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# **A GUIDE TO THE LAW IN ALBERTA REGARDING**

## **EMPLOYMENT LAW**

**version: 2010**

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## INTRODUCTION

### 1. Definition of an Employee

*Not everyone who works for money is considered an 'employee'.*

For example, if an electrician makes a contract to wire a new house, they are generally not considered an employee of the general contractor of the house, but an 'independent contractor'. This means that the employment laws discussed in this pamphlet may not apply to them.

### 2. Employee Rights

Federal and Provincial legislation gives employees certain rights. These rights may change depending on the employer and the type of employment.

**NOTE:** This pamphlet deals strictly with non-unionized employees. Unionized employees fall under different legislation and are subject to the terms of their collective agreement and the grievance process therein. Unionized employees should contact their unions for more information on Labour law.

In Alberta, employees generally have the right to:

- a. be paid a minimum wage (\$8.80 per hour in Alberta).  
NOTE: One cannot agree to work for less than minimum wage.
- b. be paid some form of overtime pay when working overtime hours;
- c. know when they have to work;
- d. be paid at least monthly;
- e. receive vacation pay;
- f. receive holiday pay;
- g. receive their full pay;
- h. take maternity or pregnancy time off;
- i. be treated fairly;
- j. receive notice before being terminated;
- k. be paid when injured on the job;

If an employee and employer agree that the employee will have greater rights than the ones listed above, the employee can enforce those rights against an employer (i.e. because they have a contract). It is important to speak up about problems as soon as they arise. For example, if the employer pays less than the agreed amount and the employee does not complain, the Court may treat this as evidence that the employee has agreed to less.

Though it is always best to have agreements in writing, a verbal agreement is also enforceable. An agreement that deals with employment specified to be more than one year, (even if it is possible to terminate the agreement earlier, or deals with work that cannot be completed within one year), **MUST** be in writing and signed by the employer to be enforceable.

## HOURS OF WORK

An employee cannot be required to work more than 12 hours in any 24-hour period unless there is an emergency or an accident (there are some exceptions).

Any changes to an employee's normal shift must be posted 24 hours before the change is to take place.

### 1. Rest Periods

An employer must allow an employee at least 8 hours of rest between shifts. In each seven day period, the employer must give one full day of rest, though an employee may agree to work up to 24 days in a row. At the end of this 24-day period, the employer must provide at least four consecutive days of rest.

An employee must be given at least 30 minutes of rest (paid or unpaid) during each shift that is more than five hours long. There are exceptions to this rule. If there is an emergency situation or it

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is not reasonable for the employee to take a break, the employee might not receive a rest period.

### OVERTIME

Generally, an employee must be paid overtime when he/she works more than 8 hours in a day or more than 44 hours in a single week. *The employee will always receive the greater total of overtime hours.* For example, if an employee works five 10-hour days (i.e. 50 hours), this could be calculated as either: 1) 6 hours of overtime above the 44 hour week, OR; 2) 2 hours above the standard 8 hours each day, or 10 hours of overtime. In this situation, the employee would receive whichever total is greater – 10 hours in this case.

An employee can work a compressed work week, which means they work fewer days but more hours in each day. A compressed work week must be scheduled in advance at a maximum of 44 hours per week. With a compressed work week, an employee will NOT be paid overtime when he/she works more than 8 hours in a day.

#### 1. Amount of Overtime Pay

Employees must be paid at least one-and-a-half times their regular wage per hour for overtime pay (“time and a half”, or one’s wage multiplied by 1.5).

An employee may agree to take time off instead of being paid overtime. Time off in place of overtime pay must be taken within 3 months of the end of the pay period in which it was earned. The time off must be taken at a time that the employee would otherwise have worked. If the employee does not take the time off within 3 months, the employer must pay them for the overtime worked. If an employee worked overtime hours and quit or was fired before taking this time off, the employer must pay them overtime.

