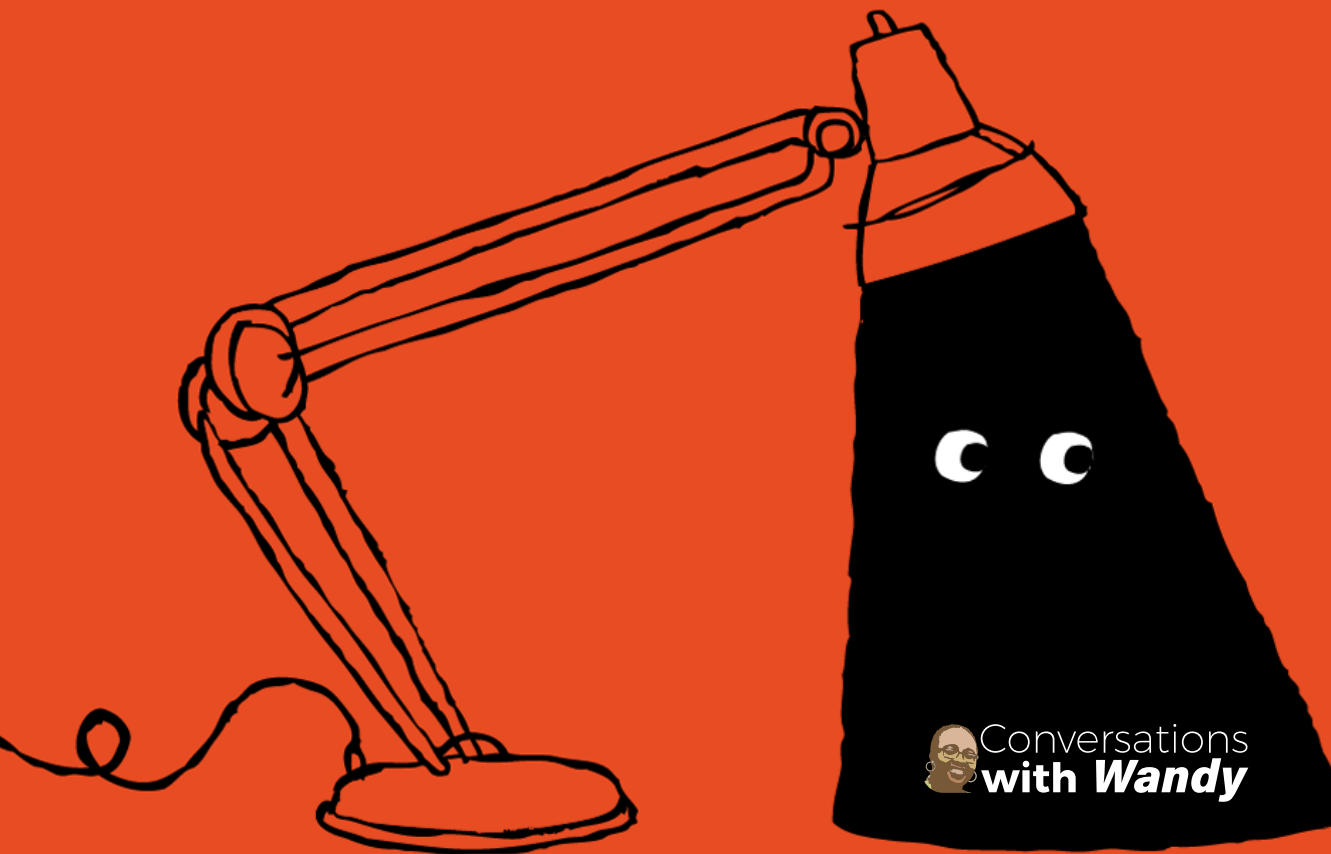


How To Manage Overtime





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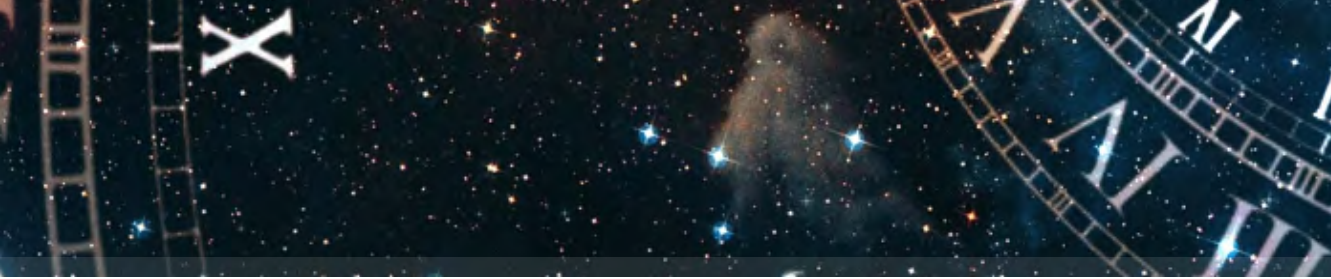


The legal provision

The Employment Act is among the main pieces of legislation in Kenya that govern the employment relationship. Business owners must appreciate that the basic minimum conditions of employment have been set out in this Act in section 26. It is of great value to always keep in mind that the Act allows only for enhancements to these minimum conditions. If an enhanced provision does exist either in law or in internal regulations, contracts, or collective agreements, the enhanced provision will take precedence.

