

# Highlights of the Alberta Employment Standards Code Update

March 16, 2018

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The province of Alberta, Canada, enacted significant revisions to its Employment Standards Code effective January 1, 2018, overhauling its foundational employment laws for the first time in almost 30 years. Canadian employment law is generally provincial—and each province has its own core employment legislation with its own regulations governing matters such as overtime pay, job-protected leaves of absence, annual vacation, and termination requirements.

The province of Alberta, Canada, enacted significant revisions to its Employment Standards Code effective January 1, 2018, overhauling its foundational employment laws for the first time in almost 30 years. Canadian employment law is generally provincial—and each province has its own core employment legislation with its own regulations governing matters such as overtime pay, job-protected leaves of absence, annual vacation, and termination requirements. Alberta has long been considered among the most employer-friendly provinces in Canada, in part because it lacked certain statutory leaves and other employee entitlements. The new law brings Alberta in line with the rest of Canada's common law provinces (all provinces in Canada are common law provinces except for Quebec, which uses a civil code system like European countries). Here are some key changes to Alberta's Employment Standards Code:

- Employers cannot unilaterally require employees to use vacation time during a period of notice of termination.
- The new law changes the rules for overtime pay, vacation pay, and holiday pay:  
Overtime, which is still considered any work over 8 hours in a day or 44 hours in a week, must be compensated at one-and-one-half times the regular rate of wages or banked as one-and-one-half times the hours worked as paid time off. (If the overtime hours are banked as paid time off, they can be used anytime within six months instead of within three months, as was previously required. A collective agreement can permit a longer period during which this paid time off can be used.)

The law imposes stricter requirements on “averaging agreements.” New “hours of work averaging agreements” allow overtime eligibility to be determined as follows:

- Daily overtime: 8 hours per day (if scheduled for less than 8 hours) or daily scheduled hours (if 8 or more hours were scheduled)
- Weekly overtime: 44 hours per week (in a 1-week averaging period) or an average of 44 hours per week (in a multi-week averaging period)

Under the new law, a group hours of work averaging agreement must be part of a collective bargaining agreement, or an employer must obtain agreement of greater than 50 percent of affected employees to use a group agreement. Individual hours of work averaging agreements with one employee are also permissible. The maximum averaging period is now 12 weeks.

Employers and employees may enter into individual “flexible averaging agreements,” which permit employers greater flexibility in scheduling versus hours-of-work averaging agreements but which are limited to a two-week averaging period. Under a flexible averaging agreement, overtime compensation is determined as follows:

Daily overtime: the daily number of hours specified in the agreement (which, by law, may not exceed 10)

Weekly overtime: 44 hours per week (in a 1-week averaging period) or an average of 44 hours per week (in a multi-week averaging period)

On a public holiday, employers must pay employees five percent of wages, general holiday pay, and vacation pay earned in the four weeks immediately preceding the holiday (regular salary is permissible if equal to or greater than that amount). For example, if an employee’s wages, holiday pay, and vacation pay earned in the past 4 weeks amounted to \$4,000, the employee would earn \$200 on a public holiday.

- Payroll deductions are now restricted, and deductions for poor work product or customer conduct (e.g., when a customer leaves without paying) are expressly forbidden.
- Employees become eligible to take most leaves of absence after 90 days of service instead of one year of service.
- Unpaid parental leave is extended to a total of up to 62 weeks with job protection.
- Employers must implement new leaves of absence commensurate to what many other provinces already offer:

Long-term illness: 16 weeks of unpaid leave per year for illness or injury with job protection

Critical illness of family member: 36 weeks of unpaid, job-protected leave in the event of a critically ill or injured child; 16 weeks of unpaid, job-protected leave for the critical illness of an adult family member

Death or disappearance of a child: 52 weeks of unpaid, job-protected leave for a child’s disappearance as a result of a crime; 104 weeks in the event of a child’s death as a result of a crime

Personal and family responsibility leave: 5 days’ unpaid leave per year for illness or to care for an immediate family member

Other unpaid leaves, including leave to address a situation of domestic violence (10 days per year), leave to attend a citizenship ceremony (half day), and leave for the bereavement of an immediate family member (3 days per year)

What have *not* changed are Alberta’s minimum notice of termination requirements (except in cases of terminations of over 50 employees); no notice is required for employees with less than 90 days’ service, one

week of notice must be provided for employees with up to 2 years' service but less than 4 years' service, 4 weeks of notice is required for employees with 4 or more but less than 6 years' service, 5 weeks of notice must be provided for employees with 6 or more but less than 8 years' service, 6 weeks of notice is required for employees with 8 or more but less than 10 years of service, and 8 weeks of notice must be given to employees with 10 or more years of service. Likewise, most other provinces provide for lengthier notice periods for more senior employees (for example, Ontario requires eight weeks' notice for employees with eight or more years' tenure).

In order to take advance of these minimum notice periods, employers need to have written contracts with employees that contain valid termination clauses specifying only the statutory minimum notice period is required for a without cause termination; otherwise Alberta courts—like the courts elsewhere in Canada—will determine a reasonable notice period, which usually amounts to a month per year of service or more.

As the new standards are in line with other provinces, Canadian employers with operations in multiple provinces may have policies that already comply with most of these requirements. Still, employers with operations in Alberta (or remote employees there) may want to audit their leave and wage and hour practices, as well as confirm that their payroll providers correctly implement the new deductions and leave calculations.

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