

FACTSHEET: CONTRACT PROVISIONS ON HOURS OF WORK & OVERTIME

Chapter 3 of the Employers' Guidebook discusses legal requirements in relation to hours of work in detail. This section does not restate legal rules, but provides examples of clauses you might want to include in your employment contracts

Please also refer to the different chapters of the Employers' Guidebook when finalising specific clauses of employment contracts to ensure you are following the law.

- **Usual hours of work** need to be clearly stated in order to ensure that the employee is not being required to work more than statutory maximum hours of work.
- **How hours of work can be extended (overtime)** should be explained, particularly if the employer can require the employee to work extra hours.
- **Overtime compensation** Whilst paying overtime is about remuneration, clauses on overtime payments are often found in the hours of work section. It does not really matter about order and placement of these clauses, just so long as they are included somewhere.
- **Breaks** should be stated in order to ensure that the employee is being provided their legal entitlements. If the employee is paid a wage based on the number of hours worked it is also useful to state whether breaks are paid or unpaid.

Other things you might like to include are clauses covering: if the employee volunteers to work on Sundays; if the employee volunteers to work on public holidays; if the employee is unavailable to work on particular days; a clause about taking time in lieu instead of overtime payments.

IMPORTANT NOTE TO EMPLOYERS: The following text boxes provide example clauses that you can use as the basis for writing your own contracts. You can amend the clauses to suit your own situation. Please **do not** just paste any of these clauses into your employment contracts without carefully reviewing them to ensure they meet your needs.

EXAMPLE HOURS OF WORK AND BREAK CLAUSES

1. Employee works regular hours, and has agreed to work on Sunday

1. The employee's regular hours of work shall be Monday – Friday, 7.30 am – 11.30 am 1.30 pm – 5 pm; Sunday 7.30 am – 11.30 am.
2. The employee has voluntarily agreed to work on Sundays, but is not available to work on Saturday for any reason.

2. Employee works flexible hours

1. The employee's hours of work are variable. The employer shall notify the employee of her next day of work and the start time for the next day of work at the end of each work day.
2. In the event that the employee works more than 6 hours in day she shall be permitted to take a 1 hour meal break. This break shall be unpaid. She shall also be permitted to take paid tea breaks of at least 20 minutes during the day.

3. Employee has set times of work, but a flexible meal break.

1. The employee's regular hours of work are Monday – Friday 8am – 5 pm.
2. The employee shall be permitted to take a 1 hour meal break. This break is to be taken at some point between 11 am – 2 pm, at a time which is convenient to the employee. This break shall be unpaid. He shall also be permitted to take paid tea breaks of at least 20 minutes during the day.

EXAMPLE OVERTIME CLAUSES

1. Situation where overtime can be voluntary or required.

1. Hours of work can be extended:
 - 1.1 by voluntary agreement of both the employee and the employer;
 - 1.2 by order of the employer, if additional work is required in an emergency.
2. If hours of work are extended by the employer hours per week shall not exceed 56 hours.
3. If hours exceed 8 hours per day or 44 hours per week overtime will be paid in accordance with the rates provided in the Employment Act. [Cap 160] (Vanuatu). These rates are attached to this contract as an appendix.
4. If a public holiday falls on a regular work day the employee shall not be required to work. The employee will not receive wages for hours that are not worked due to time off for public holidays.

2. Time off in lieu clause

1. If the employee works more than 8 hours per day by voluntary agreement the employee can choose to either have overtime paid in accordance with the rates provided in the Employment Act. [Cap 160] (Vanuatu), or take an equivalent time off in lieu on another day.
 - 1.1 If the employee chooses to take time off in lieu on another day rather than an overtime payment time off in lieu shall be paid at the usual rate of pay.
 - 1.2 The employer and employee must agree in advance as to when the time of in lieu is to be taken.
2. If the employee works additional hours without prior agreement the he shall not be paid for these hours.