

Averaging Agreement

** THIS DOCUMENT HAS BEEN DRAFTED FOR THE SOLE PURPOSE OF PROVIDING A SAMPLE FOR THE HELICOPTER ASSOCIATION OF CANADA (HAC). PRIOR TO USE MEMBERS MUST OBTAIN INDEPENDENT LEGAL ADVICE REGARDING THE PROPER USE OF THIS DOCUMENT TO ENSURE ITS ENFORCEABILITY AND COMPLIANCE WITH APPLICABLE LAW. **NOTHING CONTAINED HEREIN SHOULD BE INTERPRETED AS LEGAL ADVICE** **

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Version: July 2016

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An Averaging Agreement allows an operator to average the hours of work in a day and a week over a period of two or more weeks. The *Canada Labour Code* sets out the process for obtaining an Averaging Agreement. This document is meant to assist operators to implement an Averaging Agreement.

An Averaging Agreement allows an operator to exceed the weekly maximum hours of work (48) provided that at the end of the averaging period the total weekly maximum is not exceeded. The total weekly maximum would be 48 multiplied by the number of weeks in the averaging period.

An Averaging Agreement also allows operators to average overtime over the entire averaging period. At the end of each Averaging Period, overtime is paid to employees who work hours in excess of the Standard Hours of work (40 multiplied by the number of weeks in the averaging period).

When to Use an Averaging Agreement

If the nature of the work necessitates irregular hours due to seasonal or other factors, resulting in employees having no regularly scheduled hours or having regularly scheduled hours which vary from time to time, then the hours can be averaged.

Operators must have an Averaging Agreement in place if operational employees work beyond 48 hours in a week.

Operators should have an Averaging Agreement in place if operational employees are regularly working in excess of 40 hours a week.

Risks in Using an Averaging Agreement

An Averaging Agreement is only effective for a maximum of three years in a non-unionized work environment. Prior to the end of the three year Averaging Agreement, an Operator must go through the process again to ensure they have a valid Averaging Agreement.

Risks in NOT Using an Averaging Agreement

An operator who does NOT have a valid Averaging Agreement AND has employees working greater than 40 hours /week or greater than 48 hours / week is liable for unpaid overtime and possible fines under the *Canada Labour Code*.

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A “HOW TO” FOR AVERAGING

Determine Averaging Period

The length of the Averaging Period must be a minimum of two (2) weeks and should not exceed the number of weeks necessary to cover the period in which fluctuations in the hours of work of the employees take place.

In most instances, the appropriate point to begin an Averaging Period is halfway between the high and low period, so that peaks and valleys are balanced within an averaging period. The Averaging Period adopted must be long enough to accommodate any fluctuations in the hours of work but should not be longer than necessary to balance the peaks and valleys.

The start date of any Averaging Period must be a Sunday.

Determine Standard Hours of Work

The Standard Hours of Work of an employee is forty (40) times the number of weeks in the Averaging Period.

Note that the Maximum Hours of Work of an employee must not exceed forty-eight (48) times the number of weeks in the Averaging Period.

Reducing the Standard Hours of Work

The Standard Hours are reduced by eight (8) hours for each day in the Averaging Period which is a day:

- of bereavement leave with pay;
- of annual vacation with pay;
- of leave of absence with pay under subsection 205(2) of the Code (reassignment due to pregnancy);
- general or other holiday with pay; or,
- that is normally a working day in respect of which the employee is not entitled to regular wages (for example, when an employee is off on unpaid sick leave).

The Standard Hours are reduced by forty (40) hours where the employee has no fixed working days for a period of seven (7) consecutive days.

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Note that the Code entitles employees, in the event of the death of an immediate family, bereavement leave of three (3) days immediately following the day of the death. Employees who have completed three (3) consecutive months of continuous employment are entitled to these three (3) days with pay.

The Code also provides that all employees are entitled to two (2) weeks of vacation with pay and, after six (6) consecutive years of employment, at least three (3) weeks' vacation with pay. Note that the Code allows an employee and an employer to waive an employee's entitlement to vacation time in a given year of employment, however the employer is nonetheless obligated to pay the employee vacation pay.

Employees who receive a base salary are considered to be "entitled to regular wages" and therefore no reduction is made to the Standard Hours when an employee is absent from work on a paid sick leave.

Calculating Overtime

At the end of each Averaging Period, overtime is paid to employees who work hours in excess of the Standard Hours of work, after the appropriate reductions have been made.

Overtime is paid at a rate of one and a half (1.5) times the employee's regular rate of wages.

In a situation where an employee is paid on a basis other than on a per hour basis the employer must determine a regular hourly rate of wages. To determine this rate, the employer must divide the wages paid for the work performed by the number of hours required to perform the work. Note that the wages paid for work performed does not include vacation pay, general holiday pay, bereavement leave pay and wages paid for any hours of overtime. Additionally, the number of hours required to perform the work does not include hours for which an overtime rate of wages has been paid.

