



Directive on Terms and Conditions of Employment for Certain Excluded/Unrepresented Employees

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Directive on Terms and Conditions of Employment for Certain Excluded/Unrepresented Employees

1. Effective date

1.1 This directive is effective April 1, 2009.

1.2 It replaces the following policy instruments formerly linked to Appendix A of the Terms and Conditions of Employment Policy dated July 12th, 2002 and referred to as:

- Annex A – Interim Exceptions to the Public Service Terms and Conditions of Employment for Certain Unrepresented Employees dated July 12th, 2002; and
- Annex B – Interim Exceptions to the Public Service Terms and Conditions Regulations for Excluded Employees of the Law Group, Maternity, Parental and Adoption Leave dated May 11th, 2006.

2. Application

This directive applies to persons appointed to the core public administration as defined in section 11 of the [Financial Administration Act](#), unless excluded through specific acts, regulations or Orders in Council.

3. Context

3.1 This directive, in combination with the [Directive on Terms and Conditions of Employment](#), constitutes an essential component of the [Policy on Terms and Conditions of Employment](#). It provides direction so as to ensure the equitable, consistent and timely application of terms and conditions of employment across the core public administration which are uniquely applicable to persons occupying various excluded or unrepresented positions.

3.2 Excluded/Unrepresented Job Groupings

The specific terms and conditions of employment applicable to the various job groups and levels which comprise the certain excluded or unrepresented employee universe are set out in appendices B, C, D, E and F attached.

- Appendix B identifies the terms and conditions of employment uniquely applicable to the excluded/unrepresented positions identified in Group I;
- Appendix C identifies the terms and conditions of employment uniquely applicable to the excluded/unrepresented positions identified in Group II;
- Appendix D identifies the terms and conditions of employment uniquely applicable to the excluded/unrepresented positions identified in Group III;
- Appendix E identifies the terms and conditions of employment uniquely applicable to the excluded/unrepresented positions identified in Group IV;
- Appendix F identifies the terms and conditions of employment uniquely applicable to the excluded/unrepresented positions identified in Group V.

3.3 Where there is conflict or incompatibility between a provision of the relevant collective agreement and this Directive or a policy instrument of the Treasury Board specifying the terms and conditions of employment, the provisions of this directive take precedence.

3.4 This directive is issued pursuant to sections 7 and 11.1 of the *Financial Administration Act*.

3.5 The Treasury Board has delegated to the President of the Treasury Board the authority to amend this directive.

3.6 This directive is to be read in conjunction with:

- [Policy on Terms and Conditions of Employment](#)
- [Directive on Terms and Conditions of Employment](#)
- [Collective Agreements](#)

4. Definitions

4.1 Definitions to be used in the interpretation of this directive are attached in Appendix A.

5. Directive Statement

5.1 Objective

The objective of this directive is to ensure the sound, consistent, effective, and equitable administration of the terms and conditions of employment for those persons occupying certain excluded and unrepresented positions across the core public

administration where the terms and conditions of employment of such positions differ from those provided in the relevant collective agreement or any other Treasury Board policy instrument related to employment terms and conditions.

5.2 Expected results

The expected results are as follows:

- persons appointed to the core public administration receive appropriate monetary and non-monetary compensation; and
- the terms and conditions of employment will be applied in a timely, transparent, consistent and equitable manner.

6. Requirements

6.1 Senior Departmental Human Resources Officials or any other person named by the deputy head are responsible for the following:

- ensuring that the organizational structure, resources, systems, service standards and controls are in place for the application and timely administration of the terms and conditions of employment as set out in Appendices B, C, and D of this directive;
- ensuring that Compensation Advisors responsible for the day-to-day administration of this directive are providing accurate, consistent, and timely information to employees regarding their terms and conditions of employment.

6.2 Managers are responsible for:

- ensuring that appropriate documented authorities are provided to Human Resources in a timely manner; and
- providing employees with information regarding their terms and conditions of employment included in this directive, collective agreements, and other Treasury Board policy instruments.

