
COPYRIGHT AND DISCLAIMER

A GUIDE TO THE LAW IN ALBERTA REGARDING



EMPLOYMENT LAW

version: 2008

GENERAL

All information is provided for general knowledge purposes only and is not meant as a replacement for professional legal advice. If you have a personal legal question that requires legal advice, please consult a lawyer.

COPYRIGHT

Copyright 2008, Student Legal Services of Edmonton. All rights reserved. Copying any material, in whole or in part, is prohibited unless prior consent has been obtained. Some material may be subject to copyright from an outside source and thus there may be different restrictions on the reproduction of this material.

LIMITATION OF LIABILITY

Student Legal Services of Edmonton is not liable for any loss or damage caused by an individual's reliance on information or material obtained from Student Legal Services of Edmonton. By accessing the information, individual's agree that any usage is at their own risk.

INFORMATIONS AND OPINIONS

In some instances, information obtained by Student Legal Services of Edmonton may have been provided by outside sources. Even with the high standards set by Student Legal Services of Edmonton, we accept no responsibility for the accuracy and reliability of the material. Opinions and Informations provided by third parties does not represent that of Student Legal Services of Edmonton.

EMPLOYMENT LAW

GENERAL	3
Definition of an Employee	3
The Legislation	4
EMPLOYEES' RIGHTS	4
Increased Rights by Agreement	5
Increased Rights as a Member of a Union or an Employee's Association	5
HOURS OF WORK	6
Rest Periods	6
Compressed Work Week	7
OVERTIME	7
Amount of Overtime Pay	7
Exemptions from Hours of Work and Overtime Pay	8
DEDUCTIONS	9
HOLIDAY AND VACATION PAY	10
Holiday Pay	10
Amount of Holiday Pay	10
Exemptions from Holiday Pay	11
Vacation Time	12
Amount of Vacation Pay	12
The Timing of a Vacation	13
Exemptions from Vacation Pay	13
SICKNESS	14
MATERNITY	14
Employment Insurance while Pregnant	15

Parental Leave	15
PAYMENT OF WAGES	16
Minimum Amount	16
Exemptions from Minimum Wage	16
Length of a Shift	16
Reduced Wages	17
Time of Payment	17
UNSAFE WORKPLACES	18
UNDER 18	18
TERMINATION, TRANSFER, AND DEMOTION	19
Termination Notice and Pay	20
Duties Following Termination	21
Transfers and Demotions	21
Getting Re-hired	22
Exemptions from Notice of Termination	22
Exemptions from Termination Pay	23
Employee's Notice to an Employer	23
EMPLOYMENT INSURANCE	23
TRAINING ALLOWANCES AND WAGE SUBSIDIES	24
DISCRIMINATION	24
WORKER'S COMPENSATION	25
EMPLOYMENT STANDARDS	27
REFERRAL NUMBERS AND WEBSITES	28

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

GENERAL

This pamphlet is designed to help people understand their rights and duties as employees. It includes information on topics such as minimum wage, overtime pay, and holiday/vacation pay. It also includes information on procedures and requirements for Employment Insurance, the Human Rights Commission, and Worker's Compensation.

Student Legal Services primarily assists lower income Albertans, therefore, this pamphlet focuses on employees, not employers. This pamphlet is not a substitute for a lawyer. If a problem is complicated, or involves a large amount of money, one should contact a Lawyer (see *Referral Numbers* below). Student Legal Services will be able to assist employees with matters dealt with in the Provincial Court of Alberta or at tribunals such as the WCB. SLS may also be able to help a person understand the nature of their problem in complicated circumstances.

1. Definition of an Employee

An employee is someone who works for another person or corporation for a salary or a wage. Not everyone who works for money is considered an employee. A key distinction is made between employees and independent contractors. For example, an electrician hired to wire a new house, is not considered an employee of the general contractor of the house, but is an independent contractor (however, the hired electrical company may have its own employees).

Generally, employees can be identified by certain characteristics. Employees are generally under the day-to-day control of their employer (meaning the employer decides the method of doing the work and where and when it's done), their employer owns the tools or equipment required for the job, and the employee stands little chance of making a profit or suffering a financial loss from their work outside of their salary. Employment laws apply to

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

people who fit this general description of an employee. An employer has the right to hire, supervise, and fire employees.