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NOTE: Some employees are exempt from rules dealing with hours of work, rest periods, days of rest, and overtime pay (such as farm employees, certain types of salespeople, and managers/supervisors).

### DEDUCTIONS

An employer must take off money from each pay cheque for Income Tax, Employment Insurance, and the Canadian Pension Plan. Additional money can only be deducted from an employee’s earnings under certain conditions, such as written permission from the employee, or a Court order.

NOTE: An employer cannot deduct money for faulty workmanship or cash shortages/loss of property IF someone other than the employee has access to the cash or property.

### HOLIDAY AND VACATION PAY

#### 1. Holiday Pay

Holiday pay is paid to employees who work on general holidays, except for Federal workers. To receive holiday pay, an employee must have worked for an employer for at least 30 days in the 12-month period before the holiday. These general holidays are:

New Year’s Day	(January 1st)
Family Day	(Third Monday in February)
Good Friday	(Friday before Easter)
Victoria Day	(Monday before or on May 24th)
Canada Day	(July 1st)
Labour Day	(First Monday in September)
Thanksgiving Day	(Second Monday in October)
Remembrance Day	(November 11th)
Christmas Day	(December 25th)

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Employees who work on general holidays must be paid at least 1.5 times their regular wage OR the employee's regular wage plus another day off before his/her annual vacation. An employee will not be paid 'time and a half' if he/she does not work at scheduled times on the day before and the day after the holiday. If an employee is paid time and a half for a holiday, these hours are not included in the calculation of overtime hours for that week.

An employee is NOT entitled to general holiday pay if he/she misses a day during the regular workweek before the holiday (without the employer's consent), or if he/she misses the first regular workday after the holiday.

Note: Construction workers are generally not given general holidays off with pay.

### **2. Vacation Pay**

Employees can get vacation pay if they do not take vacation days. If an employee is paid monthly, vacation pay for one week should be equal to his/her monthly wage divided by 4.33.

Employees have the right to two weeks vacation with pay each year after four years of employment. Employees have the right to at least three weeks vacation with pay after five years of employment.

If an employee quits, is fired, or is laid off, the employer must pay vacation pay in the last cheque, no later than ten days after the last day of employment.

NOTE: If an employee does not work on scheduled days, the employer may deduct pay for that week or from vacation pay or vacation time.

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### **SICK DAYS**

The employer must give sick pay if they have agreed to give sick pay or if the employee is normally paid when they get sick. If an employer has not paid an employee sick pay in the past, the employee may not be able to collect it in the future. If an employee is not paid sick pay, they should ask their employer for it as soon as possible, though the employee may not be able to collect sick pay without an agreement in place.

### **MATERNITY AND PARENTAL LEAVE**

A pregnant employee who has worked for the same employer, full or part-time for 12 months in a row, may take time off without pay for a pregnancy. She has a right to 15 weeks unpaid maternity leave and 37 weeks of parental leave. Also, she must be reinstated to her old job or one similar to it when she returns to work.

A pregnant employee must give her employer written notice at least 6 weeks before the day she wants to start maternity leave or parental leave. If the employer asks, she must provide a medical certificate. If she does not give 6 weeks notice, she may give two weeks notice with a medical certificate and a due date.

An employer may also give an employee written notice to take her maternity leave if the pregnancy will interfere with her duties, provided it is at least 12 weeks prior to the expected delivery date. Her employer does not have to pay her for time off unless she has signed an agreement that she will get paid while she is on maternity leave.

An employee may be able to collect Employment Insurance (EI) while she is not working during pregnancy. She can collect a total of 15 weeks of EI payments. She must have worked at least 600

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hours in the last year to collect, and show that her earnings have decreased by more than 40%.

Parents are entitled to 37 weeks of parental leave, Adoptive parents may also take 37 weeks of parental leave. Parental leave must be taken within 52 weeks of the birth or adoption of the child. EI benefits for parental leave are the same as maternity leave (55% to a maximum of \$435).

