

Q & As – Additional Hours of Work for APSA Employees

August 2020

Note: For the purposes of this document, the following definitions apply:

- “Supervisor” - a manager who has direct reports. Direct reports may include both managers and non-managers.
- “Manager” – an individual in a management role who may or may not have direct reports (see *Employment Standards Regulation* definition at 2 below).
- “Employee(s)” - APSA employees.

1. Why is this issue being addressed now? What has precipitated this change?

A recent grievance filed by APSA regarding additional hours of work focused attention on the wording of existing APSA Policy AD10.13 (section 3.03). Section 3.03 of Policy AD10.13 does not comply with the hours of work and overtime (OT) provisions of the *Employment Standards Act* for those APSA employees who are not managers. APSA employees who are managers are not covered by these provisions of the *Act*.

2. How is it determined who is a manager and who is a non-manager?

The University will apply the test under the *Employment Standards Act* and *Regulation* and other relevant resources including available jurisprudence on the issue. Supervisors will first be asked to identify those of their APSA reports who are clearly either non-managers or managers based on a review of the employees' duties and the definition of “manager” contained in the *Employment Standards Regulation*: “... a manager is a person whose principal employment responsibilities consist of supervising or directing human or other resources or who is employed in an executive capacity.” See attached *Employment Standards Fact Sheet – August 2018*

In cases where the status of an APSA employee as a non-manager or a manager is unclear, the supervisor should contact the unit's HR Business Partner.

3. Do all hours worked in addition to the APSA's standard hours of work by non-managers and managers have to be recorded?

- For non-managers, time worked beyond 7.2 hours must be recorded and either paid out or banked.
- For managers, time worked beyond 7.2 hours must also be recorded but can only be taken as time off in lieu. The time taken in lieu should also be recorded.

4. What is the process for a non-manager choosing to take their additional hours worked as banked?

A non-manager can make a written request to have their extra hours credited to a time bank instead of having them paid out. If a time bank is established the employee may at any time request that all or a part of the OT wages be paid out, be permitted to use the credited OT wages to take time off with pay at a time mutually agreed to by employee and supervisor, or to close the time bank. The supervisor may close an employee's time bank after 1 month's written notice to the employee. Within 6 months of closing an employee's time bank the supervisor must ensure the employee is paid all OT credited to the time bank, allow the employee to use the credited OT to take time off with pay or a combination of the two above. Time banks are paid out if an employee is terminated.

5. How will hours of work in addition to APSA's standard hours of work be tracked when everyone is working from home or has an irregular schedule?

Supervisors and their employees are encouraged to have ongoing discussions concerning hours of work, including hours worked at home as a result of COVID 19.

6. How will extra time worked be recorded?

Payroll codes have been created in HAP for timekeepers to record all time worked beyond an APSA employee's standard hours of work. They are:

- 411 – OT 1.5x Non-managers
- 412 – OT 2x Non-managers
- 561 – MGR Salaried Paid Time Off in Lieu (1x)

7. When do we record additional hours of work?

The standard hours of work for most employees are 7.2 hours per day/36 hours per week. To simplify these reporting requirements, it will only be necessary for an employee to submit any additional hours worked that are over the standard 7.2 hours per day. This should be submitted

not later than 2 business days following the days worked. After 2 business days, the absence of a record of daily hours worked will be treated by a supervisor as confirmation that an employee worked 7.2 hours on the day in question. When an employee is on a different work schedule, the supervisor should contact the unit's HR Business Partner.

8. What if a record of hours worked is submitted outside the 2-business day window?

Provided there is no question about the record of hours worked, the record should be submitted to Payroll and processed in the normal way. The supervisor should remind the employee of the 2-business day window and of the importance of submitting hours of work records in a timely fashion in the future.

9. Should hours of work in addition to APSA's standard hours of work be recorded to the closest quarter (1/4) hour?

Yes. OT will be paid and time off in lieu will be recognized on the basis of this recording.

10. Will employees be able to claim retroactively for hours worked in addition to the standard hours of work?

The University is looking into this matter. No retroactive payments will be made until the University has had an opportunity to complete its consideration. There will be a further communication about this matter at a later date.

11. Which budgets will fund payments of OT?

Departments will continue to be responsible for the payment from their budgets of wages, including OT payments, for their staff. Department Heads and financial administrators will be responsible for ensuring that adequate resources are in place to meet operational requirements.

12. Will a supervisor have the ability to approve the OT before it is worked?

The current version of Policy AD 10.13 includes a provision recognizing that employees are primarily self-directed and exercise discretion in the performance of their duties. The University recognizes these principles are long standing and respects their importance to employees. At the same time, the University has a legitimate responsibility in managing its budget. Supervisors are therefore asked to take a collaborative approach when discussing job objectives, workload, and hours of work with each of their direct reports and to ensure that, wherever possible, employees

are both able to and do manage their work within APSA's standard hours of work. The University understands that from time to time circumstances will arise in which it will be necessary for employees to work hours in addition to APSA's standard hours of work. Supervisors should ask employees to discuss with them in advance any anticipated need for hours of work in addition to APSA's standard hours of work. More generally, supervisors should discuss with each employee whether there are specific job objectives or work assignments which are adversely affecting the employee's ability to ensure that hours worked in addition to APSA's standard hours of work are limited.

