

# FACTSHEET: HOURS OF WORK

## 1. WHERE CAN I FIND THE LAWS ON HOURS OF WORK?

Part 6 of the Employment Act [Cap 160] (the Act) provides the law on hours of work and overtime payments for employees. Specific limits for women can be found in Part 8 of the Act.

## 2. DO THESE LAWS APPLY TO EVERYONE?

Some employees are not subject to any limits on hours of work (section 27). They also have no automatic entitlement to overtime payments under the law. These exceptions are:

- Employees working in any business in which only members of the employer's family are employed;
- Employees working in offices in which staff is engaged in connection with the administration of public authority; and
- Employees occupying positions of management or employed in a confidential capacity.

The other exception is that domestic workers are not entitled to being paid overtime for work outside of the normal hours of work (section 26(2)), although they are subject to limits on hours.

## 3. HOW DOES THE LAW APPLY TO PART TIME OR CASUAL WORKERS?

Vanuatu's law does not separately define *part time* or *casual employees*. The limits on hours of work and the right to be paid overtime apply equally, regardless of whether one is employed on a part time, casual or full time basis.

*Sam is employed by Bizniz for 2 days to help them complete a large job. Sam works 13 hours a day. Is Sam entitled to overtime?*

The regular maximum hours of work per day are 8 hours. An employee can voluntarily work more than this, but must be paid overtime. Even though Sam not a regular employee of Bizniz he still can claim overtime – see *factsheet: overtime*.

## 4. WHAT ARE THE NORMAL MAXIMUM HOURS AN EMPLOYEE WHO IS COVERED BY THE LAW CAN BE REQUIRED TO WORK?

The normal maximum hours per week are **44 hours per week**. There are also daily maximum limits of **8 hours per day** (section 22(1)). These limits exclude any break times (section 28). Employees can also only be required to work a maximum **6 days per week** (section 22(1)).

These hours can be exceeded in some situations, including by voluntary agreement (see question 8 below).

*Bizniz has a special event coming up and wants to employ Ivy as a casual worker to work for 12 hours in one day. Can it do this?*

Bizniz can only do this if Ivy voluntarily agrees. Although Ivy is working less than 44 hours in the week, she is working for more than 8 hours in 1 day, so she is exceeding the normal maximum hours of work.

## 5. WHAT BREAKS MUST I GIVE EMPLOYEES WHO ARE COVERED BY THE LAW? MUST I PAY WAGES WHILE THE EMPLOYEE IS ON BREAKS?

Every employee who works for more than 6 consecutive hours on 1 day must be given a break of 1 hour for a meal and a tea break of 20 minutes or 2 tea breaks of 10 minutes each (section 24).

There is no requirement that these breaks be paid, although in practice most employers do not deduct the time taken by employees having short tea breaks.

Employees who are breastfeeding are also entitled to a nursing allowance. See the separate *factsheet: maternity leave* for more information on nursing allowances.

## 6. DO I HAVE TO GIVE MY EMPLOYEES A SET AMOUNT OF TIME OFF EACH WEEK?

Employees are usually entitled to a weekly rest period of 24 consecutive hours. This shall usually be taken on a Sunday (section 25). The day of rest can be varied by agreement, or varied if there is a trade where it is usual for another day of rest to be taken (section 25). Some people in Vanuatu have their religious day of rest on a Saturday or Friday. Where possible, employers should try to ensure that the weekly rest period fits with employee preferences regarding their religious day of rest by agreeing work days when the contract is being made. The *factsheet: contract provisions on hours of work & overtime* contains an example contract clause on this topic.

If the nature of the business means that all the staff taking their day of rest at the same time would affect the proper working of the business then the law allows the day of rest to be allocated by roster or divided into two half days (section 25).

## 7. CAN I REQUIRE THAT MY EMPLOYEE WORKS FOR MORE THAN THE NORMAL MAXIMUM HOURS OF WORK?

There are some situations where the employer can require the employee to work extra hours. These are:

- If an emergency occurs, or an actual or threatened accident occurs, or urgent work must be done to machinery or plant, and additional hours must be worked in order to avoid serious interference with the ordinary working of the business (section 22(2)(a)); or
- If the employee is engaged in a job that must be carried out continuously by using shift work (section 22(2)(b)).