6.3 Monitoring and Reporting

6.3.1 Senior Departmental Human Resources Officials (or any other person named by the deputy head) *are* responsible for monitoring the performance of their organization with respect to the application and administration of these terms and conditions of employment as follows:

- assessing the service delivery structure, resource allocation, and human resources competencies as well as the human resource systems, processes and procedures;
- informing, in a timely manner, the Treasury Board of Canada Secretariat (the Secretariat), of any major concerns or problems regarding the administration of these terms and conditions of employment; and
- providing, as required, the Secretariat with information that is considered necessary for assessing compliance with this directive.

6.3.2 The Secretariat is responsible for assessing departmental performance with respect to the administration of and compliance with the various terms and conditions of employment defined herein utilizing various reports and data obtained through Public Works and Government Services Canada management information and reporting systems.

6.3.3 Treasury Board Secretariat (TBS) will review this directive and its effectiveness at the five-year mark of implementation of the directive. Where substantiated by risk-analysis, TBS will also ensure an evaluation is conducted.

7. Consequences

7.1 In case of non-compliance, deputy heads are responsible for taking corrective measures within their organization with those who are identified with delegated authority pertaining to this directive. Corrective measures can range from training, to the suspension or removal of delegated authority, to taking disciplinary action, or any combination of these measures.

7.2 Departments are required to pay, from their departmental budgets, any costs associated with errors or inappropriate application of the terms and conditions of employment.

8. Roles and Responsibilities of Government Organizations

8.1 The Treasury Board Secretariat supports the Treasury Board in its role as employer. It assists Department Heads of Human Resources, managers, and administrative staff responsible for the implementation and application of this directive through the provision of applications advice and the issuance of related administrative guidelines and tools.

9. References

- [Financial Administration Act](#)
- [Public Service Labour Relations Act](#)
- [Public Service Employment Act](#)
- [Policy on Learning, Training and Development](#)

10. Enquiries

10.1 Please direct enquiries about this directive to your departmental headquarters. For interpretation of this directive, departmental headquarters should contact:

Core Public Administration Compensation Management
Compensation and Labour Relations
Office of the Chief Human Resources Officer
Treasury Board of Canada Secretariat

E-mail: Interpretations@tbs-sct.gc.ca

Appendix A—Definitions

Canadian forces (*forces canadiennes*)

Has the same meaning as "regular force" in the [Public Service Superannuation Act](#).

collective agreement (*convention collective*)

is an agreement in writing, entered into under Part 1 of the *Public Service Labour Relations Act* between the employer and a bargaining agent containing provisions pertaining to terms and conditions of employment and related matters.

continuous employment (*emploi continu*)

Is one or more periods of service in the public service, as defined in the *Public Service Superannuation Act*, with allowable breaks only as provided for in the terms and conditions of employment applicable to the person.

continuous service (*service continu*)

Is an unbroken period of employment in the public service in the context of determining the rate of pay on appointment. Continuous service is broken when employment ceases between two periods of Public Service employment for at least one compensation day.

core public administration (*administration publique centrale*)

Refers to the departments named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act*.

deputy head (*administrateur général*)

Is in the context of this directive:

- a. in relation to a department named in Schedule I to the *Financial Administration Act*, its deputy minister;
- b. in relation to any portion of the federal public administration named in Schedule IV to the *Financial Administration Act*, its chief executive officer or, if there is no chief executive officer, its statutory deputy head or, if there is neither, the person who occupies the position designated by the Governor in Council in respect of that portion.

employee (*employé*)

Is, for the purpose of this directive, a person appointed to the core public administration.

enactment (*édit*)

Includes a regulation, order, directive or other instrument made under the authority of an act or other authority.

excluded position (*poste exclu*)

Is a position identified by the employer in accordance with the *Public Service Labour Relations Act* as not being represented by a bargaining agent because of the nature of the duties of the position.

indeterminate (*indéterminée*)

Is the indefinite period for which a person is appointed.

manager (*gestionnaire*)

For purposes of this directive, the term "manager" is understood to mean "people manager", defined as: an employee who is accountable for exercising delegated human resources authority (i.e. staffing and/or labour relations delegation). In addition to ensuring business results are delivered and overall management functions are carried out, a manager leads people, recognizes and rewards achievement, manages performance, develops people, manages change and promotes corporate values, ethics,

and culture of the organization.