2. The Legislation

The laws of Alberta and of Canada give employees minimum rights. These rights may change depending on the employer and the type of employment.

Employees who belong to a union do not fall under employment laws. They are protected by *labour* laws. The Canada Labour Code governs employees of the Federal Government and federal companies and projects. The Public Service Employee Relations Act and the Public Service Staff Relations Act govern employees who work for the Province of Alberta. The Labour Relations Act of Alberta protects unionized employees in the private sector.

The Employment Standards Code of Alberta protects non-unionized employees in the private sector. This pamphlet will concentrate on the rights of these employees.

EMPLOYEES' RIGHTS

In Alberta, employees generally have the right to:

- a. be paid a 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 fired;
- k. be paid when injured on the job;
- l. join a union

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

By law, an employee cannot agree to less than these minimum rights. However, an employee can agree to more rights, as an individual or as a member of a trade union or an employee's association.

1. Increased Rights by Agreement

If an employee and employer agree that the employee will have greater rights than the minimum given by law, then that employee can enforce those rights because they have a contract. For example, they might agree that the employee be paid \$9.00 per hour instead of the minimum \$8.40 per hour. An employee cannot agree to less than the legal minimum.

The agreement can be verbal or in writing, but it is better to make agreements in writing as this provides clear evidence of what the agreement was and that parties understood the terms of the agreement. Any agreement that is for more than a year *must* be in writing.

An employee should address the issue with their employer if they do not get what he expected under an agreement. If an employee does not object when an employer pays less than the agreed amount, then they may not be able to claim more pay later on, as the Court may assume the employee agreed to less. Employees need to speak up about problems as soon as they arise. Employees and employers should attempt to solve any problems or misunderstandings as soon as possible.

2. Increased Rights as a Member of a Union or an Employee's Association

As a union or association member, an employee has all the minimum rights given by law, as well as all the rights listed in a union's collective agreement or association bylaws. These rights could include, for example, the right to more money, more vacation pay, or better overtime programs. As each collective

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

agreement and set of bylaws is different, each collective agreement gives its employees unique rights.

An employee should check the union contract, collective agreement, or association bylaws to see if an employer is fulfilling their duties. An employee may contact her union representative if he or she believes their employer is not following the agreement. It is important to act quickly, as some of rights have time limits or "limitation periods".

HOURS OF WORK

Employees who are 18 years of age or older, must work the hours for which their employer schedules them. However, an employee cannot work more than 12 hours in any one 24 hour period unless there is an emergency or accident.

An employer can not force an employee to work a shift different from his normal shift unless the change is posted 24 hours before the change is to take place.

3. 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. However, an employee may work up to 24 days in a row, but at the end of this period, the employer must provide at least four days of rest in a row.

An employee must be given a total of at least 30 minutes of rest, whether paid or unpaid, during each shift that is more than five hours in a row, unless it is an emergency situation, it is stated differently in a collective agreement, or it is not reasonable for the employee to take a break.

4. Compressed Work Week

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 and must meet certain requirements. An employee's schedule must show the entire cycle of the compressed weeks, an employee cannot work more than 12 hours in a day, and an employee can only be scheduled for a maximum of 44 hours in a compressed workweek. Thus by working a compressed work week an employee is not paid overtime when he or she works over 8 hours in a day.

OVERTIME

An employee must be paid overtime for any hours worked over 8 hours in one day OR hours worked over 44 hours in one week. The employee will be paid overtime for the *greater* of those two totals. For example, if an employee worked 5 10-hour days, that would be 50 hours worked in one week (6 hours over 44) and 2 hours extra on each of 5 days (10 hours total). The employee would get the greater amount which is 10 hours of overtime.

1. Amount of Overtime Pay

Employees must be paid at least one and a half times their regular wage rate for overtime pay (this is often called "time and a half"). For example, if an employee's wage is \$8.40 an hour, they must be paid \$12.60 an hour for overtime pay (\$8 x 1.5).

An employee may agree with their employer 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, unless a collective agreement allows for a longer period. The time off must be taken at a time that the employee would otherwise have worked.

If an employee does not have an agreement with their employer to take time off or if he or she does not take the time off within 3

months, then the employer must pay them for the overtime worked.

If an employee worked overtime hours and quits or was fired before he or she takes the time off, the employer must pay them time and a half.

