

BC Employment Standards for Caregivers in the LCP¹

This fact sheet explains the law in general. It is not intended as legal advice for your particular problem. Because each person's situation is different, you may need to seek legal advice. A lawyer at MWC reviewed this information in May 2018.

Am I entitled to overtime pay?

Under the *Employment Standards Act (ESA)*, live-in caregivers are entitled to overtime pay. When calculating overtime, both the number of hours worked in a day and the number of hours worked in a week must be considered.

Daily Overtime

If you work more than 8 hours in a day, you **must** be paid time-and-a-half for every hour worked for the next 4 hours. If you work more than 12 hours in a day, you must be paid double-time for every hour worked after 12 hours.

For example, if you work 14 hours in a day, the first 8 hours will be paid at the regular rate, the next 4 hours will be paid at time-and-a-half, and the last 2 hours will be paid at double-time. If the hourly rate is the minimum wage (\$11.35/hr in BC), then the caregiver should be paid \$204.32² for the 14-hour day.

	Hours Worked	Hourly Minimum Rate: \$11.35
Total hours worked in a day:	14	
Hours paid regular	8	8 X \$11.35 = \$90.80
Hours paid time-and-a-half (1.5x)	4	4 x \$17.03 = \$68.12
Hours paid double-time (2x)	2	2 x \$22.70 = \$45.40
		Total Amount to be Paid= \$204.32

Weekly Overtime

If you work more than 40 hours a week, you must be paid time-and-a-half after 40 hours for every hour worked, even if you do not work for more than 8 hours in each work day for the relevant week. If you work over 48 hours in the week, you are entitled to receive double the regular wage for every hour worked after 48 hours.

¹ LCP refers to the Live-in Caregiver Program.

² This amount is subject to deductions such as taxes and CPP. Please refer to our fact sheet titled 'Documentation of Wages' for more information on deductions.

For example, if you worked 8 hours a day for 6 days in a week for a total of 48 hours, the last 8 hours must be paid time-and-a-half. If the hourly rate is the minimum wage (\$11.35/hour in BC), then you should be paid \$488.05 for 48 hours worked in a week.

	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Hourly Minimum Rate: \$11.35
Daily Hours		8	8	8	8	8	8	
Regular Pay		8	8	8	8	8		40 x \$11.35 = \$454.00
Time-and-a-half (1.5x)							8	8 x \$17.03 = \$136.24
								Total Amount to be Paid= \$488.05

How many days off a week am I entitled to?

Every week, you are entitled to have at least 32 hours in a row free from work for rest. If your employer needs you to work during this time, you must be paid time-and-a-half for hours worked in that period. This means that *even if you work less than 40 hours a week but worked 7 days in a row, you must still be paid for time-and-a-half for one of the days worked.*

For example, if you worked 5 hours a day for seven days in a row, you should be paid time-and-a half for one of the work days. If the hourly rate is the minimum wage (\$11.35/hour), then you should be paid \$426.65.

	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Hourly Minimum Rate: \$11.35
Daily Hours	5	5	5	5	5	5	5	
Regular Pay	5	5	5	5	5	5		30 x \$11.35 = \$340.50
Time-and-a-half (1.5x)							5	5 x \$17.03 = \$85.15
								Total Amount to be Paid= \$426.65

Am I entitled to meal breaks?

For every 5 consecutive hours worked, you are entitled to at least a ½ hour of meal break. If the employer requires you to work or be available to work during your meal break, you are entitled to be paid for the time worked during your break.

No Excessive Hours

As a live-in caregiver, you cannot be required to work excessive hours or hours that are harmful to your health or safety. Caregivers are also entitled to have 8 hours off between shifts unless they are required to work because of an emergency.

Can the employer split shifts?

An employer is entitled to split your work shift as long as the split shift is completed within 12 hours of starting work.

For example, if the employer wants to split an 8 hour work shift into two 4 hour shifts and you start the first shift at 7 am, he or she should finish the second shift by 7 pm at the latest. Therefore, if you begin the first 4 hour shift at 7 am and finish at 11 am, the latest possible time he or she could start the second 4 hour shift is 3 pm in order to finish by 7pm.

Can I bank overtime and take time off instead of getting paid?