management leave (*congé de direction*)

Is a leave with pay granted by the deputy head to compensate an employee who is exempt from overtime payment but is required by management to work excessive hours or work/travel on a day of rest or on a holiday.

overtime (*heures supplémentaires*)

Is authorized time worked by a person in excess of the standard daily or weekly hours of work and for which the person may be entitled to compensation pursuant to the provisions of the relevant collective agreement or terms and conditions of employment.

person with the delegated authority (*personne ayant le pouvoir délégué*)

Is a person identified under the departmental delegation of authorities instrument for the application and administration of the terms and conditions of employment.

public service (*fonction publique*)

Has the meaning given to that expression in the *Public Service Superannuation Act*.

relevant collective agreement (*convention collective pertinente*)

Is the collective agreement for the bargaining unit to which the person is assigned or would be assigned were the person's position represented or not excluded. For positions classified as PE and OM, the relevant collective agreement is that applying to the Program and Administrative Services Group. For positions classified as PO-IMA and PO-TCO, the relevant collective agreement is that applying to the Technical Services Group.

remuneration (*rémunération*)

Is pay and allowances.

Royal Canadian Mounted Police (*Gendarmerie royale du Canada*)

Has the same meaning as "force" in the *Public Service Superannuation Act*.

unrepresented position (*poste non représenté*)

Is a position that is not represented by a bargaining agent.

Appendix B—Certain Excluded/Unrepresented Positions Terms and Conditions of Employment – Group I

1. Group I is comprised of the following job groups and levels:

Group – I	Level
CS – Computer Systems Administration Group	CS–5
SG – Scientific Regulation Group	SG–PAT–8
UT – University Teaching Group	UT–3, UT–4

2. Hours of work

The standard hours of work are normally seven and one-half (7 1/2) hours per day; thirty-seven and one-half (37 1/2) hours per week. Notwithstanding this, because the nature of the work and the exigencies of the service require flexibility in arrival and departure times and hours of work, employees in this category are not entitled to overtime pay (including work on a day of rest or on a holiday) or other conditions relating to hours of work, such as a callback, stand-by, travel on a day of rest and travel on a holiday. They are eligible to management leave in lieu of overtime. (See 4.1 below).

3. Advance of sick leave credits

An employee who has insufficient sick leave credits to cover the granting of sick leave with pay during the entire period of illness may be granted, at the discretion of the person with delegated authority, a repayable advance of sick leave credits of up to thirteen (13) weeks.

4. Management leave

4.1 An employee who is required by management to:

- work excessive hours; or
- work or travel on a day of rest or on a holiday

may be granted such leave as the person with delegated authority considers appropriate.

Appendix C—Certain Excluded/Unrepresented Positions Terms and Conditions of Employment – Group II

1. Group II is comprised of the following job groups and levels:

Group – II	Level
AS – Administrative Services Group	AS–7, AS–8
FI – Financial Management Group	FI– 4
IS – Information Services Group	IS–6
PE – Personnel Administration Group	PE–6
PG – Purchasing & Supply Group	PG–6
PM – Program Administration Group	PM–MCO – Sectors 1, 2, 3 & 4
TR – Translation Group	TR–4, TR–5
WP – Welfare Programs Group	WP–7

2. Hours of work

The standard hours of work are normally seven and one-half (7 1/2) hours per day; thirty-seven and one-half (37 1/2) hours per week. Notwithstanding this, because the nature of the work and the exigencies of the service require flexibility in arrival and departure times and hours of work, employees in this category are not entitled to overtime pay (including work on a day of rest or on a holiday) or other conditions relating to hours of work, such as a callback, stand-by, travel on a day of rest and travel on a holiday. They are eligible to management leave in lieu of overtime (see 5.1 below).

3. Performance Pay

Group II employees are participants in the *Performance Management for Certain Excluded or Unrepresented Managers and Specialists* pay plan.

4. Advance of sick leave credits

An employee who has insufficient sick leave credits to cover the granting of sick leave with pay during the entire period of illness may be granted, at the discretion of the person with delegated authority, a repayable advance of sick leave credits of up to thirteen (13) weeks.

