

Technical Circular T-5/98
July 6, 1998

TO: All HQ Directors, Operations, Planning and Major Projects
All Regional Directors
All District Highways Managers

SUBJECT:

Hired Equipment Policy

PURPOSE:

To clarify ministry policy with respect to hired equipment rates in overtime situations. The policy is effective June 19, 1998, and not retroactive. If, contrary to ministry policy, you have negotiated agreements for higher overtime allowances than stated in this Circular, you must honour those commitments. However, no such agreements shall be negotiated in the future without the prior approval of the Manager, Maintenance Programs. If you have equipment operators currently working under an agreement to pay lower overtime allowances, pay the rates as per this Circular.

This Circular replaces Circular T-2/98 dated June 19, 1998 and part of Hired Equipment Circular #2/94 dated April 25, 1994 (section dealing with overtime).

NEW POLICY:

It remains ministry policy that whenever possible, all equipment hires should be for a standard work day/week (8 hours/day, 40 hours/week). Overtime situations should be avoided.

However, if, for operational reasons, longer days/weeks are inevitable, resulting in owners requiring to pay their operators overtime (in accordance with the *Employment Standards Act*) or in owner/operators having to work overtime:

1. Pay an overtime allowance:

- this must be agreed to, in advance, and documented on the Equipment Rental Agreement;
- the overtime allowance is paid only when an **operator** works more than the standard work day/week for the Ministry; it is not calculated on total equipment operating hours; nor does it apply to hours worked for another employer;
- refer to the *Employment Standards Act* for details on when and how overtime is to be applied (a copy of the *Act* is attached for your reference); the intent of this policy is to compensate employers for overtime-related costs;
- **all operators** are entitled to the overtime allowance, i.e., including owner/operators.

2. Apply the overtime allowance as follows:

If, in accordance with the *Employment Standards Act*, the operator is entitled to pay at time and a half: add \$13.25 to the All-Found Rate in the Equipment Rental Rate Guide for those hours applicable to overtime.

If, in accordance with the *Employment Standards Act*, the operator is entitled to pay at double time: add \$26.50 to the All Found Rate in the Equipment Rental Rate Guide for those hours applicable to overtime.

Example

You hire an excavator (1996 Bobcat 56, 220) for 1 day. The All Found Rate for that equipment is \$47.50. You agree in advance that the equipment will be required for 12 hours; the same operator will work the full 12 hours.

- the first 8 hours will be paid at \$47.50/hour
- the next 3 hours will be paid at \$60.75/hour ($\$47.50 + \13.25) to compensate for the overtime at time and a half;
- the last hour will be paid at \$74.00 /hour ($\$47.50 + \26.50) to compensate for the overtime at double time.

The overtime allowance was calculated as follows: \$22.75 which represents the wage portion of the All-Found Rate in the Equipment Rental Rate Guide + \$3.75 for increased costs of benefits (vacation pay, EI, CPP, WCB).

This rate complies with the Ministry of Labour's Skills Development and Fair Wage Act and Regulations.

CONTACT:

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Encl.

EMPLOYMENT STANDARDS ACT**CHAPTER 113***Contents**Section***PART 1 – INTRODUCTORY PROVISIONS**

- 1 Definitions
- 2 Purposes of this Act
- 3 Scope of this Act
- 4 Requirements of this Act cannot be waived
- 5 Promoting awareness of employment standards
- 6 Informing employees of their rights
- 7 Continuing review of this Act

PART 2 – HIRING EMPLOYEES

- 8 No false representations
- 9 No hiring of children under 15 without director's permission
- 10 No charge for hiring or providing information
- 11 No fees to other persons
- 12 Employment agencies must be licensed
- 13 Farm labour contractors must be licensed
- 14 Written employment contract required for domestics
- 15 Register of employees working in residences

PART 3 – WAGES, SPECIAL CLOTHING AND RECORDS

- 16 Employers required to pay minimum wage
- 17 Paydays
- 18 If employment is terminated
- 19 If employee cannot be located
- 20 How wages are paid
- 21 Deductions
- 22 Assignments
- 23 Employer's duty to make assigned payments
- 24 How an assignment is cancelled
- 25 Special clothing
- 26 Payments by employer to funds, insurers or others
- 27 Wage statements
- 28 Payroll records
- 29 Producer to receive farm labour contractor's payroll records
- 30 Producer and farm labour contractor are liable for unpaid wages

PART 4 – HOURS OF WORK AND OVERTIME

- 31 Hours-of-work notices
 - 32 Meal breaks
 - 33 Split shifts
 - 34 Minimum daily hours
 - 35 Maximum hours of work
-

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- | | |
|----|---|
| 36 | Hours free from work |
| 37 | Flexible work schedules for employees not covered by collective agreement |
| 38 | Flexible work schedules for employees covered by collective agreement |
| 39 | No excessive hours |
| 40 | Overtime wages for employees not on a flexible work schedule |
| 41 | Overtime wages for employees on a flexible work schedule |
| 42 | Banking of overtime wages |
| 43 | Standards for those covered by collective agreement |

