

By Law 37 - Overtime

INTERPRETATION

37. (1) For the purposes of this By-law -

“day” means from midnight to midnight;

“emergency duty” means work outside ordinary hours in relation to which the employee was not given notice before the employee ceased work at ordinary time but does not include -

- (a) circumstances where duty for the day in question is varied by alteration of the commencement of a scheduled shift to meet a sudden situation;
- (b) circumstances in which work is performed on restrictive duty as defined in By-law 38, and is paid for in accordance with that By-law;

“ordinary time” means the hours and days that an employee is normally required to work;

“overtime” means time worked other than ordinary time;

“excess travelling time” means time in addition to the usual time taken to travel to and from an employee’s normal place of work, and the time taken to travel to and from a temporary place of work, excluding the employee’s normal hours of work;

“salary” includes higher duties allowance and any allowance stated as being all purpose in the relevant Award;

“shift worker” means an employee as defined at By-law 39;

“usual station” means -

- (a) for employees who are required ordinarily to work at the same place of work, a place so fixed by the Chief Executive Officer; or
- (b) for employees whose place of work is variable within a specified district, a place within the district fixed by the Chief Executive Officer.

ENTITLEMENT

37. (2) Subject to clause (3), an employee who works overtime is entitled to be paid the appropriate overtime rate, or with the consent of the Chief Executive Officer, to take time off in lieu of that payment, in respect of that time in accordance with this By-law.

37. (3) Except with the express approval of the Commissioner, an employee holding, or acting in, a designation having a minimum salary that exceeds the maximum salary payable in relation to an Administrative Officer 6 is not eligible to be paid for overtime work or time off in lieu.

37. (4) Overtime work is not to be performed without prior written approval being given by the Chief Executive Officer and where it is not possible to obtain prior approval unless the Chief Executive Officer subsequently gives a written approval.

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37. (5) Overtime shall be calculated to the nearest quarter of an hour of the total time claimed in each fortnightly period.

TIME OFF IN LIEU OF PAYMENT FOR OVERTIME

37. (5A) An employee who wishes to take time off in lieu of payment for overtime in accordance with clause (2), shall make a written request to the Chief Executive Officer for that purpose.
37. (5B) Where time off in lieu is granted, it shall be taken:
- (a) at the ordinary time rate, that is one hour for each hour worked; and
 - (b) at a time or times agreed between the Chief Executive Officer and the employee.
37. (5C) Time off in lieu must be utilised within 8 months from the original date of entitlement and if it is not taken within this period, the employee shall, subject to clause (5D), receive payment at the appropriate overtime rates calculated in accordance with the employee's salary at the time of actual payment.
37. (5D) Where an employee who is to receive payment under clause (5C) is promoted beyond the salary barrier prescribed under clause (3), payment shall be made at the salary rate of the employee immediately prior to the employee's actual promotion.
37. (5E) The maximum amount of time off in lieu which can be accrued is:
- (a) for seasonal workers, no upper limit; or
 - (b) for all other employees, 40 hours.

DURATION OF OVERTIME WORK

37. (6) An employee is not to be required to work overtime to such an extent that the employee -
- (a) is unable to perform his or her duties efficiently; or
 - (b) becomes a danger to himself or herself or to others.
37. (7) Normally an employee is not to be required to work overtime to such an extent that the employee does not have a break from work ("rest period") of at least 8 consecutive hours between the cessation of overtime worked and recommencement of work at ordinary time.
37. (8) In addition to the period of 8 hours referred to in clause (7) an employee is to be allowed reasonable travelling time for travelling from or to his or her normal place of employment.
37. (9) Where an employee has worked overtime to such an extent that he or she would not have a rest period and reasonable travelling time as required by clause (8) if he or she again commenced work at ordinary time, the employee shall not be required to again commence work at ordinary time until the employee has had time off for a rest period and travelling time, and is not to lose any pay in relation to that time off.