You can establish a time bank with a written agreement. Instead of being paid the overtime hours in a pay period, you can credit your overtime wages to a time bank and request the employer to do one or more of the following at any time:

- pay all or part of the overtime wages credited to the time bank;
- allow you to use the credited overtime wages to take time off *with regular pay* for a period agreed to by the employer and the caregiver; and
- close the time bank in which the employer will have to pay the you the outstanding balance.

Once you provide written request to the employer to close the time bank, all overtime wages must be paid out on the next payday.

An employer may also close your time bank as long as he or she provides one month's written notice to you. If the employer closes your time bank, he or she must pay you all overtime wages remaining in the bank, and/or allow you to use the credited overtime wages to take paid time off. This means that you can combine both pay and paid time off. The employer must fulfill its obligations within six months of closing your time bank.

When your employment ends or is terminated, your employer must pay out any overtime wages in the time bank on the final paycheck.

My employer suggested entering into an averaging agreement. What does that mean?

Typically, the standard work day is 8 hours and the standard work week is 40 hours. Overtime is payable for all hours exceeding 8 hours a day and/or 40 hours a week. The law also allows employer and live-in caregivers to enter into an "Averaging Agreement".

An averaging agreement allows hours of work to be averaged over a period of one to four weeks. You can agree to work up to 12 hours a day, averaging 40 hours a week without overtime pay. However, you are still entitled to overtime pay under an averaging agreement if you work more hours than the agreed work schedule, or if you work over 12 hours a day, or if you work hours in an excess of the average of 40 hours per week over the period covered by the agreement.

For example, if the work schedule requires you to work a 10 hour shift but you end up working 12 hours, then you are entitled to be paid time-and-a-half for the extra 2 hours. If you work more than an average of 40 hours per week covered by the averaging agreement, then you are entitled to overtime of time-and-a-half for all extra hours not included in the averaging agreement. If you work for more than 12 hours a day, then you are entitled to double-time pay for all hours worked over 12 hours a day.

Am I entitled to statutory holiday pay?

Statutory holiday pay means you get *a day off with pay* at an average day's pay. You are entitled to statutory holiday pay if you have been employed for at least 30 calendar days and worked at least 15 of

30 days before the statutory holiday. If you work under an averaging agreement, you do not have to meet the 15 of 30 days work requirement. An average day's pay will be calculated as the total regular earnings (not including overtime pay) divided by the number of days worked in the previous 30 calendar days prior to the statutory holiday.

If you work on a statutory holiday, you will be paid time-and-a-half for the first 12 hours worked, double-time after 12 hours on top of an average day's pay.

There are 10 statutory holidays in BC: New Year's Day, BC Family Day, Good Friday, Victoria Day, Canada Day, BC Day, Labour Day, Thanksgiving Day, Remembrance Day, and Christmas Day.

Am I entitled to Annual Vacation and/or Vacation Pay?

You are entitled to an annual vacation of:

- at least 2 weeks, after 12 consecutive months of employment; or
- at least 3 weeks, after 5 consecutive years of employment.

If you have not completed 12 months of employment, you can make a written request for leave. If the employer agrees, this advanced vacation time will reduce the amount of vacation time the employee will have once he or she becomes entitled to a vacation. An annual vacation is exclusive of statutory holidays to which you are entitled, which means if a statutory holiday falls during your vacation, you will still be paid the same as you would if you were not on vacation.

The employer has the right to schedule your vacation according to his or her business requirements as long as the employer provides you with a vacation within 12 months of earning it. The employer cannot schedule your vacation in periods of less than one week unless you give a written consent for a shorter period. Furthermore, the employer cannot schedule your vacation to coincide with notice of termination of employment, nor reduce your vacation entitlement by granting time off as a "bonus" or sick leave.

You are eligible for vacation pay if:

- you have been employed for 5 consecutive calendar days, at a rate of 4% of your total wages during your year of employment; or
- you have been employed for 5 consecutive years, at a rate of 6% of your total wages during the year of employment.

An employer must pay vacation pay to an employee:

- at least 7 days before the start of an annual vacation (if applicable);
- on the employee's scheduled paydays if agreed in writing; or
- at the end of the employment.

If a live-in caregiver's employment is terminated, the employer must pay her all outstanding vacation pay in the final paycheque.