

TEAM Memo

To: TEAM-IFPTE Local 161 Members
From: TEAM Office
Date: May 15, 2020
Re: Overtime and Shift Changes

As mentioned in our [March 2nd “New and Noteworthy” memo](#), members have questions about the changes implemented by Bell to overtime (OT) and shift changes for “planned work” that has to be done outside of the regular workday.

As advised previously, both 1:1 swap time arrangements and split shifts cannot and must not be used to avoid paying applicable OT rates; but what about the Company using shift and schedule changes to avoid having to pay OT?

Based on the TEAM Collective Agreement (CA) language, the Canada Labour Code, past practice, and relevant case law, we have put together some scenarios that should assist members with understanding the mechanics of shift and schedule changes, associated entitlements, and when it is appropriate to use them and when it is not.

Before we get into the mechanics, it is worthwhile to take a look back at another time when TEAM members faced similar challenges. In 2000, members in NS were working under circumstances very similar to the current situation. Downsizing of the workforce had resulted in members working increased, and in some cases excessive, amounts of OT hours to keep up with the workload. TEAM was concerned about its members’ health and well-being and also the Employer’s compliance with federal Excess Hours legislation. There was an initiative by the Employer to reduce the amount of OT hours by shifting the hours of work that needed to be completed outside of the regular workday and members were directed to accept a 1:1 swap time arrangement in lieu of receiving applicable rates for OT hours worked.

The situation resulted in a TEAM Policy grievance on overtime and shift work (the “*OT and Shift Work Grievance*”). After protracted discussions and negotiations, including during the 2001 round of collective bargaining, a settlement was achieved. The settlement resulted in impacted TEAM members receiving financial compensation for OT hours worked, and a commitment from the Employer to eliminate the use of 1:1 swap time arrangements going forward (this agreement remains in force today). The settlement also resulted in the current wording of [Article 19.05](#) which requires notice for shift and schedules changes, i.e. at least 24-hours’ notice of a shift change, and at least 5 working days’ notice of a schedule change, failing which OT rates apply.

The “4-hour rule”: Throughout the *OT and Shift Work Grievance*, TEAM made the Employer aware of its concern about the negative impact shift changes and shift work have on employees’ health and lives. An agreement/understanding and practice was reached about planned work outside the regular workday. Senior management (Roger Ballance, David Rourke, Bryan Luce) committed to promote what we’ll refer to here as the “4-hour rule” (during discussions at the time it was called the “4x4 rule”). The *4-hour rule* provides that the Employer will continue to schedule and pay OT to complete planned after-hours work if it is expected to take four hours or less. If the work is expected to extend beyond four hours, a shift change may be implemented.

Since the *OT and Shift Work Grievance*, TEAM has advanced other proposals to better define when employees have to work shifts commencing outside of the normal “daytime tour” (i.e. before 7:00 am and later than 6:00 pm). For example, TEAM proposed defined evening and night tours, similar to those found in the CA’s for other unionized MTS employees and worked currently by some TEAM members working in positions in the MNOC. Ultimately, only the existing Article 19.05 wording (a term of the *OT and Shift Work Grievance* settlement) was incorporated into the TEAM CA.

Until TEAM started hearing from members in relation to the recent changes, first in IS and then in NS, TEAM had not heard a lot of concerns about this matter (outside of shift changes related to the Apex Project). Members reported that they had been working OT hours to perform planned work outside of the regular work day, no matter the expected duration of the work, and shift changes were not implemented to perform this work in lieu of OT hours.

The idea of having hours of work shifted to avoid OT is causing some members anxiety and stress about the potential and actual negative impacts on their lives and health. Many members have questions about how such shift and schedule changes would even work for them, as their hours of work are not formally scheduled.

Shift changes and scheduling shift work can be complex, and there are many different factors that must be considered. It is important for TEAM members to be aware of these factors. We have set them out below, followed by a few scenarios to demonstrate the mechanics of shift and schedule changes and the corresponding entitlements.

