions and placed on-call by the Employer, do not have to last a minimum of 15 minutes before the nurse can be eligible for the 2 hour minimum call-back premium.

### LRB Decisions:

***HEABC(Kootenay Lake Regional Hospital) and NBA*, January 14, 2004 (Mullin, Fleming, McCreary)** - the Labour Relations Board dismissed HEABC's application for reconsideration of B161/2003 which was an application for review of the arbitration award of Arbitrator John Hall. The panel stated that "such an application will not be entertained where the essence of the appeal is a continuing disenchantment with an interpretative conclusion made by the arbitrator".

### Expedited Arbitration (provided for information purposes only):

***Powell River Hospital and BCNU*, March 31, 1999(Gordon)** - A regular part-time employee who worked 0830-1230 was called-back after she'd left work, later on the same day, for a shift from 1430-1930. The Employer argued it was a call-in and therefore she was not entitled to overtime, the arbitrator disagreed saying this fell within the definition of a call-back and awarded overtime.