### PAYMENT OF WAGES

#### 1. Minimum Wage

Most employees have the right to a minimum wage. **In Alberta, an employee has the right to a minimum wage of \$8.80 an hour (as of April 1<sup>st</sup>/2009).**

Generally, an employee must be paid for at least 3 hours every time they report for a shift, whether they are sent home or not.

#### 2. Reduced Wages

Notice is required before an employee's earnings can be reduced, and must be given before the start of the pay period in which the reduction is going to take place. If the employer does not give notice, the employee is entitled to the wage they received before the reduction.

#### 3. Time of Payment

An employee usually has the right to wages, overtime pay, and entitlements within 10 days after the end of each pay period.

If an employee is paid weekly, he or she may have to wait up to 2½ weeks before the first cheque is granted. The employee should then get cheques every week.

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A statement of earnings must be given to the employee at the end of each pay period, showing hours worked, pay earned, holiday and vacation pay, and deductions.

### UNSAFE WORKPLACES

An employee is not required to work if they are in imminent danger, or if their working puts someone else in imminent danger. An employee must tell their employer about unsafe conditions as soon as possible. If the employer fires an employee because they refuse to do dangerous work, then that employee is entitled to voice a complaint to Workplace Health and Safety. It is important that an employee tell the absolute truth in the complaint. A false complaint may result in a fine or jail time.

### TERMINATION, TRANSFER, AND DEMOTION

#### 1. Just Cause

An employer can terminate an employee for 'just cause' without having to give notice or termination pay. Examples of just cause include stealing from an employer, always being late, or not following an employer's directions.

#### 2. Termination Notice and Pay

An employer can fire or lay off an employee without just cause, so long as the employer gives notice of the termination or payment instead of notice. **An employee is not entitled to notice or pay if they have been employed for less than three months.**

An employer must give an employee written notice if he/she is being laid off. The length of time an employee has worked for an employer determines the amount of notice (or pay instead of notice) they should receive. 3 months to 2 years requires a one-week notice, and 2 to 4 years requires a two-week notice. These are minimum guidelines, and an employee who has worked for the same employer for many years may be entitled to more notice

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or pay. As always, it may be a good idea to speak to a lawyer before signing any sort of termination agreement.

### 3. Transfers and Demotions

Generally, an employer cannot demote or transfer an employee or reduce wages without reasonable notice or the consent of the employee. If an employer does this, the employee may be able to treat this as a dismissal and ask for termination pay.

NOTE: Rules dealing with notice and termination pay do NOT apply to construction workers, seasonal workers, or those employed for a fixed period of time.

### 4. Employee Notice to an Employer

If an employee has worked for more than 3 months and less than 2 years, they are required to give at least a one week notice. Employees who have worked for more than 2 years must provide 2 weeks notice. There are some situations where the employee does NOT have to give notice, such as when her/his personal safety is at risk or he/she has been working there for less than 3 months.

NOTE: It is important to seek legal advice quickly in the event that a claim arises, as orders under the *Employment Standards Code* are generally subject to a one-year limitation period.

## EMPLOYMENT STANDARDS

Employment Standards provides telephone counselling services for anyone who has a question concerning employment. Recorded messages and an automated fax back system are available 24 hours a day, while counsellors are available during regular business hours.

When employees are unable to resolve matters with their employer, Employment Standards staff can investigate the matter

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on receipt of a written complaint. Employees who want to file a complaint with Employment Standards must file within six months of the date on which their employment ended.

## DISCRIMINATION

If an employee has been discriminated against, they may complain to the Alberta Human Rights Commission. The Commission only considers discrimination on the basis of:

- a. gender (including pregnancy and sexual harassment);
- b. religious beliefs;
- c. race;
- d. ancestry;
- e. colour;
- f. physical or mental disability;
- g. age
- h. family status;
- i. marital status;
- j. source of income;
- k. sexual orientation; and
- l. place of origin

The Commission can order an employer to stop unfair treatment. Based on the circumstances, they might order an employer to promote the employee, give them a raise, rehire them, give termination pay, or pay damages. An employee must submit a written complaint within 12 months of the incident. The commission will attempt to mediate the dispute first. If this fails, a hearing may be scheduled.