PART 5 – STATUTORY HOLIDAYS

- 44 Entitlement to statutory holiday
- 45 Statutory holiday pay
- 46 If employee is required to work on statutory holiday
- 47 If statutory holiday falls on a day off
- 48 Substituting another day for a statutory holiday
- 49 Standards for those covered by collective agreement

PART 6 – LEAVES AND JURY DUTY

- 50 Pregnancy leave
- 51 Parental leave
- 52 Family responsibility leave
- 53 Bereavement leave
- 54 Duties of employer
- 55 Jury duty
- 56 Employment deemed continuous while employee on leave or jury duty

PART 7 – ANNUAL VACATION

- 57 Entitlement to annual vacation
- 58 Vacation pay
- 59 Other payments or benefits do not affect vacation rights
- 60 Common date for calculating vacation entitlement
- 61 Standards for those covered by collective agreement

PART 8 – TERMINATION OF EMPLOYMENT

- 62 Definition
- 63 Liability resulting from length of service
- 64 Group terminations
- 65 Exceptions
- 66 Director may determine employment has been terminated
- 67 Rules about notice
- 68 Rules about payments
- 69 Standards for those covered by collective agreement
- 70 Individual layoff under collective agreement
- 71 Adjustment committee

PART 9 – VARIANCES

- 72 Application for variance
- 73 Power to grant variance

PART 10 – COMPLAINTS, INVESTIGATIONS AND DETERMINATIONS

- 74 Complaint and time limit
- 75 If complainant requests identity be kept confidential

Section 29

- (e) the benefits paid to the employee by the employer;
 - (f) the employee's gross and net wages for each pay period;
 - (g) each deduction made from the employee's wages and the reason for it;
 - (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;
 - (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;
 - (j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.
- (2) Payroll records must
- (a) be in English,
 - (b) be kept at the employer's principal place of business in British Columbia, and
 - (c) be retained by the employer for 7 years after the employment terminates.

Producer to receive farm labour contractor's payroll records

- 29 (1) A farm labour contractor must provide to a producer, at the time required by subsection (2), a copy of the payroll records of each employee of the farm labour contractor who does work for the producer.
- (2) The payroll records must be provided by the earlier of the following:
- (a) on each payday;
 - (b) the day the farm labour contract with the producer is completed.
- (3) A producer must keep copies of all records provided under subsection (2) for 7 years after the records were required to be provided.

Producer and farm labour contractor are liable for unpaid wages

- 30 A producer and a farm labour contractor are jointly and separately liable for wages earned by an employee of the farm labour contractor for work done on behalf of the producer.

PART 4 – HOURS OF WORK AND OVERTIME**Hours-of-work notices**

- 31 (1) An employer must display hours-of-work notices in each workplace in locations where the notices can be read by all employees.
- (2) An hours-of-work notice must include
- (a) when work starts and ends,
 - (b) when each shift starts and ends, and
 - (c) the meal breaks scheduled during the work period.

- (3) An employer must give an employee 24 hours' notice of a change in shift unless
 - (a) as a result of the change the employee will be entitled to overtime wages, or
 - (b) the shift is extended before it ends.

Meal breaks

- 32 (1) An employer must ensure
 - (a) that no employee works more than 5 consecutive hours without a meal break, and
 - (b) that each meal break lasts at least a 1/2 hour.
- (2) An employer who requires an employee to be available for work during a meal break must count the meal break as time worked by the employee.

Split shifts

- 33 An employer must ensure that an employee working a split shift completes the shift within 12 hours of starting work.

Minimum daily hours

- 34 (1) If an employee reports for work on any day as required by an employer, the employer must pay the employee for
 - (a) at least the minimum hours for which the employee is entitled to be paid under this section, or
 - (b) if longer, the entire period the employee is required to be at the workplace.
- (2) An employee is entitled to be paid for a minimum of
 - (a) 4 hours at the regular wage, if the employee starts work unless the work is suspended for a reason completely beyond the employer's control, including unsuitable weather conditions, or
 - (b) 2 hours at the regular wage, in any other case unless the employee is unfit to work or fails to comply with the Industrial Health and Safety Regulation of the Workers' Compensation Board.
- (3) Despite subsection (2) (a), a school student reporting for work on a school day is entitled to be paid for a minimum of 2 hours at the regular wage in the circumstances described in that subsection.

Maximum hours of work

- 35 An employer must pay overtime wages in accordance with section 40 or 41 if the employer requires or, directly or indirectly, allows an employee to work
 - (a) over 8 hours a day or 40 hours a week, or
 - (b) if the employee is on a flexible work schedule adopted under section 37 or 38, an average over the employee's shift cycle of over 8 hours a day or 40 hours a week.

