

Overtime vs Extra Time

What is overtime?

Overtime is when an employee works “additional hours”. This can include work done:

- beyond their ordinary hours of work;
- outside the agreed number of hours; or
- outside the spread of ordinary hours.

The spread of hours is the times ordinary hours for day work can be worked e.g. between 7.00 am to 7.00pm.

When overtime applies

An award or enterprise agreement will set out when overtime rates or TOIL applies. Overtime is normally required by the employer and should not be at the discretion of the employee. CMS recommends that the employment contract contain a condition of employment, in which the employee is to seek prior approval before working extra hours. In general, if approval is not sought or the overtime is not requested by the employer and unless evidence can be provided of the necessity and efforts to seek approval, the employer may refuse a request for overtime payments.

For part time employees the hours of work clause in the contract of employment will provide the agreed number of hours of work per week and the times within which the hours must be worked. Casual employees will be requested to work when required and notified at the time of engagement the duration of the shift. Depending upon the Award, or the terms of an applicable Enterprise Agreement, employees may be able to request that additional hours are remunerated with “Time Off In Lieu” (TOIL). The method for calculating the TOIL changes from Award to Award so it is vital that employers seek advice before entering into such arrangements.

What to do if you currently have an employee working additional hours of work and claiming overtime?

First you must ask if these additional hours of work are necessary e.g. has the job requirements substantially changed or is the employee covering for employees on approved leave or has nothing changed within the position;

- If the job requirement has substantially changed due to an increase in business or legislative requirements, contracted hours of work may no longer be adequate for the position and new hours of work may need to be negotiated with the employee. Should the employee be a full-time employee, it may indicate a need for additional staff to meet growth of the business.
- If additional hours are being worked because other staff are on approved leave and it is for a significant period of time, you should consider bringing in relief staff to back-fill the positions. As the employer you must consider the health and safety aspects that arise from working extra hours e.g. fatigue and effectiveness.

- In the event that the requirements of the job have not changed then you may need to consider:
 - what other elements in the workplace may be distracting the employee for their duties e.g. constant interruptions;
 - are they effectively managing their time;
 - were they allocated enough hours initially for the work being expected;
 - are they competent to do the work i.e. do they have skills and ability to do the work; and
 - are there any external factors which may be impacting on the ability do their work?

All of the above should be considered and discussions held with the employee to determine what if any issues need addressing from the contract of employment and agreed conditions of work.

Once the above issues have been addressed and hours of work agreed, overtime should not be paid unless prior approval is given or overtime is requested by the employer.

An employee who attends work early and stays back late of their own volition does not automatically qualify for overtime payments.

CMS recommends that in addition to a clause in the employment contract, employers should have a policy around the working of extra hours of work/overtime and that all employees should be made aware of this at the time of their commencement.