## EMPLOYMENT INSURANCE

Generally, a person must have worked between 420 and 700 hours in the last year to qualify for E.I. (though this will vary based on the unemployment rate in the province). If a person quits without a good reason or is fired for just cause, they may not

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qualify for EI. It usually takes 28 days from the date a person files their claim before getting the first cheque. A person will still have to look for a job while collecting benefits. It is also a good idea to write down the names of all the places where one has applied for a job. One must apply for EI benefits within four weeks from the last day of employment to avoid unnecessary delays or loss of benefits.

### **WORKER'S COMPENSATION**

If injured on the job, one should first seek first aid treatment and make sure to tell their employer he/she is hurt. If the employee cannot work, they may apply to the WCB for benefits. If the claim is accepted, the employee may be paid up to 90% of their net (after deductions) income.

Generally, it is very difficult for an employee to sue an employer if injured on the job. However, an employee may be able to sue another employee causes the injury.

The WCB offers a claims counsellor to help people who have problems with their claim. They can help employees prepare a claim or attend hearings.

If an employee disagrees with a decision of the WCB, they may appeal the decision. The employee has the right to have a representative at the appeal hearing, which can be a friend, a lawyer, an appeals advisor, or someone from Student Legal Services.

If someone is appealing, WCB must be notified. The employee and their representative have the right to view their file, in order to prepare for the appeal. A free appeal service is provided by WCB's appeals advisory service. There are two levels of appeal. First, someone can appeal to the Claims Services Review

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Committee. If unhappy with this decision, an employee can further appeal to the Appeals Commission.

### **JOB TRAINING**

There are programs in Alberta that may be able to help with job training. *Alberta Works* is a program of the Alberta Government that brings together *Employment and Training Services*, *Income Support*, *Health Benefits*, and *Child Support Services*. The program's goals are to help unemployed people find and keep jobs, help low-income Albertans cover their basic costs of living, and help employers meet their need for skilled workers.

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**REFERRAL NUMBERS AND WEBSITES**

Employment Standards (*outside Edmonton dial 310-780-4273*) [780] 427-3731  
<http://employment.alberta.ca/SFW/1224.html>

Workplace Health And Safety . . . . . 1-866-415-8690  
<http://www.employment.alberta.ca/SFW/53.html>

Employment Insurance . . . . . 1-800-206-7218  
<http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

Worker's Compensation Board . . . . . [780] 498-3999  
[www.wcb.ab.ca](http://www.wcb.ab.ca)

Alberta Human Rights Commission  
. . . . . (toll free: 1-866-922-9221) [780] 427-7661  
[www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca)

Alberta Works . . . . . 1-866-644-5135  
<http://employment.alberta.ca/FCH/3171.html>

**Legal assistance**

Dial-A-Law (Legal Information on Tape)  
Toll-free . . . . . 1-800-332-1091

Edmonton Centre for Equal Justice . . . . . [780] 702-1725  
[www.ecej.ca](http://www.ecej.ca)

Lawyer Referral Service . . . . . 1-800-661-1095

Edmonton Legal Aid . . . . . [780] 427-7575  
[www.legalaid.ab.ca](http://www.legalaid.ab.ca)

Calgary Legal Guidance . . . . . [403] 234-9266  
[www.clg.ab.ca](http://www.clg.ab.ca)

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Student Legal Services of Edmonton (Switchboard) [780] 492-2226  
Civil Law . . . . . [780] 492-8244  
[www.slsedmonton.com](http://www.slsedmonton.com)

Calgary Student Legal Assistance . . . . . [403] 220-6637  
<http://www.sla.ucalgary.ca/>

Native Counselling Services of Alberta . . . . . [780] 451-4002