INDUSTRIAL WORKERS OF THE WORLD
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Commissioned Sales

This Employment Standards Factsheet is also available in a printable pdf format

Commissioned salespeople are employees who are paid on a commission or incentive basis. They may be paid entirely by commission or by a combination of salary and incentives.

Lack of close supervision does not make a commissioned salesperson something other than an employee. (See the factsheet: Employee or Independent Contractor?)

The Employment Standards Regulation makes a distinction between certain types of sales.

High-end commission sales

Special rules apply to salespersons who are paid entirely or partly by commission to sell, or sell a lease arrangement for:

- Automobiles and trucks,
- Heavy industrial or agricultural equipment,
- Recreation vehicles or campers, or
- Sailing or motor vessels.

These "high-end" commission sales people are excluded from requirements for minimum wage, hours of work, overtime and statutory holidays.

Minimum wage, overtime and statutory holidays

Unless they are in "high-end sales," commissioned salespeople are entitled to minimum wage, overtime and statutory holiday pay.

Minimum wage

Each employee must receive at least minimum wage for all hours worked. The current minimum wage is $8 per hour. The First Job/Entry level minimum wage is $6 per hour.
Where the salesperson's commissions do not total at least the minimum wage for the number of hours worked in a pay period, the employer must pay the difference between the commissions earned and the minimum wage.

Overtime and statutory holidays

Commissioned salespeople are entitled to overtime and statutory holiday pay. However, sales commissions can be used to meet overtime and statutory holiday pay requirements.
Total wages (base plus commission) in the pay period must be more that what the salesperson would have been paid if overtime and holiday pay was calculated based on the employee's base rate or on minimum wage - whichever is higher.

Example 1: A full-time salesperson is paid a base rate of $9 per hour plus commissions. In a two-week pay period, she earns $200 in commission.

During the pay period, the salesperson works 24 hours of overtime payable at time-and-a-half. On her base rate, the salesperson would be entitled to $1,044 (80 hours at $9 and 24 hours at $13.50).

If the salesperson was paid at straight time for all hours worked, her total wages plus commission would be $1,136 (104 hours at $9 plus $200).

The salesperson does not have to be paid extra for working overtime because her base plus commission is more than what she would have been paid on her base with overtime.

Example 2: A full-time salesperson is paid straight commission and earns $600 in a two-week pay period for 80 hours of work.

During the pay period he works eight hours on a statutory holiday.

Because there is no base, the salesperson would be entitled to wages based on the minimum wage ($8 per hour) for all hours, including:

72 regular hours	$576
8 hours @ 1½ X	$96
Average days' pay	$64
Total	$736

In this case the employee will be paid an extra $136 to make up the difference between what he earned in commission and what he is entitled to under employment standards.

When are commissions payable?

The date when commissions become payable depends on the terms of each employment contract. For example, commission may not be payable until a customer takes delivery of the product.
Employers must pay employees' wages at least twice a month. If sales are reconciled over the month, employees who are not in "high-end sales" are entitled to a mid-month advance equal to at least minimum wage for hours worked.

Advance on wages

Some commissioned salespeople receive an advance on commissions in each pay period. If the sales commission for the pay period exceeds the advance, the employee is entitled to the difference. If the commission for the pay period is less than the advance amount, the employee is entitled to be paid at least the minimum wage for all hours worked in that pay period.

No Offsets Allowed

Commissions earned in one pay period cannot be used to offset earnings during another pay period when no commission was earned or the commission was less than minimum wage.

On call or at work?

In general, employees' time that is controlled by the employer is paid time. Such an employee is under the employer's direction and is not free to pursue his or her own interests.
Employees who are required to be available for work at a location designated by the employer are considered to be at work unless the designated location is the employee's home.
An employee who has a range of mobility, but can be contacted if needed for work, is considered

to be "on-call." Unless he or she is engaged in "high end sales, the minimum daily pay provisions of the Act cover an employee responding to a call.

Costs of doing business

An employer cannot pass on to an employee the cost of doing business. Samples, sales kits or demonstration products are a cost of doing business. Any deductions made for such costs from the employee's earnings can be recovered under the Act.
Tool allowances and travel allowances are not considered to be wages, and therefore, cannot be recovered through the Act.

Annual vacation

The method by which an employee is paid has no bearing on the employee's entitlement to statutory holidays and annual vacation.

Related factsheets:

Contractor or Independent Contractor
Paying Wages
Keeping Records
Statutory Holidays
Annual Vacation
First Job/Entry-level wage