2. Exemptions from Hours of Work and Overtime Pay

Some employees are exempt from hours of work, rest periods, days of rest, and overtime pay:

- a. employees on a farm or a ranch;
- b. various types of salespersons;
- c. professionals such as real estate brokers, and licensed insurance and securities salespersons;
- d. professions such as architects, engineers, lawyers, psychologists, and information systems professionals;
- e. managers, supervisors, and those employed in a confidential capacity
- f. licensed land agents;
- g. instructors or counsellors at a non-profit educational or recreational camp;
- h. extras in a film or video production;
- i. employees covered by others Acts (academic staff);
- j. municipal police officers

Managers, supervisors, and some others do not get paid for overtime. However, an employee is not necessarily a manager or supervisor simply because an employer tells that employee that he or she is one. If someone is not performing the duties of a manger or supervisor he or she may be entitled to overtime pay.

Some industries and occupations follow different overtime guidelines:

- a. ambulance attendants;
- b. geophysical exploration;
- c. irrigation districts;

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

- d. logging and lumbering;
- e. oilwell servicing;
- f. surveying;
- g. trucking industry;
- h. field catering;
- i. highway and railway construction and brush clearing;
- j. nursery industry;
- k. road maintenance activities; and
- l. taxi cab drivers

DEDUCTIONS

By law an employer may take off money from each pay cheque for:

- a. Income Tax;
- b. Employment Insurance Premiums;
- c. Canadian Pension Plan Premiums; and
- d. Alberta Health Care Premiums

Additional money can only be deducted from an employee's earnings under certain conditions. Money can be deducted from a pay cheque if an employee has given permission in writing. If an employee is a member of a union, an employer may deduct union dues on behalf of the union if the collective agreement or union contract allows it. An employer will also deduct from an employee's earnings if there is a judgment or order from a court to garnish his/her wages.

An employer may deduct for room and board provided for an employer. An employer can charge for room and board if an employee is paid more than the minimum wage. An employer may not lower your pay under minimum wage by more than \$2.76 per meal and \$3.65 per day of lodging. An employee can only be deducted for the meals they actually eat.

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

If an employee must pay for a pension plan, medical plan, dental plan, or life insurance plan, the employer may deduct these premiums from a pay cheque.

An employer cannot deduct money for:

- a. faulty workmanship, or
- b. cash shortages or 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. 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 May 25th)
Canada Day	(July 1st)
Labour Day	(First Monday in September)
Thanksgiving Day	(Second Monday in October)
Remembrance Day	(November 11th)
Christmas Day	(December 25th)

To receive holiday pay, an employee must have worked for an employer for at least 30 days in the 12 months before the holiday.

2. Amount of Holiday Pay

Employees who work on one of the above days must be paid at least 1.5 times their regular wage or must be paid their regular wage and given another day off before their annual vacation.

If the employee has worked on that day of the week in at least five of the past nine weeks and does have to work on the holiday, they will be paid for that day. The average number of hours worked

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

over the last nine weeks is the amount that will be used to calculate the regular wage.

If one of the above days falls on an employee's regular day off but that employee works on that date, the employer must pay at least 1.5 times his regular wage.

If an employee does not work on a scheduled day before the holiday and the scheduled day after the holiday then he will not get paid for the holiday.

If an employee is on vacation and there is a holiday during that vacation and that holiday is one that the employee would have been entitled to, then the employer must either:

- a. give the employee one more day of vacation; or
- b. pay the employee one extra day's pay.

An employer must pay an employee holiday pay in the first cheque after the holiday.

If an employee is paid at a rate of 1.5 times or more his regular wage for these holiday hours then these hours are not included in the calculation of overtime hours for that week.

3. Exemptions from Holiday Pay

Construction workers are generally not given general holidays off with pay. However, all construction employees must be paid general holiday pay equal to 3.6% of the employee's wages. There is no qualifying period of employment for construction employees to be entitled to general holiday pay.

Some employees are exempt from general holiday pay:

- a. employees on a farm or a ranch;
- b. salespersons who mainly work outside the employers place of business;
- c. various other types of salespersons;

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

- d. professionals such as real estate brokers, and licensed insurance and securities salespersons;
- e. instructors or counsellors at a non-profit educational or recreational camp;
- f. extras in a film or video production;
- g. employees covered by other Acts (academic staff); and
- h. municipal police officers

4. Vacation Time

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

If an employee does not work all of the days they are scheduled to work, then for each day they did not work, but were supposed to, their vacation time and vacation pay can be reduced by one day.