This guide is written from the premise of the above law. Users are reminded to be consistently familiar and remain current on whether there exists an enhanced provision when it comes to working hours.

The Employment Act (EA), requires employers to regulate the working hours of each employee as the provisions contained in it and other laws.



Rest day

The EA provides that each employee is entitled to a day of rest in every period of seven days. The rest day in itself has not been assigned to any particular day of the week, therefore, employers are free to enter into agreements with their staff on when this day of rest shall be granted.

This day of rest is not counted among leave days nor should the hours of work contained in this day be deducted from the weekly or daily working hours. This day of rest is a compulsory provision for all employees in all industries.

An employer in agreement with an employee can move an employee's rest day to be utilized on the next subsequent day. It is further allowable, by mutual agreement for an employee to accumulate not more than fourteen days of rest days. Once these days are accumulated, they should be taken in addition to annual leave with full pay.



Hours of work

Employees' hours of work have been defined through the Labour Institutions Act. This piece of legislation in its section 63 subsection 2, established instruments and orders that regulate wages and conditions of employment. Once such order is the Regulation of Wages (General) Order.

This order applies to all employees, save for those that work in the agricultural industry; who are regulated by the Regulation of Wages (Agricultural Industry Wages Council Establishment) Order.

The Regulation of Wages (General) Order in its article 5, places the maximum number of hours of work in any six days, as fifty-two for day workers and sixty for night workers.

This being a maximum provision, there is, therefore, an obligation placed on every employer to not exceed the stated hours of work for their employees. Employers are, however, allowed to agree with their employees to work for fewer hours than those stated in article 5 of the Order.

In situations where an employer has allowed their employees to work for less than fifty-two hours for day-employees and sixty hours a week for night employees, those favourable hours will be the enhanced provision.



Overtime

An employee is deemed to have worked overtime when their hours of work in six days exceed fifty-two for day workers and sixty for night workers.

In organizations that have fewer working hours than the prescribed maximum, an employee is deemed to have worked overtime once they have exceeded the maximum hours of work noted in their contract, internal regulations, or collective agreements.

It is important to mention that Kenya's common practice is to have employees work for forty to forty-five hours a week. This notwithstanding, several employers go the extra mile to note in their contracts, internal regulations, or collective agreements that payment for overtime will only be considered once an employee exceeds the prescribed legal maximums. In the absence of such provisions, overtime will be due and owing after employees have exceeded the enhanced maximums provided by their organization's internal regulations, contracts, or collective agreements.

Overtime rates

Once an employee has worked more than the prescribed legal maximum hours, an employer is required to compensate the said employee for the extra hours worked.

For overtime hours worked on a normal working day; that is, excluding normal rest days and or public holidays, an employee is entitled to compensation at the rate of one and a half of the normal hourly rates of the said employee.

For example, make employee X wages at an hourly rate of 2,000 Kenyan shillings. Employee X then works for three overtime hours within his normal workweek. Employee X's overtime pay shall be calculated as follows:



Normal hourly rate = 2,000
Overtime hourly rat = 2,000 X 1.5
= 3,000

Total Overtime amount = Overtime hourly rate X Number of
overtime hours worked
3,000 X 3 = 9,000

The above calculation should only be used where the overtime hours are worked within a normal working week. For overtime hours worked during an employee's normal rest day and or public holidays, an employee is entitled to overtime pay at twice their normal hourly rate.

It is imperative to mention here that a normal rest day need not be a weekend. Depending on a work schedule, a normal rest day can be any day of the week or on a weekend. The key is to ensure that every seven days, an employee has one day of rest. It is not uncommon to find employers that have enhanced provisions when it comes to rest days. This is how many employees tend to have Saturday and Sundays as rest days.

In the example given above, employee X worked three hours of overtime. Let us take in this case that those three hours were worked during a normal rest day or on a public holiday. Employee X's overtime will be calculated as follows;

Normal hourly rate = 2,000
Overtime hourly rat = 2,000 X 2
= 4,000
Total Overtime amount = Overtime hourly rate X Number of
overtime hours worked
4,000 X 3 = 12,000



Capping of overtime

The provision of overtime pay rates does not confer a right upon an employer to make an employee work for extended periods as long as the employer pays the requisite overtime.

