

IV. SECTION 33—SPLIT SHIFTS [§4.7]

33. An employer must ensure that an employee working a split shift completes the shift within 12 hours of starting work.

A. COMMENTARY AND ANNOTATIONS TO SECTION 33 [§4.8]**COMMENTARY**

Employees are also entitled to at least eight consecutive hours free from work between shifts, under s. 36(2).

ANNOTATIONS

The employee was aware of the company policy of taking a two-hour break during a ten-hour shift. The employee was also aware that he was not required to be available to work in excess of eight hours per shift. Nothing in the Act precludes an employer from instructing an employee to take breaks that split their shift. Section 33 only requires that a split shift must be completed within twelve hours of starting work. Since the employer did not require the employee to be available to work and specifically instructed employees to take breaks, the employee was not entitled to payment for overtime.

Re Schutt (c.o.b. ABCO Building Maintenance) (30 June 1997), BCEST #D287/97 (Buchan).

V. SECTION 34—MINIMUM DAILY HOURS [§4.9]

34. (1) Subject to subsections (2) and (3), if as required by an employer an employee reports for work on any day, the employer must pay the employee for a minimum of 2 hours at the regular wage whether or not the employee starts work, unless the employee is unfit to work or fails to comply with Part 2 of the *Workers Compensation Act*, or a regulation under that Part.

(2) Whether or not the employee starts work, the employer under subsection (1) must pay the employee for a minimum of 4 hours at the employee's regular wage if the employer had previously scheduled the employee to work for more than 8 hours that day, unless

- (a) the employee is unfit to work or fails to comply with Part 2 of the *Workers Compensation Act*, or a regulation under that Part, or
- (b) the work is suspended for reasons completely beyond the employer's control, including unsuitable weather conditions.

(3) If the circumstance set out in subsection (2)(b) applies, the employer must pay the employee for a minimum of 2 hours at the employee's regular wage.

(4) If

- (a) the employee under subsection (1) is required to work longer than 2 hours, or
- (b) the circumstances described in subsection (2) are applicable and the employee is required to work longer than 4 hours,

the employer must pay the employee for the entire period the employee is required to work.

[am. to 2019-1-Sch2, effective April 6, 2020 (B.C. Reg. 207/2019).]

A. ANNOTATIONS TO SECTION 34 [§4.10]

An employee cannot waive the statutory right to minimum daily hours. Any such agreement between the employer and the employee is of no effect.

Re Lotte Enterprises (c.o.b. Pacific Northwest Language Studies) (2 November 2001), BCEST #D598/01 (Petersen).

Where the employer chose a scheduling method that infringed the minimum hours of work provisions of the Act, it is no defence to say that it sought to strike a balance between the hours worked by its full-time employees and part-time employees.

Re Buchanan (c.o.b. Pressed for Time Drycleaning) (18 February 1999), BCEST #D034/99 (Love).

The employee started work and then told her employer she was sick. The employer sent the employee home, although the employee indicated that she was capable of completing her shift. The Tribunal held that the employer did not meet its obligation to provide evidence that the employee was not fit to work, and as a result the employee was entitled to be paid for the minimum daily hours.

Re Hill Top Holdings Ltd. (c.o.b. Starlite Drycleaners) (14 January 2002), BCEST #D014/02 (Edelman).

The length of a shift of a tow truck driver responding to calls from a dispatch centre is not "completely beyond the employer's control".

Re Loiselle (c.o.b. Swede's Towing) (31 December 2001), BCEST #D708/01 (Stevenson).

The fact that an employee sets their own hours does not relieve the employer from the duty to pay minimum daily hours.

Re Applied Plastics Technology Inc. (31 January 2002), BCEST #D060/02 (Collingwood).

The employee set his own hours, had his own keys to the employer's premises, and came and went as he pleased. The Tribunal found that the employee attended at work more often than would have been required by the employer, and controlled his own hours. Accordingly, the employee's hours were "beyond the employer's control" and the minimum hours provision did not apply.

Re Robinson (21 November 2000), BCEST #D494/00 (Orr).

The employer cannot escape liability for payment for minimum daily hours on the basis that it gave the employee complete flexibility of working hours. In this case, the employer was fully aware that the employee was consistently working less than the minimum. The employer allowed the situation to occur and continue. The Tribunal held that the employer could have easily controlled this situation.

Re Bristle (10 January 2001), BCEST #DO15/01 (Stevenson).

The onus is on the employer to keep accurate records of the hours of work, including when the shift starts and ends. The employer cannot come to the Tribunal and claim that hypothetically the Act could have been complied with. The employer argued that it paid the employee on a per shift basis, which theoretically could have been a split shift, complying with s. 34. The Tribunal rejected the argument.

Re Newbrook Cleaning Services Inc. (6 October 1997), BCEST #D445/97 (Orr).

An individual employed as a customer service representative was provided with a pager and was required to respond to after-hours pager calls. The Tribunal found that the requirement to respond to the pager and perform work in connection with the demands of the pager constituted a form of reporting for work and therefore s. 34 applied. More particularly, the Tribunal found that where the start of the work and its length could not be predicted or controlled by the employer or the employee, and the employee would automatically revert back to a statutory status of not being at work (she would be "on call") on completion of the work, s. 34(2)(b) (now s. 34(1)) applied.

Re Labour Ready Temporary Services Ltd. (28 October 1999), BCEST #D457/99 (Narod).

Section 34 refers to minimum daily hours of pay and does not separately apply to each and every defined segment of work (for example, each "working" period) within a particular day. In other words, this section does not apply to each "working segment" (to be contrasted with each "on-call" segment) within a scheduled shift, so as to separately trigger a minimum daily pay entitlement that accumulates throughout the shift each time work resumes.