5. Amount of Vacation Pay

Employees can get vacation pay in lieu of vacation time if they take no vacation days off. If an employee is paid by the month then for each week of vacation she should get paid an amount equal to her normal monthly wage divided by $4\frac{1}{3}$.

For example, if an employee has worked for an employer for two years and is paid \$1000 monthly, then they should get two weeks of vacation. 1000 divided by $4\frac{1}{3}$ is about \$230.77, so they should get that much for each week (for a total vacation pay of about \$461.54).

If an employee is not paid by the month and has worked for an employer for less than five years, then they should get vacation pay of 4% of her wages for the year of work for which they are getting a vacation (for example, if an employee earned \$20,000 in the year then they should get \$800 in vacation pay). If an

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

employee has worked over 5 years, then they should get vacation pay of 6% for the year of work for which they are getting a vacation.

Vacation pay must be paid no later than the next regularly scheduled payday after the employee starts annual vacation but the employer may pay it at an earlier time.

6. The Timing of a Vacation

An employee can choose to take their vacation in a continuous 2-week period or in two or more periods of at least a day long, if they have worked the full year.

If an employee and an employer cannot agree when a vacation will be taken, the employer can tell the employee when to take it if they are given two (2) weeks notice in writing.

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.

7. Exemptions from Vacation Pay

Construction workers are usually not provided with vacation time, but are entitled to vacation pay. Construction employees are entitled to vacation pay once they start working (they do not have to be employed for 3 months). All construction employees must be paid vacation pay equal to 6% of the employee's wages.

Some employees are exempt from vacation pay:

- a. employees on a farm or a ranch;
- b. salespersons working mainly away from the employer's premises who solicit orders for later delivery;
- c. professionals such as real estate brokers, and licensed insurance and securities salespersons;
- d. extras in a film or video production;

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

- e. employees covered by other Acts (academic staff); and
- f. municipal police officers

SICKNESS

If an employer has agreed to pay an employee when they are sick, or if that employee would normally get paid when sick, that employer must give sick pay. If an employer has not paid an employee sick pay in the past, then that employee may not be able to collect it in the future.

If an employee is not paid sick pay, they should ask the employer for it as soon as possible. If the employer refuses or any other problems arise, the employee should ask why this has occurred, then contact Employment Standards. If an employer told an employee when they started a job that he would not get sick pay, that employee might not be able to collect it.

MATERNITY

An employee who is pregnant and has worked for the same employer, full or part-time, for 12 months in a row can take time off without pay for a pregnancy. At the end of the leave she must be reinstated to her old job or one similar to it. She has the right to 15 weeks unpaid maternity leave (and 37 weeks of parental leave). Leave may begin at any time during the 12 weeks before the estimated date of birth. An employee who takes maternity leave must take at least six weeks following the date of delivery unless otherwise agreed by the employer and a doctor.

A pregnant employee must give her employer written notice at least six weeks before the day she wants to start her maternity or parental leave. Also, if her employer asks for it, she must give a medical certificate stating that she is pregnant and when she is expected to give birth. If she doesn't give notice, she can still take leave if she tells her employer within two weeks of leaving work

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

and she gives her employer a medical certificate and due date. An employer can also give the employee written notice within 12 weeks prior to the expected delivery date that they request the employer take her maternity leave, if the pregnancy interferes with the performance of her duties.

If an employee plans to start working again or to resign after her maternity leave, she must tell her employer, in writing, at least four weeks before.

When the employee returns to work her employer must give her her old position back or give her a different position with work very much like what she did in her old position.

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.

1. Employment Insurance while Pregnant

An employee may be able to collect EI while she is not working during pregnancy. She can collect a total of 15 weeks in payments. She must have worked at least 600 hours in the last year to collect. Her payments will be 55% of her insurable earnings over the past 26 weeks, up to a maximum of \$435 per week.

2. Parental Leave

Parents are entitled to 37 weeks of parental leave that can be shared between the two parents in any way they choose.

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

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

PAYMENT OF WAGES

1. Minimum Amount

Most employees have the right to a minimum wage. In Alberta, an employee has the right to a minimum wage of \$8.40 an hour (as of April 1, 2008).