Section 36

Hours free from work

- 36 (1) An employer must either
- (a) ensure that an employee has at least 32 consecutive hours free from work each week, or
 - (b) pay an employee double the regular wage for time worked by the employee during the 32 hour period the employee would otherwise be entitled to have free from work.
- (2) An employer must ensure that each employee has at least 8 consecutive hours free from work between each shift worked.
- (3) Subsection (2) does not apply in an emergency.

Flexible work schedules for employees not covered by collective agreement

- 37 (1) An employer may adopt a flexible work schedule for employees not covered by a collective agreement if
- (a) the schedule is prescribed in the regulations and is for a period of at least 26 weeks,
 - (b) the employer has followed the procedure in the regulations,
 - (c) at least 65% of all employees who will be affected by the schedule approve of it, and
 - (d) within 7 days after the date of approval by the employees, the employer has provided the director with a copy of the schedule.
- (2) An employer may at any time cancel a flexible work schedule.
- (3) The director may cancel a flexible work schedule if
- (a) an employee affected by the schedule complains in writing to the director, and
 - (b) the director is satisfied that the employer has not complied with subsection (1) (b) or has unduly influenced, intimidated or coerced any employees to persuade them to approve the schedule.
- (4) Unless cancelled under subsection (2) or (3), a flexible work schedule expires 2 years after it is approved under subsection (1) (c) but it may be renewed with the approval of at least 65% of the affected employees.
- (5) An employer must retain for 7 years after the date of approval all records relating to the approval of a flexible work schedule.

Flexible work schedules for employees covered by collective agreement

- 38 An employer may adopt a flexible work schedule for employees covered by a collective agreement if the flexible work schedule

- (a) is for a period of at least 26 weeks,
- (b) consists of a shift cycle of days at work and days off work that repeats over a period of up to 8 consecutive weeks,
- (c) allows each employee affected by the schedule to work during each shift cycle, an average of at least 35 and not more than 40 hours per week at the employee's regular wage, and
- (d) has been approved by a trade union representing the affected employees.

No excessive hours

- 39 Despite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety.

Overtime wages for employees not on a flexible work schedule

- 40 (1) An employer must pay an employee who works over 8 hours a day and is not on a flexible work schedule adopted under section 37 or 38
- (a) 1 1/2 times the employee's regular wage for the time over 8 hours, and
 - (b) double the employee's regular wage for any time over 11 hours.
- (2) An employer must pay an employee who works over 40 hours a week and is not on a flexible work schedule adopted under section 37 or 38
- (a) 1 1/2 times the employee's regular wage for the time over 40 hours, and
 - (b) double the employee's regular wage for any time over 48 hours.
- (3) For the purpose of calculating weekly overtime under subsection (2), only the first 8 hours worked by an employee in each day are counted, no matter how long the employee works on any day of the week.
- (4) If a week contains a statutory holiday that is given to an employee in accordance with Part 5,
- (a) the references to hours in subsection (2) (a) and (b) are reduced by 8 hours for each statutory holiday in the week, and
 - (b) the hours the employee works on the statutory holiday are not counted when calculating the employee's overtime for that week.

Overtime wages for employees on a flexible work schedule

- 41 An employer must pay an employee who is on a flexible work schedule and who works more than an average over the shift cycle of 8 hours a day or 40 hours a week
- (a) overtime wages as prescribed in the regulations, if the schedule was adopted under section 37, or
 - (b) overtime wages as required by the collective agreement, if the schedule was adopted under section 38.

Section 42

Banking of overtime wages

- 42 (1) At the written request of an employee, an employer may establish a time bank for the employee and credit the employee's overtime wages to the time bank instead of paying them to the employee within the time required under section 17.
- (2) Overtime wages must be credited to a time bank at the rates required under section 40 or 41.
- (3) If a time bank is established, the employee may at any time request the employer to do one or more of the following:
- (a) pay the employee all or part of the overtime wages credited to the time bank;
 - (b) allow the employee to use the credited overtime wages to take time off with pay at a time agreed by the employer and the employee;
 - (c) close the time bank.
- (4) The employer must ensure that all overtime wages credited to an employee's time bank are paid to the employee, or taken as time off with pay, within 6 months after the overtime wages were earned.
- (5) On termination of employment or on receiving the employee's written request to close the time bank, the employer must pay the employee any amount credited to the time bank.
- (6) An employer may set a common date for paying out employees' overtime wages under subsection (4) so long as the common date does not result in an extension of the 6 month period for any employee.

Standards for those covered by collective agreement

- 43 (1) If the hours of work, overtime and special clothing provisions of a collective agreement, when considered together, meet or exceed the requirements of this Part and section 25 when considered together, those provisions replace the requirements of this Part and section 25 for the employees covered by the collective agreement.
- (2) If the hours of work, overtime and special clothing provisions of a collective agreement, when considered together, do not meet or exceed the requirements of this Part and section 25 when considered together,
- (a) the requirements of this Part and section 25 are deemed to form part of the collective agreement and to replace those provisions, and
 - (b) the grievance provisions of the collective agreement apply for resolving any dispute about the application or interpretation of those requirements.