Determine Actual Hours of Work

Employees must record actual hours of work performed. In situations where employees are truly on-call or standby (i.e. where despite a requirement to remain on location are nonetheless free to use the time as they see fit) these hours are not included in actual hours worked.

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Additionally, there is no obligation or requirement to consider travel time to and from base from an employee's home as hours of work. However, travel time within the work day to move from location to location would be included in actual hours of work.

General Holidays

Regardless of whether the employee works a general holiday, the Standard Hours of Work are reduced by 8 hours.

In addition to this (and assuming the employer is a continuous operation), if the employee works a general holiday, the employee receives either:

- Regular wages plus time and a half for time worked on that day; OR
- Regular wages for time worked on that day plus a holiday with pay at some other time

If the employee does not work they simply receive their regular wages for that day.

Record Keeping

The *Canada Labour Code* requires that all employers must keep the following information for at least three (3) years after work is performed:

- rate of wages, with a clear indication of whether the rate is hourly, weekly or monthly (along with the date and particulars of any change in the rate);
 - If the rate of wages is on a basis other than time, a clear indication of the method of computation.
- hours worked each day;
- actual earnings, indicating the amounts paid each pay day, with a record of amounts paid for overtime, vacation pay, general holiday pay, bereavement leave pay, termination pay and severance pay;
- dates of commencement and termination of annual vacations, and the year of employment in respect of which such vacation is given;
- any general holiday or other holiday with pay granted to the employee;

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- where hours of work are averaged, any notice concerning the averaging of hours of work, details of any reductions in the standard and maximum hours of work made and the number of hours for which the employee was entitled to be paid at the overtime rate of wages.

Duration of Averaging

An Averaging Agreement in a non-unionized environment can only be in effect for a total of three (3) years, after which a new Notice of Averaging must be posted and submitted to the Regional Director. **NOTE** – when an employer renews a previously approved Averaging Agreement, Labour Canada will ask for data to ensure that the Averaging Agreement has been administered properly. As a result, it is very important to ensure that employers comply with the record keeping obligations above, including hours of work and timing of vacation.

Parties subject to a collective agreement may negotiate any length of time for an Averaging Agreement to be in effect.

If Employment Commences During an Averaging Period

In order to integrate this employee into the Averaging Period, the Standard Hours of an employee who commences employment during an Averaging Period are reduced by forty (40) hours for each week of the Averaging Period that occurred before the employment relationship began.

If Employment is Terminated During an Averaging Period

If an employer lays off or terminates the employment of an employee during an Averaging Period, the employer must pay the employee at the overtime rate of wages for any hours worked, but not previously paid, in excess of forty (40) times the number of weeks in the completed part of the Averaging Period.

If Employee Resigns During Averaging

Where an employee resigns during an Averaging Period, the employer shall pay the employee's regular rate of wages for the actual hours worked during the completed part of the Averaging Period.

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NOTICE OF AVERAGING OF HOURS OF WORK

(Schedule IV of the *Canada Labour Standards Regulations*)

a)	Name of Employer	XXX
b)	Identification of affected employees	TITLES and NUMBER OF WORKERS UNIONIZED?
c)	Location/Workplace	INCLUDE ALL LOCATIONS
d)	Number of weeks in the averaging period	XXX
e)	Overtime applies in the following situations	At the end of each averaging period, overtime will be paid to employees who work hours in excess of the Standard Hours of Work (XXX). (see below)
f)	Standard Hours	<p>The Standard Hours will be reduced by 8 hours for each day in the averaging period which is a day:</p> <ul style="list-style-type: none"> • Annual vacation with pay • Bereavement with pay • of leave of absence with pay under subsection 205(2) of the <i>Canada Labour Code</i> (reassignment due to pregnancy); • general or other holiday with pay; or, • that is normally a working day in respect of which the employee is not entitled to regular wages (for example, when an employee is off on unpaid sick leave).
g)	Information to establish that there is an irregular distribution of hours of work that is necessitated by the nature of the work in the industrial establishment	<p>XXX is a general air charter operator. It operates 24 hours a day, 7 days a week, 52 weeks a year, depending on fluctuating and unpredictable client demands. It supports the xxx industries across Canada, including remote areas.</p> <p>Due to the nature of the business, the geographic area in which it operates and related operational reasons (severe weather, mechanical situations, client requests), XXX has an irregular distribution of hours of work.</p>
h)	Reason for the length of the averaging period	XX weeks allows for reasonable distribution of

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		seasonal workloads.
i)	Date the averaging period comes into effect	XXX (must be a Sunday)
j)	Date the averaging of hours ends	XXX (Maximum three years)
k)	Date the notice was posted	XXX (30 days in advance of when it comes into effect)
	<i>Note:</i> <ol style="list-style-type: none">1. This notice is posted in accordance with section 6 of the <i>Canada Labour Standards Regulations</i> which requires that the employer notify affected employees of details of the average of hours of work at least 30 days before the averaging takes effect and also requires that the information contained in this notice remain posted for the duration of the average of hours of work	

SAMPLE