Factors to Note

- Where our CA is silent, or our CA provisions are less than the legal minimum standards, the Canada Labour Code wording and provisions apply.
- Section 166 of the Canada Labour Code (CLC) defines a “day” as “any period of twenty-four consecutive hours”.
- Case law interprets section 166 of the CLC to mean a period of twenty-four consecutive hours that begins when an employee’s shift starts, e.g. if an employee starts work at 8:00 am, that employee’s work “day” ends at 8:00 am the following day.
- The normal working day for TEAM members consists of 7 hours and 30 minutes consecutively.
- A normal working week for TEAM members consists of any assigned 5 consecutive days commencing on any day of the week.
- The CLC requires overtime to be paid when an employee is **required or permitted** to work in excess of the standard hours of work. Standard hours of work under the CLC are 8 hours in a day and 40 hours in a week.
- [Article 21.01](#) of our CA says that when a TEAM member is authorized to work beyond the normal work day, those hours are considered as OT and will be paid at the applicable OT rate of time and one-half for the first 4 hours OT in a week, and double time for OT hours in excess of four in a week.

- A daytime tour for TEAM members shall not normally start before 7:00 a.m. or end later than 6:00 p.m.
- Assignment of tours for TEAM members may include Saturdays or Sundays.
- A “shift” is a single block or window of time in which an employee is scheduled to work in a 24-hour period.
- Both the TEAM CA and the CLC require a minimum of 8 hours off between scheduled shifts. Exceptions apply in limited emergency situations.
- Case law indicates that while the CLC contemplates employees working in excess of 8 hours in a 24-hour period, in that it provides for OT to be paid in such instances, it does not contemplate the *standard* workday being organized so that an employee only has 8 hours off between shifts.
- A “schedule” generally refers to the days per week and the hours per day that an employee is expected to be at their job. A “schedule” typically includes a timeline of an employee’s shifts that span several weeks.
- If a shift change is implemented with less than 24 hours’ notice for a TEAM member, OT rates will apply.
- Per the CLC, 24 hours written notice is required for a shift change. If the change is to start earlier than normal, notice must be provided at least 24 hours before the earlier start time. If the change results in a later start time, notice is required at least 24 hours before the normal start time.
- If a schedule change is implemented with less than 5 working days’ notice for a TEAM member, OT rates will apply.
- Per the CLC, 96 hours (4 days) notice is required for a work schedule change; employees may refuse to work any period or shift in their schedule that starts within 96 hours from the time that the schedule is provided to them.
- TEAM members who are required to work between the hours of 6:00 p.m. and 8:00 a.m. are entitled to an evening and night differential of \$1.00 per hour. This does not apply to a day tour starting after 7:00 a.m. or ending before 6:00 p.m.
- TEAM members receive a differential of one-half straight time extra for each hour worked between midnight Saturday and midnight Sunday.
- Differentials are not applicable if an employee is being paid OT rates.
- Bell has the right from time to time to establish the arrangement of hours of work for employees as is necessary for the efficient operation of the business, subject to the provisions of the CLC. This means it is up to the Company to initiate an occasional shift or schedule change if there is a legitimate business need to do so. Employees can provide input as far as what would provide the least amount of disruption to their life, but ultimately the business is responsible for altering employee shifts and schedules from time to time as needed to ensure the efficient operation of the business. Bell is

also required to pay TEAM members in accordance with the CA and the CLC for OT hours worked.

The Rules in Practice

The following scenarios explore a number of ways in which shift and schedule changes might be used. They demonstrate, as signified by the *4-hour rule*, that but for a few situations, it makes more sense, causes less disruption for employees, and costs less to continue to perform the after-hours work as overtime.

Scenario #1 – A member who normally works 8:00 am to 4:00 pm, Monday to Friday, is tasked with work that needs to be completed outside of the regular workday that is expected to take between 2 to 3 hours to complete. For the remainder of the shift, the employee would perform work that would otherwise be done during their normal working hours. Two shift changes are initiated 3 days before the work is to be performed, whereby the employee will start work on Wednesday at 7:00 pm and work until 3:00 am Thursday morning, and then return 8 hours later and work from 11:00 am to 7:00 pm on Thursday. The employee returns to their normal start time on Friday and works 8:00 am to 4:00 pm.