2. Exemptions from Minimum Wage

There are some exceptions to the minimum wage:

- a. real estate brokers;
- b. securities sale persons;
- c. insurance sales persons paid entirely by commission;
- d. students engaged in a work experience program approved by the Minister of Learning or Minister of Human Resources and Employment;
- e. students engaged in an off-campus education program provided under the School Act;
- f. extras in a film or video production;
- g. counsellors or instructors at an educational or recreational camp operated on a non-profit basis or children or handicapped individuals or for religious purposes; and
- h. farm employees

Some salespeople and professional employees have the right to minimum pay of \$336.00 per week.

Domestic employees who live in their employer's home have a minimum wage of \$1601 per month.

3. Length of a Shift

Generally, an employee must be paid for at least 3 hours of work every time he or she reports for a scheduled shift. Again, some employees are exempted from this rule. For example, school bus drivers, part-time employees in certain non-profit recreation and athletic programs, and employees between the ages of 12 and 14

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

who work on school days must only be paid for at least 2 hours of work per day.

4. Reduced Wages

Notice is required before earnings can be reduced. If an employee's wage rate, overtime rate, vacation pay, general holiday pay, or termination pay is reduced, an employer must notify the employee of the reduction before the start of the employee's pay period in which this reduction is to take effect.

If the employer does not give notice, the employee is entitled to the wage they received before the reduction.

5. 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. For example, if an employee is paid monthly, then he or she should get a pay cheque before the 11th of the next month.

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.

A statement of earnings must be given to the employee at the end of each pay period. This statement must show:

- a. the number of hours worked;
- b. the amount of regular pay earned;
- c. the amount of bonus, or living allowance paid;
- d. the amount of vacation pay or holiday pay; and
- e. all the deductions your employer made.

When an employer fires or lays off an employee with notice or pay, then all unpaid wages must be paid within three days after the last day of employment. When an employee is fired with cause, the employer must pay the employee's earnings no later than 10 days after the last day of employment.

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

If the employee quits with notice, the employer must pay the earnings no later than three days after the last day of employment. If no notice is required, the employer must pay no later than 10 days after the last day of employment. If no notice is given but it is required, the employer must pay no later than 10 days after what would have been the last day of employment had the notice been given.

If an employee has not received his cheque, and it is past the time periods outlined above, he should ask the employer for the cheque and then, if he does not get it, the employee should call Employment Standards.

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. Imminent danger includes potential harm likely to happen in the present moment. It also includes unusual danger.

An employee must tell their employer about the unsafe condition as soon as possible and that they will not work until the danger is eliminated. If the employer fires an employee because they refuse to do the dangerous work, then that employee is entitled to voice a complaint to the Workplace Health and Safety. It is important that an employee tell the absolute truth in the complaint, a false complaint may result in being fined or jailed.

UNDER 18

If an employee is 12 years old or older, they are permitted to work in Alberta. An adolescent between the ages of 12 and 14 can:

- a. work in an office or a store;
- b. deliver flyers or papers;
- c. deliver small wares for a retail store; or

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

- d. be a host/hostess, cashier, dish washer, or buss tables, wait on tables, provide customer service, assemble orders, or clean at a restaurant or for other employers in the food service industry so long as they are not working with deep fryers, grills, or slicers, there is no smoking in her presence, an adult is always present, and the workplace is safe.

Such employees must get parental consent. Adolescents are not allowed to work between the hours of 9:00 P.M. and 6:00 A.M., and cannot work for more than 2 hours on a school day or more than 8 hours on a non-school day. For all other occupations, a permit from the Director of Employment Standards must be obtained before the adolescent starts to work.

Employees between 15 and 18 years old must also have parental consent but can work in any type of employment. If such young persons work in a retail store, gas station, a hotel or motel, or at a place that sells food or drinks, they can only work until midnight, and someone 18 or older must work with them after 9:00 P.M. Young persons working in other occupations after midnight must have parental consent and be in the presence of another individual 18 years of age or older.

TERMINATION, TRANSFER, AND DEMOTION

1. Just Cause

An employer can terminate an employee for “just cause” without having to give any notice or termination pay. Examples of just cause include, stealing from an employer, always being late or sick, or not listening to an employer’s lawful orders. In these situations, the employer will be able to fire that employee without any notice.