13. What if employees have concerns about working OT?

In this event, specifically, as well as more generally, supervisors should engage in a proactive and collaborative discussion with employees who report to them regarding job objectives and the management of workload. It is important to note that employees should not be expected or required to work hours in addition to APSA's standard hours of work on a regular or routine basis.

14. If an employee needs extra time to meet job objectives or complete work assignments because of a performance issue, would this be considered OT?

All time worked in addition to APSA's standard work week is compensable by either overtime pay or time off in lieu depending on whether the employee is a non-manager or a manager. Exceptions and specific cases related to accommodations should be discussed with the unit's HR Business Partner.

15. Will Policy AD 10.13 be updated? It states that there will be no monetary compensation for extra hours.

Aspects of the current Policy do not comply with the requirements of the *Employment Standards Act*. Compliance with the *Employment Standards Act* is mandatory and the University is taking active steps to establish compliance. The University will be discussing with APSA those aspects of the Policy which raise such compliance issues with a view to updating the content.

16. Does AD 10.6.02 Temporary Overload still apply when an employee works additional hours beyond the standard hours of work?

The University will be reviewing this policy in consultation with APSA. It is likely that changes will be made and a further communication will be issued. A supervisor should discuss any immediate needs with their HR Business Partner.

17. When can employees (and managers) take time off in lieu?

Time off in lieu should be taken within a reasonable time after it has been earned which takes into consideration both the employee's preferences and the University's operational needs.

Employees who wish to take earned time off in lieu must make their request in writing to their supervisor for the dates and times they wish to take off.

18. What happens if I disagree with the record of hours worked that my employee has submitted?

Supervisors should review workload with employees as often as is necessary to ensure that job objectives can normally be met and work assignments can normally be completed within APSA's standard hours of work. If it appears the employees in a unit are having difficulty meeting job objectives and completing work assignments within APSA's standard hours of work, the supervisor should take active steps, including collaborative discussions with their employees, to understand the reasons for the difficulty and to introduce appropriate remedial measures. If a supervisor has questions about a specific record of hours worked which has been submitted, the supervisor is free to discuss the additional hours with their employee to understand why the additional hours were needed. Supervisors should contact the unit's HR Business Partner for assistance as needed.



This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and Regulation for purposes of interpretation and application of the law.

August 2018

Managers

In British Columbia, managers are excluded from Parts 4 and 5 of the *Employment Standards Act*, which covers hours of work, overtime entitlements and statutory holiday pay.

How is “Manager” defined?

The Employment Standards Regulation defines a “manager” as:

- (a) a person whose principal employment responsibilities consist of supervising or directing, or both supervising and directing, human or other resources, or
- (b) a person employed in an executive capacity.

To determine if an employee is a manager, the Employment Standards Branch considers:

- How much can the individual, on their own or otherwise, materially and substantially affect the employment conditions of those for whose work they are held responsible by the organization?
- What kind of responsibilities does the employee have with regard to company resources, even if there are certain checks on their authority?

Duties

Typically, managers have the ability to act independently and make decisions using their own discretion. This may include things such as:

- Ensuring company policies are followed;
- Authorizing overtime, time off or leaves of absence;
- Calling employees in to work;

- Altering work processes;
- Establishing or altering work schedules;
- Training employees;
- Committing or authorizing the use of company resources;
- Managing a budget.

Example 1: A project manager for a corporation is responsible for overseeing various projects. She is currently responsible for administering a contract to implement a new computer system. The project manager has no employees reporting to her but is responsible for a large budget. The project manager has a great deal of discretion in running this project and others she is assigned to.

Although she does not supervise employees, this individual is a manager because she directs other resources for the corporation.

Example 2: A floor manager in a department store is responsible for ensuring stock is maintained in good order and customers are served quickly. The floor manager is required to approve any customer refunds within stated company policy. The floor manager can recommend staffing actions but has no direct authority to hire and fire employees. The floor manager also serves customers.

This individual is not a manager. Although there are elements of supervision and managing resources in the job, the floor manager has limited authority to act independently.

Continued ...



Executive capacity

A person is said to be in an executive capacity when he or she makes key decisions which are critical to the business, such as:

- How many employees are to be employed;
- What product should be purchased or produced;
- What services should be provided;
- From whom should supplies be purchased;
- At what price should products be sold.

They are the controlling mind of the business. They need not be the owner. They are sometimes given titles such as General Manager, Manager of Operations, Comptroller, or Director of Store Development.

What is not considered:

Determining who is a manager is **not** based on:

- The title given to a position or the fact that other employees refer to that person as a 'manager.'
- The form of payment of wages (e.g. salary, hourly wage, commission).
- The responsibility to open and close the business for the day.

An employee who is not a manager is entitled to the full range of entitlements under Parts 4 and 5, including overtime and statutory holiday pay.