The Regulation of Wages (General) Order provides that overtime plus normal working time worked in a two-week consecutive period shall not exceed one hundred and forty-four hours for night workers and one hundred and sixteen hours for any other adult employee.

Employers have a responsibility to ensure that the prescribed maximum overtime hours are not exceeded by their employees.

Rest and recuperation play an important role in the productivity or otherwise of an employee. It is key to further recognize that an employee requires sufficient time to interact with the other parts of their lives for them to continue to have a full and productive life as human being. This in turn makes them more engaged and productive as employees.





Request for working overtime

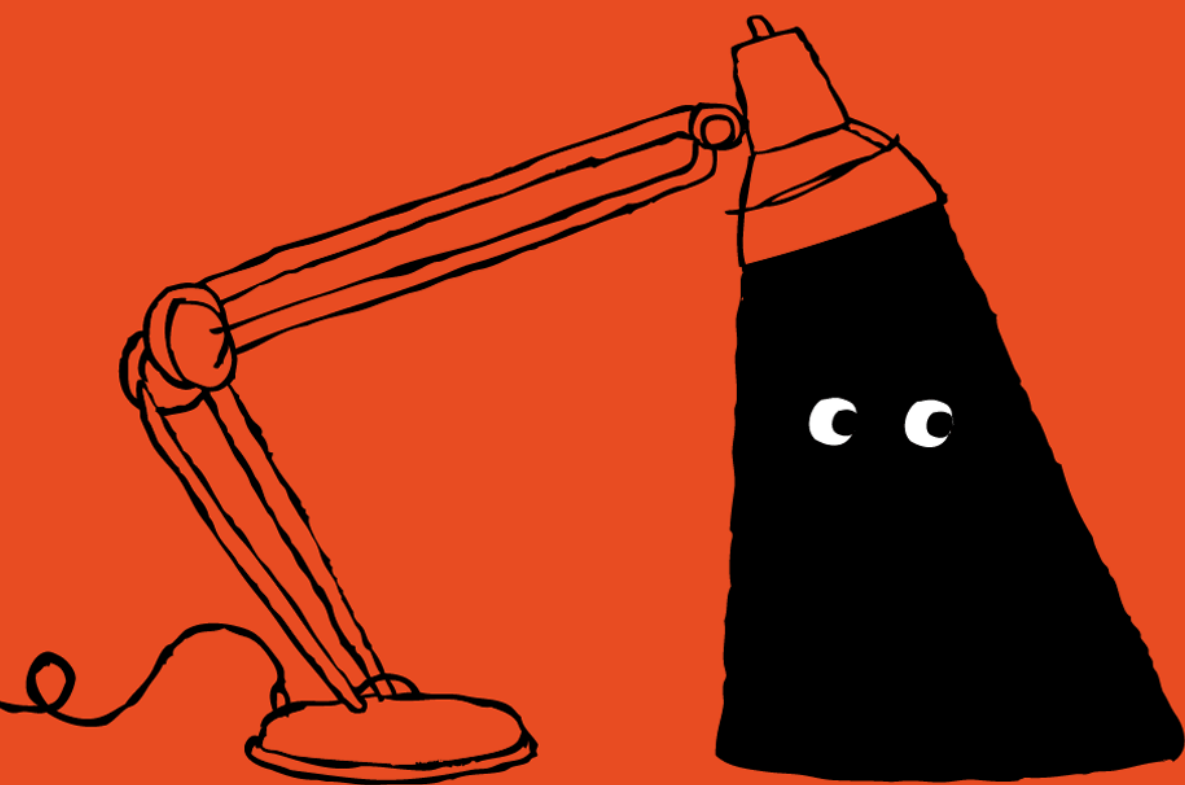
An employer cannot compel an employee to work overtime. The best practice is to give the employee at least twenty-four hours in advance of when they are required to work overtime. Working overtime should be by mutual agreement between an employer and an employee.





Other important things to note on overtime

- a) All amounts resulting from overtime are eligible for taxation as the Pay As You Earn (PAYE) regulations that are currently in force.
- b) It is advisable to pay overtime amounts with the next scheduled payments, i.e., for a payment that is weekly, the overtime should be paid with the subsequent week's pay and for a payment that is monthly, overtime should be paid with the next subsequent month's pay.
- c) Clearly state in the itemized payslip, the overtime amounts paid.
- d) There are no clear statutory provisions that exempt any employees from benefiting from overtime payment. In practice, however, employees classified within management are exempted from overtime pay. Certain decided cases have upheld this practice. Employers are however advised to familiarize themselves with the circumstances that were present in each decided case that upheld this practice while creating policy on similar matters.
- e) An overtime policy should be included in the internal regulations of an organization.



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