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

2. Termination Notice and Pay

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

An employer must give an employee written notice that they have been laid off. The length of time an employee has worked for an employer determines the amount of notice (or pay in lieu of notice) they should receive from the employer concerning termination:

- a. three months to two years employment requires at least one week notice
- b. two to four years employment requires at least two weeks notice
- c. four to six years employment requires at least four weeks notice
- d. six to eight years employment requires at least five weeks notice
- e. eight to ten years employment requires at least six weeks notice
- f. 10 years or more employment requires at least eight weeks notice

If there is a break in employment of less than three months with one employer, the period of employment is treated as one period for the purposes of determining the minimum notice required.

These guidelines are the legal minimums. If an employee has worked for a company for many years, or has worked as a supervisor or manager, they may be entitled to more notice or pay. A lawyer can advise an employee about how much notice or pay is expected. A court will consider how long they will need to find a job similar to the old one. The following factors are also often considered:

- a. the work the employee did (duties and responsibilities);

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

- b. how long the employee worked for that employer;
- c. the employee's age;
- d. what other employers in the industry give to their employees in similar jobs;
- e. the general state of the economy.

Also, an employer may have to pay for moving costs, real estate, and legal fees (if the employee sold their house), and other costs of looking for a new job.

It is best for an employee to not sign any documents after being fired unless a lawyer advises the employee to do so. If an employee signs an agreement to accept less termination pay than they have a right too, they may not be able to collect it later.

3. Duties Following Termination

Even if an employee did not receive enough notice from an employer, they must look for work after being fired. It is useful for the former employee to write down the names of all the people talked to in regards to getting a new job. They should also apply for Employment Insurance payments as soon as possible. This is called "mitigating" your damages. Courts like to see people trying to improve their situation rather than make things worse for themselves. If the former employee spends any money on looking for a job, they should save all the receipts because a lawyer or judge will need to see them. They should also write down everything the employer says about the firing, and make notes about any conversations about looking for a new job and the efforts the employer made to help or hinder that process. All of this information is important when the former employee seeks the advice of a lawyer.

4. Transfers and Demotions

Generally, an employer cannot demote, transfer, suspend, or reduce an employee's wages without her consent or without reasonable notice. An employer can not change any of the major

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

terms of employment unless the employee consents or is given reasonable notice of the change. Otherwise, an employee may be able to treat the change as a dismissal or firing and ask for termination pay. However, an employer may be able to give an employee reasonable notice of the demotion and then demote them.

An employment contract will tell an employee if they have to accept any of the changes. For example, bank managers often sign an agreement that they are willing to be transferred elsewhere if asked. Bank managers who signed the agreement cannot claim for termination pay if they are fired because they refuse the move.

5. Getting Re-hired

If an employee thinks they were treated unfairly, and if it falls within the Human Rights Commission's mandate, an employee may be able to force the employer to re-hire him. (See the section on *Discrimination* below)

If an employee is a member of a union that has a contract or collective agreement with their employer, then they may be able to force the employer to rehire them. If an employee feels that they were unjustly fired, they should contact a representative right away. There are often strict time limits so they should act as soon as possible.

Otherwise, an employee cannot force an employer to rehire him, but the employee might have a right to termination pay.

6. Exemptions from Notice of Termination

Some employees are exempt from notice of termination:

- a. construction employees
- b. employees covered by other acts (academic staff)
- c. municipal police officers

7. Exemptions from Termination Pay

The following types of employees can't use the Employment Standards Board to collect termination pay (there may be other types of employees not listed):

- a. employees who have worked for their employer for less than 3 months;
- b. employees who work in construction or as brush clearers;
- c. seasonal employees (for example, those who work only for the summer or at Christmas);
- d. employees who work only for a fixed period of time;
- e. casual employees;
- f. employees who have gone on strike or been locked-out under a collective agreement;

8. Employee's Notice to an Employer

An employee must provide written notice to the employer of at least one week if employed for three months to two years and two weeks notice if employed for more than two years. There are certain circumstances in which an employee does not have to give termination notice, such as, if his personal health or safety is at risk by continuing to work, or if the employer reduces the wage rate, overtime rate, vacation pay, or termination pay.

EMPLOYMENT INSURANCE

Generally someone can collect Employment Insurance (EI) payments while they are unemployed. If a person quits without a good reason or is fired for just cause they may not qualify for EI. A person must have worked between 420 and 700 hours in the last year to qualify (this amount depends on the region's unemployment rate, currently 700 hours is required in Edmonton).

