

BULLETIN

Right to refuse overtime

April 1, 2001

The Report: April / May 2001 vol.22 num.2

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What is the scope of an employee's right to refuse overtime?



Working people have many different attitudes towards working overtime. Some welcome overtime as the opportunity to put some more money in the bank. Others wish to accrue extra time off to tag on to that long-awaited vacation. Others, however, see overtime as a pain to be avoided – less time for family, friends and favoured activities, and more time in a stressful work environment. Working too much overtime can contribute to or be the cause of work-related injury for tired and over-worked bodies and minds.

The right to refuse overtime applies differently to various employee groups within HSA. If you are covered by the **Health Services and Support ... Community Subsector Agreement**, article 16.8 gives employees a specific right to refuse overtime whether the overtime requested is on a scheduled work day or on a scheduled day off. Be careful, however, as the right to refuse overtime is limited by emergency situations. This means if you refuse to work overtime where there is an emergency, you could be subject to discipline. As to what constitutes an emergency, it is better to err on the side of caution and -work now, grieve later," in consultation with your steward.

The **Nurses Collective Agreement** also contains a provision giving employees some power over the issue of overtime. Article 27.03 balances the right of the employer to ask for reasonable overtime with the employees right to decline unreasonable overtime. However, what constitutes -reasonable" overtime can be a thorny issue.

Article 27.03 allows the employer to request that the employee work a reasonable amount of overtime. Should there be overtime requested over and above what the employee deems reasonable, the employee can decline without being subject to disciplinary action. Beware, however, that this is not an absolute right to decline overtime under any circumstances. For example, an employer may have the right reasonably to ask for two hours of overtime after a full shift. If the employer asks for eight hours, the employee might be able to argue that while two hours might be reasonable, eight is not. It is not that the employee can decline overtime absolutely – just that the employee can decline overtime over and above reasonable overtime. What is and is not reasonable overtime will vary from situation to situation. Unfortunately, there is no hard and fast rule. Again, where there are emergency conditions, the right to decline is not protected by the collective agreement.

If you are an employee covered by the **Paramedical Professional Collective Agreement**, there is little in the contract giving the employee the right to refuse overtime. Arbitrators have generally agreed that if the collective agreement does not say that overtime is voluntary, the employee will be obliged to work overtime if requested. The paramedicals contract contains a -management rights" clause in section 4.01 which states that all management rights not specifically abridged, modified or delegated by the agreement are retained by the employer. Can there be any right to refuse overtime under these circumstances?

A strong body of arbitral decisions states that management must exercise its rights, including the requesting of overtime, fairly and reasonably. Furthermore, section 39 of the *Employment Standards Act* states that an employer must not require an employee to work excessive hours detrimental to the employees health and safety.

In any case, if you feel that the assignment of overtime in your workplace violates the collective agreement, or is unfair, excessive, or detrimental to your health and safety, please contact your local steward.

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