

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; or
- (b) circumstances in which work is performed on restriction duty as defined in by-law 38, and is paid for in accordance with that by-law;

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

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

“overtime” means time worked other than ordinary time;

“salary” includes higher duties allowance and any allowance stated as being all purpose in the relevant award or enterprise agreement or as determined by the Commissioner;

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

“usual place of work” means:

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

37.2 Unless otherwise provided for in by-law 37.3 (shift worker), duty is considered overtime where it is performed on:

- (a) Full-time employee:

- (i) Monday to Friday outside the span of ordinary hours 6.00 am to 6.00 pm; or
 - (ii) Monday to Friday during the span of ordinary hours 6.00 am to 6.00 pm but beyond the length of time the employee is normally required to work on the day concerned; or
 - (iii) a Saturday, Sunday or public holiday.
- (b) Part-time employee:
- (i) Monday to Friday outside the span of ordinary hours 6.00 am to 6.00 pm; or
 - (ii) Monday to Friday during the span of ordinary hours 6.00 am to 6.00 pm, but in excess of any daily maximum hours applicable to an equivalent full-time employee; or
 - (iii) a Saturday, Sunday or public holiday; or
 - (iv) for duty which falls wholly within the period 6.00 am to 6.00 pm, and which exceeds, in any one fortnight, the maximum fortnightly hours applicable to an equivalent full-time employee.

37.3 Duty for shift workers will be considered overtime where:

- (a) Full-time shift worker
- (i) it is performed on any day which is outside the normal rostered ordinary hours of duty on that day; or
 - (ii) it is performed in excess of the weekly hours of ordinary duty, or an average of the weekly hours of ordinary duty over a cycle of shifts.

Part-time shift worker

- (i) it is performed on any day which exceeds the normal rostered ordinary hours of duty applicable to an equivalent full-time shift worker on that day; or
- (ii) it is performed in excess of the fortnightly hours of ordinary duty applicable to an equivalent full-time shift worker, or an average of the fortnightly hours of ordinary duty over a cycle of shifts.

Entitlement

- 37.4 to by-law 37.5, an employee who works overtime is entitled to be paid the appropriate overtime rate, or with the consent of the CEO, to take time off in lieu of that payment, in respect of that time in accordance with this by-law.
- 37.5 Unless authorised by the Commissioner, an employee in a classification the minimum salary of which exceeds the maximum salary of the classification of Administrative Officer 6 is not eligible to receive overtime or time off in lieu. The salary barrier does not apply to emergency duty under by-law 37.34.
- 37.6 Overtime work is not to be performed without prior written approval being given by the CEO and where it is not possible to obtain prior approval unless the CEO subsequently gives a written approval.
- 37.7 Overtime will be calculated to the nearest quarter of an hour of the total time claimed in each fortnightly period.

Hourly rate of overtime

- 37.8 The hourly rate for overtime payment will be ascertained by applying the following formulae:

(a) Time and a half rate:

$$\frac{\text{Annual Salary}}{313} \times \frac{6}{\text{Prescribed weekly hours before overtime is payable}} \times \frac{3}{2}$$

(b) Double time rate:

$$\frac{\text{Annual Salary}}{313} \times \frac{6}{\text{Prescribed weekly hours before overtime is payable}} \times \frac{2}{1}$$

(c) Double time and a half rate:

$$\frac{\text{Annual Salary}}{313} \times \frac{6}{\text{Prescribed weekly hours before overtime is payable}} \times \frac{5}{2}$$

- 37.9 In applying the relevant formula at by-law 37.8 the prescribed weekly hours before overtime is payable are 38, with the exception of overtime worked on Sunday and outside ordinary hours on public holidays by employees whose weekly hours are 36.75 where prescribed weekly hours before overtime is payable are 36.75.
- 37.10 For the purposes of determining whether an overtime attendance is or is not continuous with ordinary duty, or is or is not separate from other duty, meal periods will be disregarded.

Time off in lieu of payment of overtime

- 37.11 Time off may be granted in lieu of overtime with the agreement of the employee at the ordinary time rate. Where time off in lieu of a payment has been agreed, and the employee has not been granted that time off within a period of eight (8) months, payment at the overtime according to the employee's salary at the time the payment will be made.
- 37.12 An employee who is to receive payment in accordance with by-law 37.11 and is promoted beyond the salary barrier for payment of overtime, will be paid at the salary rate applicable to the employee immediately prior to the employee's promotion.
- 37.13 The maximum amount of time off in lieu that can be accrued is 40 hours.
- 37.14 Where an employee performs a full day's duty on Sunday in addition to the employee's prescribed ordinary hours of duty during the week, the employee will, wherever practicable, be granted a day off during the following week. Where this occurs, an employee who is eligible for the payment of overtime will be paid an additional one day's pay, in lieu of the provisions of by-law 37.19(c).

Duration of overtime work

- 37.15 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.
- 37.16 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 eight (8) consecutive hours between the cessation of overtime worked and recommencement of work at ordinary time.
- 37.17 In addition to the period of eight (8) hours referred to in by-law 37.16 an employee is to be allowed reasonable travelling time for travelling from or to his or her normal place of employment.
- 37.18 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 by-law 37.17 if he or she again commenced work at ordinary time, the employee will 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.

