



Salaried Employees and Overtime

By Breena Murray

The Employment Standards Code applies to all employees and employers save for where exceptions are provided by the *Code*. It sets out the minimum obligations of an employer to its employees on a number of workplace issues, including setting the minimum wage in Manitoba and outlining provisions for when employers have to pay their employees overtime wages.

The standard work week set out by the *Code* is 40 hours of work per week, and 8 hours of work per day, unless otherwise permitted by a regulation of the *Code* or a collective agreement. When employees are required to work longer than this, the employer must pay them overtime wages at an hourly rate of at least 150% of the employee's normal rate.

When it comes to an employee who is paid a salary, rather than an hourly rate, there is a misconception that this employee is not entitled overtime wages. However, the *Code* does not treat salaried and hourly rate employees

differently. Thus, salaried employees may be entitled to overtime wages.

The first step to determine a salaried employee's right to overtime wages is to look at their employment contract. Employment contracts for salaried employees should always speak to what hours the employee will be required to work and whether overtime is included in the salary.

If the contract is silent to the hours required and overtime, or states something similar to "salary is inclusive of all hours worked", the Courts will view at this as contradictory to the *Code*. As, you are not allowed to agree to employment agreements that provide less the *Code*, the *Code's* provisions will then prevail.

Under the *Code*, an employee is entitled to overtime wages if they work more than the standard work week or day, unless they fall into one of the exceptions provide by the *Code* or its regulations. These exceptions include:

- An employee who performs management functions primarily
- An employee who has substantial control over his or her hours of work and whose annual regular wage is at least two times the Manitoba industrial average wage, as defined by regulation
- Agricultural workers and fishers
- Professionals and Students of a Profession
- Family business workers
- Salespersons remunerated solely on commission
- Certain Crown employees
- Workers under *The Elections Act*

One of the hardest exceptions to determine is whether an employee performs management functions primarily. This is because Courts look past a person's title to see what responsibilities they

actually have when determining if they are management. Some of the criteria the Courts look at when determining such an issue include whether the person has the ability to hire, fire or discipline the employees they are supervising, whether they participate in performance evaluations, whether they can authorize overtime or absences from work, whether they participate in policy making for the workplace, or establish budgets and whether they have the ability to purchase material or tools without prior authorization. If the person does not have at least some of the responsibilities list above, they will not be viewed as management.

If the employee does not fall into an exception listed, he or she will be entitled to overtime wages when they work more than 8 hours day or 40 hours a week, whether or not they are paid by the hour or have a set salary.