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COMPLEXITIES OF BC'S OVERTIME LAWS - NAVIGATING THE FIELD

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Overtime laws involve complexities that, if missed, can result in large claims against employers. This article will provide a reminder of BC's overtime laws and highlight some tips and traps for employers to assist in navigating this field.

What are the requirements for overtime pay or "banking" overtime?

Employees are entitled to be paid time and a half for any hours worked over 8 hours per day and over 40 hours per week. Employees are entitled to be paid double time for any hours worked over 12 hours per day.

The obligation to pay overtime arises whether the employer directly requires overtime work or indirectly permits overtime. If an employer is aware that an employee is working overtime and takes no action to stop the overtime work then, if the employee later files a complaint with the Employment Standards Branch (the "Branch"), the employee will likely be owed overtime pay. Employers should have a specific system to authorize and record overtime. Employment agreements that outline the requirements to obtain overtime approval are one tool employers can use to outline, and confirm that employees are aware of, the system to authorize overtime hours.

"Banking" overtime hours, so that an employee can take time off at a later date instead of receiving pay, is popular with a number of employers and employees. If an employer wants to provide employees with time off instead of overtime pay the following requirements of the Employment Standards Act (the "Act") must be met:

- There must be a written request from the employee to use such a system.
- The wages credited to the time bank must be credited at the proper overtime rate.
- The employer must:
 - provide the wages in the time bank on an employee's request to be paid what has



- accumulated in the time bank;
- provide time off with pay at a time agreed by the employer and employee;
- close the time bank on the employee's request; and
- if the employee is dismissed before any of the above items occur, pay out the amount in the time bank to the employee at the time of dismissal.

What records of overtime work need to be kept?

Records of an employee's hours of work, including records of any overtime hours, must be kept by employers. Given this requirement, in the event of a complaint about overtime hours by an employee, the onus is on the employer to produce proper records.

The Act also requires that an employee's pay record (for each pay period) show the hours worked by an employee, any hours worked at the overtime wage rate, the employee's usual wage rate and the employee's overtime wage rate.

Who is exempt from overtime?

"Managers" are exempt from receiving overtime pay. A "manager" is defined in the Employment Standards Regulation as a person working in an "executive capacity" or a person who supervises or directs "human or other resources". In the event of a dispute, the Branch will determine whether or not a person is a "manager". An employee's title will not be determinative, rather, the employee's day to day tasks will be reviewed.

The remaining exemptions from overtime relate to specific industries or occupations. Some of these industries and occupations are exempt only from the overtime provisions of the Act (e.g. fishing and hunting guides, teachers, police officers and firefighters) while others, typically falling into the category of self-regulated professions (e.g. architects, accountants, and dentists), are not subject to any of the Act's provisions.

A common misconception is that people who are paid a salary are exempt from receiving overtime, however, the manner of pay is irrelevant to whether an employee is entitled to overtime pay. Salaried employees remain entitled to receive overtime pay unless another exemption in the Act applies to their employment.

Where can overtime claims be made and what is the time limit for bringing a complaint?

In BC the Branch is responsible for enforcing the minimum employment standards which are set out in the



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Act. Overtime rules are part of the Act, therefore, they fall within the Branch's jurisdiction. The courts are not the proper forum for overtime claims in BC. Generally a failure to comply with the Act's standards is brought to the attention of the Branch through a complaint filed by an employee.

If an employee pursues a complaint with the Branch, the employee has six months from their last day of employment to file a complaint. The Branch will only consider a remedy for an employee going back six months prior to the date of the complaint or the date of dismissal.

Minimize the Risk

Ensuring that a system to authorize overtime is created, published and followed, along with keeping detailed records of hours worked, can minimize the risk for an employer of facing an overtime claim. These tips, while not a comprehensive guide to overtime, can help address some common problems in overtime complaints.