5. Management leave

5.1 An employee who is required by management to:

- work excessive hours; or
- work or travel on a day of rest or on a holiday

may be granted such leave as the person with delegated authority considers appropriate.

Appendix D—Certain Excluded/Unrepresented Positions Terms and Conditions

of Employment – Group III

1. Group III is comprised of the following job groups and levels:

Group – III

Level

MD – Medicine Group MD–MOF–4, MD–MOF–5, MD–MSP–3

2. Hours of work

The standard hours of work are normally seven and one-half (7 1/2) hours per day; thirty-seven and one-half (37 1/2) hours per week. Notwithstanding this, because the nature of the work and the exigencies of the service require flexibility in arrival and departure times and hours of work, employees in this category are not entitled to overtime pay (including work on a day of rest or on a holiday) or other conditions relating to hours of work, such as a callback, stand-by, travel on a day of rest and travel on a holiday. They are eligible to management leave in lieu of overtime (see 6.1 below).

3. Performance Pay

Group III employees are eligible for performance pay pursuant to the [Performance Management Program \(PMP\) for Executives](#).

4. Vacation Leave

4.1 An employee is entitled to four weeks' annual vacation leave earned at the rate of one and two-thirds ($1\frac{2}{3}$) days for each calendar month in which the employee is entitled to ten (10) days' pay.

4.2 An employee is entitled to five weeks' annual vacation leave, at the rate of two and one-twelfth ($2\frac{1}{12}$) days a month, beginning the month of the earliest attainment of:

- ten (10) years of service at one, or a combination of the specified group and levels;
- fifteen (15) years of service of which five or more are at one, or a combination of the specified group and levels;
- 20 years' service.

4.3 An employee is entitled to six weeks' annual vacation leave earned at the rate of two and one-half ($2\frac{1}{2}$) days for each calendar month in which the employee is entitled to ten (10) days' pay beginning the month of the attainment of 28 years of service.

Note:

Service – means continuous and discontinuous employment with any organization that is subject to the *Financial Administration Act* or continuous and discontinuous employment with any organization for which the individual was a contributor under the *Public Service Superannuation Act*, [Canadian Forces Superannuation Act](#), or the [Royal Canadian Mounted Police Superannuation Act](#).

4.4 Exceptions:

Employees appointed from:

- another group in the core public administration on or after April 1, 2004, and previously earned vacation leave credits greater than one and two-thirds ($1\frac{2}{3}$) days per month (4 weeks per year) continue to earn vacation leave credits at the rate of entitlement on the day prior to appointment, until they qualify to earn the next level of entitlement under these provisions;
- outside the core public administration, who are included in the definition of service, as defined above and who were entitled to vacation leave credits greater than one and two-thirds ($1\frac{2}{3}$) days per month (4 weeks per year) while employed outside the core public administration, are entitled to keep earning their vacation leave credits at the same rate as prior to being appointed, provided that the vacation entitlement rate does not exceed two and one-half ($2\frac{1}{2}$) days per month (6 weeks per year);
- outside the core public administration to whom the definition of service as defined above does not apply, who were entitled to vacation leave credits greater than one and two-thirds ($1\frac{2}{3}$) days per month (4 weeks per year) while employed outside the core public administration, are eligible, at the discretion of the Deputy Head, to keep earning their vacation leave credits at the same rate as prior to being appointed, provided that:
 - the employee demonstrates that his/her vacation entitlement was greater than one and two-thirds ($1\frac{2}{3}$) days per month (4 weeks per year) while employed outside the core public administration; and
 - the vacation entitlement rate does not exceed two and one-half ($2\frac{1}{2}$) days per month (6 weeks per year).

5. Advance of sick leave

An employee who has insufficient sick leave credits to cover the granting of sick leave with pay during the entire period of illness may be granted, at the discretion of the person with delegated authority, an advance of sick leave credits of up to one hundred and thirty (130) working days. Any amount so granted shall not be recovered from future earned sick leave credits.

