



**Lancaster, Brooks & Welch LLP**  
BARRISTERS AND SOLICITORS

**A Note on Overtime**

By Robert B. Reid

*Corporate Bulletin for August 2010*

Everyone thinks they know what overtime is, and what payment is required. Unfortunately, employers and employees don't always share the same understanding.

Here's the deal: The Employment Standards Act 2000 sets out the minimum overtime payment requirements. There can be an employer policy for payment of overtime, and if so, the policy takes precedence over the ESA, as long as the ESA standards are met or exceeded.

There must be a payment of overtime at time and one half the employee's regular hourly rate for hours worked in a week over 44. Hours over the normal work week, for example 35 or 40, do not require the premium payment unless they exceed 44.

Time off instead of overtime payment can be given if the employee agrees, but note that the time off must be one and one half hours for each overtime hour worked. The time must be taken within three months of the overtime worked, or if the employee agrees, within twelve months.

If the overtime needs are regular but not weekly, there can be an averaging agreement between the employer and the employee, which must be approved by the Director of Employment Standards. This prevents the triggering of overtime pay if the hours exceed 44 in some weeks, but other weeks have lower hours. For example, an employee might agree to work more hours in one week without premium pay in exchange for a shorter work week in the other.

Employees are not exempted from overtime pay just because they are salaried. This is a common misconception. However, an employee (whether salaried or not) need not receive overtime pay if the work is "supervisory or managerial" as long as any non-supervisory or non-managerial work performed is only occasional or exceptional.

There are other exceptions under the ESA which are job specific, including many professions, commissioned salespeople, farmers, cab drivers, etc. If in doubt, give us a call or check the Ministry of Labour website at: [www.labour.gov.on.ca/english/es](http://www.labour.gov.on.ca/english/es).

***The foregoing information is provided to you for information purposes only.  
We caution you to obtain legal advice specific to your situation in all circumstances***

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