

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

110

, Approved and Ordered

FEB 11 2005



~~Lieutenant Governor~~  
~~Administrator~~

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~<sup>Administrator</sup>, by and with the advice and consent of the Executive Council, orders that the Employment Standards Regulation, B.C. Reg. 396/95, is amended as set out in the attached Schedule.



Minister of Skills Development and Labour



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Employment Standards Act, R.S.B.C. 1996, c. 113, s. 127

Other (specify): OIC 1155/95

## SCHEDULE

### ***1 Sections 37.5, 37.51 and 37.6 of the Employment Standards Regulation, B.C. Reg. 396/95, are repealed and the following substituted:***

#### **Oil and gas field workers paid by an hourly rate – exclusion from section 36 (1) of the Act**

**37.5** Section 36 (1) of the Act [*hours free from work*] does not apply in respect of employees who work for an employer in the oil and gas well drilling and servicing industry and who are

- (a) paid by an hourly rate, and
- (b) referred to in Appendix 3.

#### **Specific oil and gas field workers paid by an hourly rate – rest periods and pay for interruption in rest periods**

**37.51** (1) This section applies in respect of the following employees who work for an employer in the oil and gas well drilling and servicing industry and who are paid by an hourly rate:

- (a) a first aid worker referred to in Appendix 3;
  - (b) a water truck operator referred to in Appendix 3;
  - (c) a camp catering worker referred to in Appendix 3.
- (2) If the employer schedules an employee referred to in subsection (1) (a) or (b) for a 24 hour shift, section 36 (2) of the Act [*hours free from work between shifts*] does not apply but the employer must include in the shift a rest period of 12 or more consecutive hours.
- (3) If the employer schedules an employee referred to in subsection (1) (c) to remain on site on a 24 hour basis, section 36 (2) of the Act [*hours free from work between shifts*] does not apply but the employer must include in each 24 hour period
- (a) a rest period of 8 or more consecutive hours, and
  - (b) a total of at least 12 hours of rest.
- (4) Section 1 (2) of the Act [*employee deemed to be at work while on call*] does not apply to a rest period or rest referred to in subsection (2) or (3) of this section.
- (5) For each interruption of a rest period or rest referred to in subsection (2) or (3), the employer must pay the employee wages for the greater of the following:
- (a) 2 hours;
  - (b) the hours actually worked during the interruption.
- (6) The rate of pay for the hours referred to in subsection (5) is as follows:
- (a) 1 1/2 times the employee's regular wage if the total hours worked or earned that day are 12 hours or fewer;
  - (b) double the employee's regular wage if the total hours worked or earned that day are more than 12 hours.

**Oil and gas field workers who are paid other than by an hourly rate**

- 37.6** Sections 37.61 to 37.65 apply in respect of employees who
- (a) work for an employer in the oil and gas well drilling and servicing industry,
  - (b) are primarily engaged in
    - (i) any of the following on site activities:
      - (A) drilling, evaluating, stimulating, completing, re-completing, enhancing production or optimizing services of an oil or gas well;
      - (B) performing remedial treatment of an oil or gas well;
      - (C) providing safety services or other services unrelated to the administration of the employer’s business, for an oil or gas well, and
    - (ii) transporting oilfield equipment, or
    - (iii) oil or gas well site preparation,
  - (c) have a compensation system other than an hourly rate, and
  - (d) are not working under an averaging agreement under section 37 of the Act.

**Oil and gas field workers under section 37.6 – exclusion from section 36 (1) of the Act**

**37.61** Section 36 (1) of the Act [*hours free from work*] does not apply in respect of employees referred to in section 37.6 of this regulation.

**Oil and gas field workers under section 37.6 – “regular salary”**

**37.62** (1) The term “**regular wage**”, wherever it is used in the Act, does not apply in respect of employees referred to in section 37.6 of this regulation but, to establish other conditions of employment for those employees, the following term is substituted in its place:

“**regular salary**” means

- (a) if the employee is paid a monthly salary, the monthly salary multiplied by 12 and divided by 2 080,
  - (b) if the employee is paid a yearly salary, the yearly salary divided by 2 080, and
  - (c) if the employee is paid a weekly salary, the weekly salary divided by 40.
- (2) In sections 37.64 and 37.65, “**regular salary**” has the same meaning as in subsection (1) of this section except that the term “**salary**”, as it is used in that definition, does not include any bonus, allowance or remuneration to which the employee is otherwise entitled under the compensation system, if the bonus, allowance or remuneration is based on geographic location of the employee’s residence.