Rate of overtime

- 37.19 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 three (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.

37.20 Subject to by-laws 37.21 and 37.22, the appropriate rate of pay for overtime work by an employee who is a shift worker is:

- (a) overtime worked Monday to Saturday will be paid at time and a half for the first three hours and double time thereafter;
- (b) overtime worked on a Sunday will be paid at double time;
- (c) overtime worked at any time on a public holiday will be paid at double time and a half.

37.21 If practicable, a shift worker who works overtime on a Sunday is to be given one (1) day off on any of the five (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.

37.22 Where an employee is required to resume or continue work without having the rest period and reasonable travelling time prescribed under by-laws 37.13 and 37.14 the appropriate rate for the time so worked is double time.

37.23 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

37.24 work that is not continuous with ordinary time or separate from other duties (and for this purpose meal periods will be ignored) is subject to a minimum payment.

- 37.25 Subject to by-law 37.24 the minimum payment is payment for four (4) hours and is payable in relation to each separate attendance.
- 37.26 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.
- 37.27 Where an employee on restriction duty as defined in by-law 38, otherwise than on passive duty or as duty employee, is required to work overtime on restriction duty:
- (a) subject to by-law 37.27(b), the minimum payment to be paid is payment for three (3) hours in relation to each separate attendance;
 - (b) if a subsequent attendance is required within three (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 three (3) hours and in any event only one (1) 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 three (3) or more hours, a separate minimum payment is payable in relation to the subsequent attendance.
- 37.28 In accordance with by-law 38, the minimum payment applicable under by-law 37.24 will be one (1) hour where an employee who is restricted, and who is required to perform duty, but is not required to be recalled to a place of work.
- 37.29 Excess travelling time
- (a) An employee who is travelling or on duty away from the employee's usual place of work will be paid for time necessarily spent in travel or on duty (exclusive of overtime duty) in excess of:
 - (i) the employee's usual hours of duty for the day; and
 - (ii) the time necessarily spent travelling to and from home and the usual place of work.
 - (b) Where an employee's usual place of work is variable within a specified district, the employer will determine a place within the district as the usual place of work, In this case the minimum of 20 minutes travelling time each way will apply.

- (c) Travelling time includes:
- (i) the time an employee has to wait for change of scheduled conveyance between the advertised and actual time of departure;
 - (ii) in the case of an employee not absent from the employee's permanent or temporary place of work overnight, the time the employee spends outside the usual hours of duty for the day in waiting between the time of arrival at the place of work and the time of commencement of work, and between the time of ceasing work and the time of departure of the first available conveyance; and
 - (iii) time spent in travelling on transfer where expenses are allowed, unless the transfer involves promotion;
 - (iv) in the case of an employee required to perform emergency duty, the time that emergency duty is performed and the time necessarily spent travelling to and from emergency duty.
- (d) Travelling time does not include:
- (i) time of travelling during which an employee is required to perform duty other than care of kit;
 - (ii) time of travelling by ship on which accommodation and meals are provided; or
 - (iii) time of travelling by train between 10.30 p.m. and 7.00 a.m. where a sleeping berth is provided, or any time travelling by train (day or night) between capital cities where a sleeping berth is provided.
- (e) An employee in a camping party is not entitled to payment of excess travelling time and is required to travel from camp to the place of work within the prescribed ordinary hours of work, returning from the place of work to the camp in his or her own time after ceasing duty, or vice versa as agreed with the employee.
- (f) An employee may be required to work at any place within a specified district and to proceed to that place of work instead of the employee's usual place of work. Any excess travelling time spent by the employee in proceeding direct to and returning from such a place of work will be dealt with as excess travelling time.

37.30 An employee in receipt of a salary exceeding the first incremental point of the Administrative Officer 4 salary will not be entitled to payment for excess travelling time.

37.31 Subject to by-laws 37.24 to 37.28, payment for excess travelling time does not affect an employee's entitlement to any other allowance.

No claim in certain cases

37.32 The CEO will not approve a claim for excess travelling time if:

- (a) the time in relation to which a claim is made exceeds five (5) hours in any one day;
- (b) the excess time spent in travelling does not exceed:
 - (i) half of one hour in any one (1) 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.

Rate of payment for excess travelling time

37.33 The appropriate rate of payment for excess travelling time is:

- (a) single time if travelling at any time from Monday to Saturday (inclusive); or
- (b) single time and a half if travelling at any time on a Sunday or public holiday.

Emergency duty

37.34 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.

- 37.35 The appropriate rate of payment for the purposes of by-law 37.31 is double time.
- 37.36 Emergency duty is subject to a minimum payment for two (2) hours.
- 37.37 Where an attendance for emergency duty extends from one day to another day the minimum payment is to be in relation to only one attendance.
- 37.38 The provisions of by-laws 37.24 to 37.28 (minimum payment) do not apply to emergency duty.