The limit in these situations is that the working hours do not exceed, on average, 56 hours per week.

**Grey area: It is not clear what the average should be taken from. It is assumed that averages are based on hours worked over 1 year.**

*Bizniz has a construction job that involves pouring foundations. Work has gone slowly and it will take an extra 4 hours of work for the job to be finished. Can Bizniz require staff to continue working?*

If it is not possible to stop pouring foundations in the middle of the job then this is a situation where additional hours must be working to avoid serious interference. Bizniz can require staff to keep working, although it will have to pay overtime – see *factsheet: overtime*.

If your employees are likely to have hours that occasionally require them to work variable hours it is good practice to include this in your employment contracts – see *factsheet: contract provisions on hours of work & overtime*.

Also, an employer **can require** an employee to work longer hours to make up for hours that have been lost due to holidays, accidents, power cuts, damage to plant et cetera (section 22(3)). There are limits on this though:

- the employer shall as soon as practicable notify a *labour officer* of any increase of hours of work due to making up for lost hours; and
- hours of work which have been lost shall not be made up on more than 30 days in the year; and
- hours shall be made up within a reasonable time; and
- the increase in hours of work in the day shall not exceed 1 hour; and
- the hours of work in the day shall not exceed 10; and

Grey area: the provisions of the law contradict. Normal hours of work are 8 hours per day. Limiting to a 1 hour increase would mean only 9 hours per day could be worked. To be safe an employer should seek voluntary agreement of employees for any more than 9 hours work per day.

There are limits on requiring employees to work on Sundays and public holidays. See the separate *factsheet: work on Sundays, religious days of rest and public holidays*.

If the employer requires the employee to work more than the normal maximum hours of work then **overtime must be paid**. See the separate *factsheet: overtime*.

#### **8. CAN MY EMPLOYEE VOLUNTARILY AGREE TO WORKING FOR MORE THAN THE NORMAL MAXIMUM HOURS OF WORK?**

Yes, an employer can agree with an employee that the employee works overtime. There are no limits in law as to the amount of voluntary overtime that must be agreed to.

If the employee voluntarily works more than the normal maximum hours of work then **overtime must be paid**. See the separate *factsheet: overtime*.

#### **9. CAN I VARY MY EMPLOYEE'S HOURS OF WORK DEPENDING ON THE AMOUNT OF WORK I HAVE ON, OR OTHER EXTERNAL CONDITIONS SUCH AS WEATHER?**

If you want to be able to vary your employee's hours of work this will need to be stated in the employment contract. If you do not do this and regular set hours can be implied by past practice then you will be liable to pay employees for their regular set hours, even if they are not given work to do in those hours (section 12).

*Bizniz is a construction firm. Staff wage are based on an hourly rate and the standard workday is 8 hours per day. On days when rain does not allow work Bizniz sends staff home early and does not pay wages for hours that staff do not work. Is this allowed?*

If the employment contract makes it clear that hours of work are variable then this is permitted.

#### **10. ARE THERE PARTICULAR LIMITS ON THE HOURS WOMEN CAN WORK?**

Women are generally not allowed to be employed at night (section 35(1)). This is defined as between 7 pm and 6 am (section 35(3)). There are some exceptions to this.

Women **are** allowed to work at night if necessitated by an emergency which is impossible to foresee and which is not of a recurring character.

Women are also allowed to work at night in the following business areas

- processing raw materials or materials in course of treatment which are subject to rapid deterioration;
- responsible positions of management;
- nursing and of caring for the sick, or other health or welfare work, including work in pharmacy;
- theatres or other places of public amusement;
- hotels, bars, restaurants, clubs, or similar establishments;
- the transport of passengers by sea or air;
- postal and telecommunication services or broadcasting.

#### **11. ARE THERE PARTICULAR LIMITS ON THE HOURS YOUNG PEOPLE CAN WORK?**

There are limits on the types of work young people are allowed to do (sections 38 – 42), but there are no general limits on the hours of work for young people.

The only limit is that people under the age of 18 are generally not allowed to work night shifts in industrial businesses (section 41(1)). A night shift is a consecutive period of work of 7 or more hours between 10 pm and 6 am (section 41(2)).

If the employee is above the age of 16 a labour officer can, however, give written consent to his engagement in industrial night shift work (section 41(1)).