**Oil and gas field workers under section 37.6 –  
paydays and bonus pay**

- 37.63** (1) Section 17 of the Act [*paydays*] does not apply in respect of employees referred to in section 37.6 of this regulation but the conditions of employment respecting payment of wages established in this section apply instead.
- (2) At least semimonthly and within 8 days after the end of the pay period, an employer must pay to an employee referred to in section 37.6 all wages earned by the employee in a pay period.
- (3) Subsection (2) does not apply to
- (a) overtime wages credited to an employee's time bank,
  - (b) vacation pay, or
  - (c) any bonus to which the employee is entitled under the compensation system for that period of employment.
- (4) The employer must pay to the employee the bonus referred to in subsection (3) (c) within the next 3 pay periods that follow the pay period in which the bonus was earned.

**Oil and gas field workers under section 37.6 –  
overtime wages**

- 37.64** (1) Section 40 of the Act [*overtime wages*] does not apply in respect of employees referred to in section 37.6 of this regulation but the conditions of employment respecting entitlement to overtime wages established in this section apply instead.
- (2) Subject to subsection (5), if an employee referred to in section 37.6 works over 8 hours a day, the employer must pay the employee as follows:
- (a) 1 1/2 times the amount of the employee's regular salary for the time over 8 hours;
  - (b) double the employee's regular salary for any time over 12 hours.
- (3) Subject to subsection (5), if an employee referred to in section 37.6 works over 40 hours a week, the employer must pay the employee 1 1/2 times the employee's regular salary for the time over 40 hours.
- (4) For purposes of calculating weekly overtime under subsection (3), only the first 8 hours worked by the employee in each day are counted, no matter how long the employee works on any day of the week.
- (5) If during the pay period in respect of which subsection (2) or (3) applies the employee is entitled under the compensation system to a bonus, allowance or remuneration, other than a bonus, allowance or remuneration that is based on geographic location of the employee's residence, then the employer must pay the employee the greater of the following:
- (a) the sum of that bonus, allowance or remuneration and the employee's regular salary for that pay period;
  - (b) the wages to which the employee is entitled for that pay period including the overtime wages under subsections (2) to (4).

- (6) For purposes of references in the Act, or in section 37.63 (3) of this regulation, to section 40 of the Act [*overtime wages*] or to “overtime wages”, those references are to be read as references to the employee’s entitlement to overtime wages as established by this section.

**Oil and gas field vacuum workers under section 37.6 –  
rest periods and periods and pay for interruption in rest periods**

- 37.65** (1) This section applies to an employee referred to in section 37.6 who is primarily engaged in vacuuming waste from an oil or gas well.
- (2) If the employer schedules an employee referred to in subsection (1) for a 24 hour shift, section 36 (2) of the Act [*hours free from work between shifts*] does not apply but the employer must include in the shift a rest period of 12 or more consecutive hours.
  - (3) Section 1 (2) of the Act [*employee deemed to be at work while on call*] does not apply to a rest period referred to in subsection (2) of this section.
  - (4) For each interruption of a rest period referred to in subsection (2), the employer must pay the employee wages for the greater of the following:
    - (a) 2 hours;
    - (b) the hours actually worked during the interruption.
  - (5) Subject to subsection (6), the rate of pay for the hours referred to in subsection (4) is as follows:
    - (a) 1 1/2 times the employee’s regular salary, if the total hours worked or earned that day are 12 hours or fewer;
    - (b) double the employee’s regular salary, if the total hours worked or earned that day are more than 12 hours.
  - (6) If during the pay period in respect of which subsection (5) applies the employee is entitled under the compensation system to a bonus, allowance or remuneration, other than a bonus, allowance or remuneration that is based on geographic location of the employee’s residence, then the employer must pay the employee the greater of the following:
    - (a) the sum of that bonus, allowance or remuneration and the employee’s regular salary for that pay period;
    - (b) the wages to which the employee is entitled for that pay period including the wages under subsection (5).

**2** *Appendix 4 is repealed.*