Under the *4-hour rule*, this work would be performed using OT hours. However, if the business instead initiated these shift changes, this employee would be entitled to evening and night differentials of \$1.00 per hour for the first changed shift of 7:00 pm to 3:00 am. In addition, because the entire second shift is within 24- hours of the start of the first shift, and thus part of the same work “day”, this employee is entitled to applicable OT rates for the 11:00 am to 7:00 pm shift, as they have already worked a normal working day within the 24-hour period.

Note: The above scenario is based on a real situation, the outcome of which was that the business decided not to proceed with the shift change, and the employee was approved to perform the after-hours work as OT.

Scenario #2 – A member who normally works 7:00 am to 3:00 pm, Monday to Friday, is instructed verbally at 9:00 am on Monday to start at 5:00 am on Tuesday to perform work that has to be completed before 8:00 am and is expected to take around 2 hours.

This employee would be entitled to applicable OT rates for the whole shift on Tuesday because 24 hours written notice of the change was not provided.

Note: If the shift change had been initiated with 24 hours written notice, this employee would be entitled to the applicable OT rate from 5:00 am to 7:00 am and their regular wage for the rest of the shift. However, if the *4-hour rule* had been followed, this work would have been performed using OT hours instead of a shift change.

Scenario #3 – A member who normally works 9:00 am to 5:00 pm, Monday to Friday, is scheduled to perform an implementation that needs to be completed overnight from Saturday to Sunday. The after-hours work is expected to take at least 4 hours and likely longer. The employee is provided with 2 weeks’ notice of a schedule change whereby they work Tuesday to Friday at the normal time, and complete the work week on Saturday, working 8:00 pm to 4:00 am Sunday morning.

This employee would be entitled to an evening and night differential for the hours worked on Saturday from 8:00 pm – 11:30 pm as well as a time and a half Sunday differential for the hours worked from 12:00 am – 4:00 am (30-minute unpaid rest period from 11:30 pm to 12:00 am).

Scenario #4 – A member who normally works 8:30 am to 4:30 pm, Monday to Friday is asked on Monday to initiate their own shift changes so they can complete after-hours work on Thursday night that is expected to take about 3 to 4 hours to perform.

This employee should advise their manager that it is not their responsibility to initiate their own shift changes, and request that their manager provide the shift change details in writing. The request must be provided within the prescribed time-lines, or OT rates apply.

Scenario #5 – A member who normally works 8:30 am to 4:30 pm, Monday to Friday is notified in writing on Monday that their shift on Thursday is changed to 4:00 pm to 12 midnight to perform after-hours work that is expected to take about 3 to 4 hours to complete. At the same time, they are also notified that their shift on Friday is changed to 10:00 am to 6:00 pm.

This employee would be entitled to evening and night differentials for 6:00 pm to 12 midnight, and applicable OT rates on the Friday shift from 10:00 am to 4:00 pm. Alternatively, per the 4-hour rule, OT hours would be used to complete the work.

Scenario #6 – A member who normally works 7:30 am to 3:30 pm, Monday to Friday, is provided one weeks' notice of a schedule change whereby they work Sunday to Thursday at their normal time, and perform the after-hours work on Sunday, which is expected to take more than 4 hours.

This employee would be entitled to a differential of time and a half for all hours worked on Sunday.

Note: If the schedule change had been made with less than 5 days' notice, OT rates would apply for the Sunday shift, and if the change had been made with less than 4 days' notice, the employee could refuse to work the Sunday shift and instead work their normal Monday to Friday schedule.

Please contact the TEAM Office (204-984-9470, team@teamunion.mb.ca) or our Labour Relations Officer, Erin Spencer (204-984-9474, erin.spencer@teamunion.mb.ca) if you have any questions or concerns, or if you believe that you have not been compensated appropriately in relation to a shift change or overtime hours you have worked.

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