

L.N. 46 of 2012**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)****Overtime Regulations, 2012**

In exercise of the powers conferred by article 6 of the Employment and Industrial Relations Act, the Minister for Justice, Dialogue and the Family has made the following regulations:-

Title and scope

1. (1) The title of these regulations is the Overtime Regulations, 2012.

(2) These regulations shall be without prejudice to-

(a) any other law issued under the Act regulating part-time employment, and

LN 247 of 2003.

(b) the Organization of Working Time Regulations, 2003.

Definitions.

2. (1) For the purpose of these regulations:

“the Act” means the Employment and Industrial Relations Act; and

“Director” shall have the same meaning assigned to it by the Act;

“overtime” shall have the same meaning assigned to it by the Act.

(2) Terms and expressions used in these regulations, unless the context otherwise requires, shall have the same meaning assigned to them in the Act.

General principles.

3. (1) Subject to sub-regulation (4) of this regulation, whole- time employees shall work any overtime as required by their employer provided that the average weekly working time, including overtime, does not exceed an average of forty-eight hours over the applicable reference period in terms of the Organization of Working Time Regulations, 2003:

(2) The provisions of sub-regulation (1) of this regulation limiting the overtime worked to a weekly average of 48 hours during the applicable reference period shall not apply where the employee has given his consent in writing to work more than a weekly average of forty-eight hours.

4. An employee whose overtime rate is not covered by a Wages Council Wage Regulation Order shall be paid one and a half times the normal rate for work carried out in excess of a forty hour week, averaged over a four week period or over the shift cycle at the discretion of the employer. Payment of overtime.

5. (1) In all sectors, whether these sectors are covered by a Wages Council Wage Regulation Order or not, the employer may introduce schemes to bank hours, whereby up to three hundred and seventy-six hours of the normal annual working hours in each calendar year may be banked, thus allowing extra hours over and above the normal weekly working hours to be worked during periods of higher work activity which would be redeemed during periods of lower activity by having working hours below the normal weekly working hours. Annualized hours.

Provided that the average weekly working time, including overtime, shall not exceed an average of forty-eight hours over the applicable reference period in terms of the Organization of Working Time Regulations 2003, unless the employee concerned has given his consent in writing to work more than a weekly average of forty-eight hours.

(2) The hours of work which may be banked shall be limited to those hours on any day in a week which attract the normal hourly rate of payment. Similarly, any hours of work which have been banked in order to be utilized during weeks of lower work activity shall only be so utilized on a weekly day of work where the hours of work are paid at a normal rate.

(3) Subject to the specific provisions in sub-paragraphs (4) and (5) (e) (f) and (g) of this regulation, any banked hours shall be considered not to attract any remuneration above the normal daily or weekly rate as the case may be, and clauses in any applicable Order or regulation under the Act which specify particular rates of remuneration for hours of work in excess of a specified daily or weekly amount of hours shall not apply in these circumstances.

(4) Any hours worked on any day which attracts a special rate of pay in terms of any law, regulation, order, collective agreement or individual contract shall be excluded from any banking system and shall be paid for in accordance with normal practice unless the parties agree otherwise, in which case, the number of hours to be banked shall be calculated on and shall reflect the special hourly rate of pay.

(5) Any scheme of banking of hours shall comply with the following:

(a) the employee is given prior written notice of the number of hours and roster to be worked in the following four weeks under the banking of hours scheme;

(b) the employer shall have the possibility of making an alteration of the weekly hours to be worked in the following week as long as at least one week's written notice is given of such a change;

(c) the weekly basic wage shall remain constant throughout the year;

(d) part-time and whole-time employees with reduced hours shall not be obliged to participate in a scheme to bank hours and shall not suffer any detriment by the employer for failing to agree to participate in such a scheme;

(e) in cases where the contract of employment is terminated for whatever reason;

(i) before the banked hours could be redeemed, such outstanding banked hours are to be paid at the applicable overtime rate in force on the date of termination, by the date of the next pay day; provided that in the case of participating part-time employees or whole-time employees with reduced hours, any banked hours shall only be paid at the applicable overtime rate if the total hours worked by such employees when averaged exceed the normal hours of work of a comparable whole-time employee; and

(ii) where lesser hours than the yearly average have been worked, the employer shall not be entitled to claim a refund in respect of hours not actually worked;

(f) the employee may be required to work in excess of the scheduled hours of work on a particular day as referred to in paragraph (a) or (b) hereof but in such a case, such extra hours are to be paid at overtime rates at the applicable overtime rates;

(g) if at the end of a calendar year there are outstanding banked hours which have not been redeemed, such hours are to be paid at the applicable overtime rate unless the employer and employee have agreed in writing to transfer up to 160 banked hours to the next calendar year. Such banked hours carried forward from the previous year shall be utilised first and shall not be carried forward again; and

(h) the Director has authorised the introduction of the banking hours scheme and in so doing may impose any conditions deemed necessary.

(6) Any scheme to be introduced by an employer shall be without prejudice to the provisions of any applicable collective agreement in force at the workplace unless the parties to such an agreement otherwise agree.

(7) When a scheme has been duly authorized, any provision in any Wage Council Wage Regulation Order specifying rates of pay for particular work, shall, in the case of any conflict with the provisions of these regulations, not apply and the provisions herein shall prevail.

6. With respect to calculation of hours to be deducted from the annual leave or sick leave entitlement when these are availed of by an employee, the hours of work to be deducted from such annual entitlement shall be the number of hours which have been scheduled to be worked by the employer in accordance with the schedule issued by the employer in terms of regulation 5 of these regulations.

Vacation leave and
sick leave

7. (1) When an employee participating in a scheme for banking of hours takes maternity leave or other paid leave not referred to in regulation 6 of these regulations, that employee shall receive the normal wages which may be due in respect of the maternity leave or other leave, as the case may be, and the provision of regulation 5 (c) of these regulations shall continue to apply. During such leave, such an employee shall be considered to have worked the same number of hours scheduled to be worked

Maternity and other
Leave and banking of
hours

by virtue of such a scheme, whether these are above or below the normal hours usually worked outside the scheme, and such banked hours shall be considered to have been credited or debited, as the case may be, and be considered for all intents and purposes, in the same way as would apply to similar hours credited or debited by other employees participating in such a scheme.

(2) When an employee participating in a scheme for banking of hours is on unpaid leave, he shall be considered to have worked the same number of hours scheduled to be worked by virtue of such a scheme, whether these are above or below the normal hours usually worked outside the scheme, and such banked hours shall be considered to have been credited or debited, as the case may be, and be considered for all intents and purposes in the same way as would apply to similar hours credited or debited by other employees participating in such a scheme.