5.1 No employee shall be granted sick leave during a period in which he/she is on leave without pay or under suspension.

6. Management leave

6.1 An employee who is required by management to:

- work excessive hours; or
- work or travel on a day of rest or on a holiday

may be granted such leave as the person with delegated authority considers appropriate.

Appendix E — Certain Excluded/Unrepresented Positions — Terms and Conditions of Employment — Group IV

1. Group IV is comprised of the following job groups and levels:

Group - IV

Level

PO - Police Operations Support Group PO-IMA 1-3

PO - Police Operations Support Group PO-TCO 1-4

2. Hours of work

A. Employees working on a rotating or irregular basis:

- a. Normal hours of work are to be scheduled so that employees work:
 - i. an average of thirty-seven decimal five (37.5) hours per week and an average of five (5) days per week; and
 - ii. an average of seven decimal five (7.5) hours per day.
 - iii. this is to be averaged over a period not exceeding one hundred and twenty-six (126) days
- b. The employer will make an effort to schedule a meal break of one-half (1/2) hour during each full shift which will not constitute part of the work period.
- c. When an employee's scheduled shift does not commence and end on the same day, such shift is to be deemed for all purposes to have been entirely worked:
 - i. on the day it commenced where one-half (1/2) or more of the hours worked fall on that day; or
 - ii. on the day it terminates where more than one-half (1/2) of the hours worked fall on that day.

Accordingly, the first (1st) day of rest will be deemed to start immediately after midnight of the calendar day on which the employee worked or is deemed to have worked his or her last scheduled shift; and the second (2nd) day of rest will start immediately after midnight of the employee's first (1st) day of rest, or immediately after midnight of an intervening designated paid holiday if days of rest are separated thereby.

- d. the employer will make an effort:
 - i. not to schedule the commencement of a shift within eight (8) hours of the completion of the employee's previous shift;
 - ii. to avoid excessive fluctuations in hours of work;
 - iii. to consider the wishes of the employees concerned in the arrangement of shifts within a shift schedule;
 - iv. to arrange shifts over a period of time not exceeding fifty-six (56) days and to post schedules at least fourteen (14) days in advance of the starting date of the new schedule;
 - v. to grant an employee a minimum of two (2) consecutive days of rest.
- e. It may be operationally advantageous to implement work schedules for employees that differ from those specified in this provision. The employer will consult with the employees affected.

If an employee is given less than forty-eight (48) hours advance notice of a change in his or her shift schedule, the employee will receive a premium rate of time and one-half (1 1/2) for work performed on the first shift changed. Subsequent shifts worked on the new schedule will be paid at straight time. Such employee will retain his or her previously scheduled days of rest next following the change or if worked, such days of rest will be compensated in accordance with the relevant overtime provisions.

B. For those employees working on a non-rotating and regular basis:

- Where hours of work are scheduled for employees on a regular basis, they will be scheduled so that employees:
 - a. work thirty-seven decimal five (37.5) hours and five (5) days per week, and
 - b. work seven decimal five (7.5) hours per day.

The employer may have the employee complete the weekly hours of employment in a period other than five (5) full days provided that over a period of twenty-eight (28) calendar days the employee works an average of thirty-seven decimal five (37.5) hours per week. Attendance reporting will be determined in consultation with the employee and the employer. In every twenty-eight (28)-day period such an employee will be granted days of rest on such days as are not scheduled as a normal work day for the employee.

Notwithstanding anything to the contrary, the implementation of any variation in hours will not result in any additional overtime work or additional payment by reason only of such variation, nor will it be deemed to prohibit the right of the employer to schedule any hours of work permitted otherwise.

Appendix F - Certain Excluded/Unrepresented Positions - Terms and Conditions of Employment - Group V

1. Group V is comprised of the following job group and level:

Group - V	Level
CX – Correctional Services Group CX-04	

2. Hours of work

- a. For all matters related to scheduling, the CX-04 group and level shall remain consistent with the other CX levels.
- b. Normal hours of work for the CX-04 group and level are to be established in a manner to ensure the average weekly hours and days are consistent with all other CX levels.
- c. Notwithstanding (a) and (b) above, Appendix “K” of the Correctional Services collective agreement does not apply to this group.