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RATE OF OVERTIME

37. (10) The appropriate rate of pay for overtime worked by an employee who is not a shift worker is -
- (a) for work at any time from Monday to Friday (both inclusive) at the rate of time and a half;
 - (b) for work at any time on a Saturday at the rate of single time and a half for the first 3 hours and at double time thereafter;
 - (c) for work at any time on a Sunday, at the rate of double time;
 - (d) for work on a public holiday -
 - (i) during time that would have been normal working hours had the day not been a public holiday, at the rate of single time and a half;
 - (ii) during time that would have been outside normal working hours had the day not been a public holiday, at the rate of double time and a half.
37. (11) Subject to clauses (12) and (13), the appropriate rate of pay for overtime work by an employee who is a shift worker is -
- (a) for work at any time other than a public holiday, double time;
 - (b) for work at any time on a public holiday, double time and a half.
37. (12) If practicable, a shift worker who works overtime on a Sunday is to be given one day off on any of the 5 working days following that Sunday, and if the shift worker takes such a day off the appropriate rate of pay for the overtime work performed on the Sunday is the employee's ordinary rate of pay.
37. (13) Where an employee is required to resume or continue work without having the rest period and reasonable travelling time prescribed under clauses (7) and (8), the appropriate rate for the time so worked is double time.
37. (14) Where an attendance for overtime work extends from one day to another day and a higher rate of pay is payable in relation to one of those days the appropriate overtime rate payable for the minimum payment in relation to the entire attendance is the amount calculated at the higher rate of pay.

MINIMUM PAYMENT

37. (15) Overtime work that is not continuous with ordinary time or separate from other duties (and for this purpose meal periods shall be ignored) is subject to a minimum payment.
37. (16) Subject to clause (18), the minimum payment is payment for 4 hours and is payable in relation to each separate attendance.
37. (17) Where an attendance for overtime work extends over from one day to another day the minimum payment is to be in relation to only one attendance.

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37. (18) Where an employee on restrictive duty as defined in By-law 38, otherwise than on passive duty or as duty employee, is required to work overtime on restrictive duty -
- (a) subject to paragraph (b), the minimum payment to be paid is payment for 3 hours in relation to each separate attendance;
 - (b) if a subsequent attendance is required within 3 hours of the commencement time of an employee's attendance, the employee is not entitled to claim a separate minimum payment in relation to the subsequent attendance unless the total time worked during the previous attendance and the subsequent attendance exceeds 3 hours and in any event only one payment is to be made in relation to both attendances;
 - (c) with the result that the total time worked during a previous attendance and a subsequent attendance (commencing from the commencement time of the previous attendance) together equal 3 or more hours, a separate minimum payment is payable in relation to the subsequent attendance.

EXCESS TRAVELLING TIME

37. (19) An employee who is required to report for duty at a place other than his or her normal place of employment is entitled to be paid for excess travelling time at the appropriate rate in accordance with clauses (20) to (23).
37. (20) An employee who receives a salary that exceeds the first incremental point of the salary payable in relation to an Administrative Officer 4 is not entitled to claim to be paid for excess travelling time.
37. (21) Subject to clauses (15) to (18), payment for excess travelling time does not affect an employee's entitlement to any other allowance.

NO CLAIM IN CERTAIN CASES

37. (22) The Chief Executive Officer shall not approve a claim for excess travelling time if -
- (a) the time in relation to which a claim is made exceeds 5 hours in any one day;
 - (b) the excess time spent in travelling does not exceed -
 - (i) half of one hour in any one day; or
 - (ii) a total of two and one half hours in any pay period;
 - (c) the employee is performing any duty when travelling;
 - (d) the means of transport used by the employee provides accommodation and meals; or
 - (e) the employee receives overtime pay, emergency duty pay or any other similar payment in relation to the time spent travelling.

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RATE OF PAYMENT FOR EXCESS TRAVELLING TIME

37. (23) The appropriate rate of payment for excess travelling time is:
- (a) single time if travelling at any time from Monday to Saturday (inclusive);
 - (b) single time and a half if travelling at any time on a Sunday or public holiday.

EMERGENCY DUTY

37. (24) An employee who is required to perform emergency duty is entitled to be paid in relation to -
- (a) the time that emergency duty is performed; and
 - (b) the time necessarily spent in travelling to and from emergency duty.
37. (25) The appropriate rate of payment for the purposes of clause (24) is double time.
37. (26) Emergency duty is subject to a minimum payment for 2 hours.
37. (27) The provisions of clauses (15) to (18) apply to and in relation to emergency duty as though emergency duty were overtime work.

By-law 38 - Restrictive Duty

INTERPRETATION

38. (1) For the purposes of this By-law -
- “duty employee” is an employee who works at the normal place of employment after ordinary time on duties that are required to be carried out at regular times or on an ad hoc basis in circumstances in which, if attendance is overnight, the employee is provided with facilities for sleeping and other personal activities;
- “home duty” means working at home normally on an intermittent basis whether predetermined or not and/or being available at home for immediate call to duty;
- “on call” means being available at home to commence duty without delay or within a reasonable time, before the next ordinary commencing time for that employee;
- “passive duty” means being present at the normal place of employment after ordinary time until released or required to perform duty in circumstances in which, if attendance is overnight, the employee is not provided with facilities for sleeping and other personal activities;