A person may get payments of 55% of their average weekly insurable earnings over the 26 week period prior to the last day of employment. 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 unemployed and collecting benefits. They should also write down the names of all the places they applied to 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. The maximum weekly rate is \$435 and federal tax is deducted.

TRAINING ALLOWANCES AND WAGE SUBSIDIES

The Alberta and Federal governments have a number of programs to help employers hire workers. Most help employers pay for training. An employee can tell their employer about these programs that could help pay for wages or training. Information about such programs can be found at local Canada Employment Centres. As an employee looking for a job, a person should tell any potential employers about these programs. It could make a difference in how many people they hire.

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.

DISCRIMINATION

If an employee has been discriminated against she may complain to Canadian Human Rights Commission (if working for a federal employer), otherwise 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;

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

- 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 will order an employer to stop the unfair treatment. Based on the circumstances, they could order an employer to:

- a. promote the employee;
- b. give the employee a raise;
- c. rehire the employee;
- d. pay the employee termination pay; OR
- e. pay the employee damages for sexual harassment.

An employee must write out and submit a complaint within 12 months of the unfair act. The Human Rights Commission will look into a complaint once it is in writing. It will try to mediate (help the employee and employer solve the problem). If this fails, the commission may hold a hearing for both the employee and employer where each party can share their side of the story. The commission will then make an order.

Also, if the employee is a member of a union or an association, the collective agreement or contract may allow that employee to submit a complaint.

WORKER'S COMPENSATION

If an employee is injured on the job they should first seek First Aid treatment to ensure that the injury is as minor as possible. Then, the employee must tell their employer they were hurt. They will

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

probably have to see a doctor and fill out an injury or accident report. The report should include the date of the accident, the name of the employer, the details of the injuries, and the employee's name and social insurance number. The Worker's Compensation Board (WCB) will need this information if a claim is filed.

If the employee cannot work, they may apply to the WCB for benefits. If the claim is accepted, the employee will be paid up to 90% of their net (after deductions) wages.

Generally, it is difficult for an employee to sue his employer if they are injured while on the job. However, if a motor vehicle is involved they may be able to sue (because the employer is being sued as the owner of the vehicle, not as an employer). An employee may also be able to sue if another employee causes or is involved in the injury.

Some employees can't claim benefits because their employer is excluded under the Worker's Compensation Act.

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

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 the WCB's appeals advisory service.

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

There are two levels of appeal. First, someone can appeal to the Claims Services Review Committee. If unhappy with this decision, an employee can further appeal to the Appeals Commission. These appeals have strict time limitations.

EMPLOYMENT STANDARDS

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

When employees believe they have received less than minimum employment standards and are unable to resolve the matter with their employer, Employment Standards staff will investigate the matter 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 terminated

Employees who are members of a union should seek the advice and aid of the Alberta Labour Relations Board instead of Employment Standards.

A GUIDE TO THE LAW IN ALBERTA REGARDING EMPLOYMENT LAW

REFERRAL NUMBERS AND WEBSITES

Employment Standards
(*outside Edmonton dial 310-0000 first*) [780] 427-3731
www3.gov.ab.ca/hre/employmentstandards/

Labour Relations Board
Edmonton Office [780] 427-8547
Calgary Office [403] 297-4334
www.alrb.gov.ab.ca/

Workplace Health And Safety 1-866-415-8690
www3.gov.ab.ca

Employment Insurance 1-800-206-7218
www.hrsdc.gc.ca - "*financial benefits*" - "*Employment Insurance*"

Worker's Compensation Board [780] 498-3999
www.wcb.ab.ca

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

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

Legal assistance

Dial-A-Law (Legal Information on Tape)
Other Cities toll-free 1-800-332-1091

Edmonton Centre for Equal Justice [780] 702-1725
www.ecej.ca

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

Alberta Law Line 1-866-845-3425

Lawyer Referral Service 1-800-661-1095

Edmonton Legal Aid [780] 427-7575
www.legalaid.ab.ca

Calgary Legal Guidance [403] 234-9266
www.clg.ab.ca

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

Calgary Student Legal Assistance [403] 220-6637
http://wcm2.ualberta.ca/law/legalassistance/SLA

Native Counselling Services [780] 423-2141
*NOTE: There are Native Counselling Services offices located
throughout Alberta, consult your telephone directory for the
office nearest you.*