

Know Your Collective Agreement

Reasonableness should prevail when flexing

This column provides guidance on the approach “B” type employees should take when “flexing” their work hours.

Article 26.02 defines “B” type employees as employees who do not work under direct supervision and who organize their own work schedules. They work 36.25 hours per week, (not including ETO). They are allowed two 15-minute paid breaks. The work week is Monday to Friday.

What are the Board’s concerns with flex time?

After doing a very informal audit of “B” type employees in 2007, the Board concluded that service was being compromised by the hours of work some “B” type employees were working. Here are some examples of flex time issues the Board identified:

1. Prevention Officers are working in excess of a normal work week and then flexing over a two-week period, a monthly period, or in one case, over a year.
2. Many offices were reporting a lack of “claims” officer staff in the SDLs or offices on a Friday afternoon.
3. Some employees are using flex time to work a permanent part time work week.
4. Some employees are using flex time for purely personal reasons, for example, regularly golfing Thursday afternoons.

What have arbitrators said about flex time?

The CEU has received two arbitration awards on “B” type employees in the last several years. Arbitrator Beattie said the following:

1. When scheduling their work, “B” type employees will primarily consider the effective and efficient performance of their duties but are also entitled to consider other factors including personal factors.
2. “B” type employees will schedule their work for both business and personal reasons.
3. Managers have the right to obtain information on employees’ work schedules retrospectively.
4. Employees do not work in isolation and scheduling should take into account their network of colleagues and clients.
5. The parties recognize and are committed to providing to every extent possible superior service to clients.

Arbitrator Sullivan re-emphasized the findings of Beattie. He indicated the primary consideration to be taken into account by “B” type employees in scheduling their own work is the effective and efficient performance of their duties. This guiding principle is buttressed by the commitment to provide to every extent possible superior service to clients. But his decision also reinforced the ability of “B” type employees to schedule for personal reasons in the absence of any evidence of service problems.

What is the CEU’s view of flex time issues?

The CEU wants to preserve the integrity of the work

week and the overtime provisions in the collective agreement. We also support providing a reasonable expectation by the employer to ensure service does not suffer.

How should “B” type employees approach flexing?

1. Reasonableness should prevail. By that we mean, a balancing of employer interests with employee interests. Given the arbitration decisions, the employer interests clearly carry a little more weight than employee interests.
2. The work week should be Monday to Friday. Any Saturday or Sunday work should be overtime unless those days are used for ETO accumulation only. [Under article 26.10 (b), if an employee and manager agree, the employee may work ETO hours over two weeks, including weekends. For example, an employee could work 36.25 hours each week of a two-week period and work their total ETO for 10 days (i.e., 4 hours and 10 minutes) on Saturday or Sunday at the normal pay rate.]
3. Flex time cannot be used to create a permanent four-day work week. On occasions, due to the nature and location of job sites or work assignments, a person may be “houred out” and, therefore, will work fewer days in the work week.
4. Flex time cannot be used strictly and regularly for personal reasons. Flexing time for strictly personal reasons can occur occasionally assuming there is no evidence of service issues being created by the flex.
5. The employer has the right to expect a reasonable number of employees per classification at individual offices during work hours. This can be achieved by duty desks, teams covering off for each other, and other ways.
6. Some “B” type classifications, for example, Occupational Safety and Hygiene Officers, are more amenable to flex time given the nature of the work. Other “B” type classifications, for example, some types of Case Manager, are more akin to “A” type positions in that they generally work a consistent schedule. They still retain the right to flex within the Beattie parameters. The employer cannot use service requirements to finesse the conversion of a “B” type employee to an “A” type employee.
7. When employees are “houred out”, and they still have work to do during the Monday to Friday work week, they should seek direction from management. If a manager doesn’t authorize overtime, the employee’s work week is over.

This column outlines what we believe is a reasonable approach to flex time; however, we are not aware of the employer’s position on it.

There are about 40 job classifications designated as “B” types. There are about 850 employees in these classifications; 750 of them work in WES.