

FACTSHEET: OVERTIME

The Vanuatu Employment Act provides for overtime payments to certain types of employees when they exceed their normal working hours or work on public holidays or days off. This factsheet outlines these requirements for employers.

1. WHEN MUST OVERTIME BE PAID?

Any time that an employee's working hours exceed 44 hours in a week excluding breaks, or 8 hours in a day excluding breaks, or 6 days in a week then overtime must be paid (section 26(1)).

Whether you have to pay overtime if an employee works more than 8 hours in a day, but less than 44 hours in total in the week is something of a **grey area**. It has not been tested in court. However, the plain meaning of the words in the Act is that overtime must be paid any time that an employee works more than 8 hours in a day.

Sarah regular hours of work are Monday & Tuesday 10 hours per day, Wednesday, Thursday & Friday 8 hours per day. Sarah works 44 hours per week in total, but on 2 days she works more than 8 hours per day. Does Bizniz have to pay Sarah overtime on the days that she works more than 8 hours?

Under a strict interpretation of the law yes Bizniz does have to pay overtime to Sarah for the days where she works more than 8 hours.

Some classes of employees are, **excluded from overtime** and have no statutory right to overtime payments. These classes of employees are:

- Domestic workers (section 26(2))
- Employees working in any business in which only members of the employer's family are employed (section 27(a));
- Employees working in offices engaged in connection with the administration of public authority (section 27(b)); and
- Employees occupying positions of management or employed in a confidential capacity (section 27(c)).

2. HOW MUCH MUST I PAY FOR OVERTIME WORK?

The statutory rates for overtime are found in section 26(1), which says 'an employee shall be paid overtime at the following rates -

(a) for work on public holidays or Sundays: at a minimum rate equal to one-and-a-half times the normal hourly rate;

(b) for work carried out in excess of the *normal weekly hours of work* –

(i) for the first 4 hours: at a minimum rate equal to one-and-a-quarter times the normal hourly rate;

(ii) in excess of 4 hours: at a minimum rate equal to one-and-a-half times the normal hourly rate;

(c) for work (other than work as a night watchman) carried out at night between 8 p.m. to 4 a.m. in excess of the normal weekly hours of work: a minimum rate equal to one-and-three-quarter times the normal hourly rate.'

Note: These amounts are *minimums*. You can agree to pay a higher rate for overtime than these rates above.

3. CAN I GIVE AN EMPLOYEE TIME OFF IN LIEU INSTEAD OF OVERTIME?

Grey area: There is nothing in the law that permits giving *time off in lieu*. If time off in lieu works to the employee's favour and is requested by the employee, then it is probably legal as section 6 permits an employment agreement to contain anything more favourable for the employee.

If you would like to provide the employee with time of in lieu, rather than overtime payments, this should be agreed in advance, and should also be included in the employment contract –see *factsheet: contract provisions on hours of work & overtime*.

You may also want to seek approval from the Department of Labour, who can check that your contract provides time off in lieu provisions that are more favourable to your employees than receiving overtime payments.

4. IF AN EMPLOYEE WORKS OVERTIME WITHOUT MY PRIOR PERMISSION MUST I PAY HIM OR HER OVERTIME FOR THIS WORK?

If an employee does extra work without your prior agreement or permission then you are under no obligation to pay him or her for overtime. This permission can be implied from circumstances, or can be express.

A Bizniz employee works late (an additional 6 hours over his normal working day) to complete a customer order that was shipped that same night on a rescheduled domestic ship. The manager of Bizniz had previously sent a memo to employees instructing them to ensure that customer orders are shipped on the first available ship. As the manager was busy in another office he did not give permission for these extra hours so does Bizniz have to pay overtime? Can Bizniz provide time off in lieu instead?

As Bizniz had made it clear to its employees that they have to send customer orders out on the first available ship it could be reasonably argued that Bizniz has given blanket permission for overtime in these circumstances. The manager's written instructions could be viewed as a general internal operating policy which gives implied permission for overtime.

As a good employer, Bizniz should probably pay the employee overtime at the standard rates. Bizniz may want to review its operating policies to cover similar situations in future.

There is no provision to provide time off in lieu in this circumstance, unless Bizniz and the employee have agreed to this in advance, and the time off in lieu is of more benefit to the employee than being paid overtime.