

# Overtime

On Friday 16 December 2016, the Fair Work Commission approved the new Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2016-2020, and it became legally enforceable seven days later. The new EBA contains a number of significant new conditions and obligations and the ANMF has developed materials to assist members and managers to understand and comply with its requirements.

Overtime is an entitlement for full-time, part-time and casual employees and should be claimed and paid.

By claiming your overtime, you ensure actual working hours are recorded, which also means problems with inadequate staffing levels can be identified and addressed.

Working excessive overtime can also impact negatively on your practice and your health, and compromise patient/resident care. You and your employer have a responsibility to prevent this.

### When am I entitled to claim for overtime?

When you:

- work beyond the end of your rostered shift; or
- are recalled to work when off-duty; or
- do not receive an eight hour break between rostered shifts; or
- work more hours than a full-time employee would.

### Does my employer have to authorise the overtime?

Generally yes. However circumstances may arise when this did not occur or was not possible. The new EBA recognises this and allows ANMF to argue your case in Fair Work if you did overtime that could not reasonably be approved in advance, or was as a consequence of circumstances beyond

your control, and your employer does not subsequently authorise payment.

### What should I get paid for working overtime?

Monday to Friday (inclusive) – time and a half for the first two hours, then double time thereafter. This applies on a per occasion basis, meaning if you work overtime on another occasion the first two hours revert to time and a half.

Saturday to Sunday (inclusive) – double time. You do not receive shift penalties for overtime work.

### What about 'time off in lieu'?

You may request time off in lieu for overtime, but cannot be required to take it. Time off in lieu is equivalent to the overtime penalty (e.g. the first two hours overtime equals three hours time off in lieu) and must be taken within 28 days of when it was worked. If this does not happen then you must be paid what you are owed, at the original overtime rates, in the next pay period.

### Am I obliged to work overtime?

If you are on-call then almost certainly yes. 'On-call' is a rostered period of availability where you can be contacted to come back to work, known as 'recall'. If you are rostered to be on-call (i.e. to be available to be recalled to duty beyond your rostered hours) you are entitled to receive an on-call allowance for each 12 hour period, or part thereof.

Therefore if you were on-call for 14 hours, you would receive the allowance twice.

Otherwise you may refuse to work overtime, if the request is unreasonable.

To determine if a request is unreasonable, the following must be taken into account:

- any risk to your health and safety from working the additional hours;
- your personal circumstances, including family responsibilities;
- the needs of your workplace;
- the notice given of any requirement to work the additional hours;
- any notice you give of your inability to work additional hours;
- the usual patterns of work in your area;
- the nature of your role, and your level of responsibility;
- any other relevant matter.

### What about getting home after overtime?

If you finish a period of overtime when reasonable means of transport home are not available your employer must provide you with adequate transport at no cost to you. This would commonly be a taxi voucher.

### What applies with a 'double' shift?

A double shift is one where you stay on after your shift and work another consecutive shift. This should only ever occur in emergency circumstances.

Overtime is payable for the entire second shift, and to mitigate the risk of fatigue and clinical error you must be provided:

- breaks of at least 10 minutes duration in each two hours worked; and
- adequate transport home free of cost to the employee, including the return journey where your vehicle remains at the workplace.

## **What if I am called to come back to work?**

This is called 'recall'. You are entitled to a minimum of three hours pay at the overtime rate for each occasion of recall, and you cannot be required to work the full three hours if the work you were called in for is completed in a shorter timeframe.

## **Travel to and from work when recalled**

If you are recalled and use your vehicle for transport from home to work and return, you are entitled to a vehicle allowance.

If you do not use your own vehicle your employer must provide you with suitable transport to work at no cost to you. If you finish the recall at a time when reasonable means of transport are not available for you to return home, your employer must provide adequate transport at no cost to you.

## **What if I can manage the problem without returning to work?**

Where recall to duty can be managed without you having to return to your workplace, such as by telephone, you must be paid a minimum of one hour's overtime, which then compensates for that and other recalls within that hour.

## **What if I don't get a decent break between when I finish overtime and am due to start my next shift?**

You should have at least 10 hours off between the end of recall, and the start of the next rostered shift. If this means you miss out on rostered hours then

you must be paid those hours. However this break does not apply if you are still at work on overtime when your shift commences.

If your employer cannot or will not give you the ten hour break you must continue to be paid at the overtime rate until you get your 10 hour break.

## **What if overtime causes me to have insufficient days off?**

The new EBA contains a provision that applies if you:

- normally work four or more days a week; and
- work 14 or more hours consecutively (this may be a mix of rostered hours and overtime); and
- these hours include night time (finish on the day after commencing duty or commence after midnight and before 5am); and
- some of those hours occur on your day off.

If this applies to you, you must be granted a substitute rostered day off on a working day (without loss of pay) as soon as practicable, but not later than 14 days.

## **When do I get a meal allowance?**

There are two Meal Allowances in the new EBA: Meal Allowance A and Meal Allowance B.

On any day where you work one hour beyond your usual finishing hour of work, you are entitled to 'Allowance A', and if you work five hours beyond your usual finishing hour of work, you also receive 'Allowance B'.

On any day where you work five hours overtime on your day off, you are entitled to 'Allowance A', and if you work nine hours overtime, you also receive 'Allowance B'.

The above does not apply if your employer has its own cooking and dining facilities, and provides you an adequate meal or you could reasonably

return home for a meal within the period allowed.

You are entitled to request and receive payment of the Meal Allowance on the same day overtime is worked.

## **Using your home phone for on-call**

If you are required to install and/or maintain a fixed telephone line for the purposes of being on-call your employer will refund the installation costs and pay a fortnightly Telephone Allowance. This does not apply to mobile telephones.