FAQ about changes to Alberta's *Employment Standards Code* and Regulation

Changes to Alberta's *Employment Standards Code* and Regulation came into effect on January 1, 2018.

Please note additional information regarding the new standards can be found at https://www.alberta.ca/employment-standards-changes.aspx

Maternity and parental leave

Q. Am I eligible for job-protected maternity leave?

A. A pregnant employee who has been employed by the same employer for at least 90 calendar days is eligible for this leave. The 90 days of employment begins from the date the employee commenced employment, not the date the Code changes come into effect. For example, if the employee started in August 2017, they will become eligible in January 2018.

Q. What is parental leave?

A. Parental leave can be taken by: the birth mother, immediately following maternity leave, the other parent, adoptive parents, or both parents, shared between them. Leave can start any time after the birth or adoption of a child. The length of the parental leave is increased to align with changes to the federal Employment Insurance program that came into effect on Dec. 3, 2017. Parental benefits extend to 61 weeks plus a one-week mandatory waiting period for a total of 62 weeks. The only change to maternity benefits is to allow birth mothers access to maternity benefits 13 weeks before the expected due date.

Q. I started my parental leave before Dec. 3, 2017. Am I eligible for the new extended parental leave?

A. Changes to federal Employment Insurance benefits came into effect on Dec. 3, 2017. As per program requirements, employees who were already receiving benefits for parental leave on Dec. 2, 2017, are not able to access the extended benefit duration

that came into effect Dec. 3, 2017. Changes to Alberta's job-protected leaves come into effect Jan. 1, 2018. Therefore, employees who are on leave in 2017 will not have access to the extended job-protected leaves until Jan. 1, 2018. If the employee is already on parental leave as of Jan. 1, 2018, they must notify their employer of their intent to take the extended duration as soon as possible, but no later than 4 weeks from the original end date of the leave.

Overtime pay

Q. What is the new banked overtime rate?

A. Employers are required to compensate employees for all overtime hours worked at 1.5 times the employee's wage rate or with 1.5 times the overtime hours worked as paid time off. Exceptions or special rules may apply if you are in an industry or occupation exempted from overtime or overtime pay.

Q. How should overtime banked hours be tracked?

A. Employers must track and provide a record of overtime hours worked. Employers can determine the method they use, so long as an accurate record is kept. Employers are required to compensate employees for all overtime hours worked at 1.5 times the employee's wage rate or with 1.5 times the overtime hours worked as paid time off. Payroll records must show this as overtime.

General holidays and general holiday pay

Q. What is the 'average daily wage' and what has changed with its calculation?

A. Effective Jan. 1, 2018 average daily wage will be calculated as 5% of an employee's wages, vacation pay and general holiday pay earned in the 4 weeks immediately preceding a general holiday.

Q. Can salaried employees get paid their regular salary rather than the 5% when the holiday falls on a regular work day and they get the day off?

A. Yes, as long as the salary amount is at least the average daily wage of the employee.

Q. Do the new rules on General Holidays apply to Jan. 1, 2018?

A. Yes, as January 1 (New Year's Day) is one of the 9 days that are recognized as general holidays in Alberta. The new rules do not apply to holidays occurring in 2017, such as Christmas Day.

Q. Is Boxing Day a general holiday?

A. No, Boxing Day is not a general holiday in Alberta. However, if an employer agrees to designate it as a general holiday, the rules regarding general holiday pay apply.

Vacations and vacation pay

Q. What is the basic vacation leave entitlement?

A. An employer must provide an annual vacation to an employee of at least:

a) 2 weeks after each of the first 4 years of employment, and

b) 3 weeks after 5 consecutive years of employment, and each year of employment after that.

Termination and termination pay

Q. Instead of termination notice may an employer pay an employee termination pay in the amount the employee would have been paid if they worked they regular hours?

A. Yes. The pay must be at least equal to the wages the employee would have earned if the employee had worked regular hours of work for the applicable termination notice period. The employer may give the employee a combination of termination pay and termination notice if they choose. If the wages of the employee vary from one pay period to another, the employee's termination pay must be determined by calculating the average of the employee's wages during the previous 13 weeks in which the employee worked preceding the date of termination of employment.

Q. Can an employer require an employee to used banked overtime or vacation time during a termination notice period?

A. No. Unless the employer has, prior to the giving of the termination notice, provided the employee with notice to take annual vacation, the employer shall not require the employee to take overtime or vacation during the termination notice period.

New leaves

Q. What is critical illness leave?

A. Critical illness leave is intended to provide employees with time off work to provide care or support to a critically ill or injured family member. Employees are eligible for critical illness leave if they have been employed at least 90 days with the same employer and if they provide a medical certificate (signed by a physician or nurse practitioner) stating that the family member is critically ill and the period of time in which care or support is required. Eligible employees can receive up to 16 weeks to provide care to an adult family member or up to 36 weeks to provide care to a child, beginning from the date specified in the medical certificate or the date the employee started the leave.

Employers must grant critical illness leave to eligible employees and give them their same, or equivalent, job back when the employee returns to work. Employers aren't required to pay wages or benefits during this leave, unless stated in an employment contract or collective agreement. However, employees may be eligible to receive

federal income support through the critical illness of a child or adult family member benefit.

Q. Who is considered a family member?

A. The definition of family member is the same as provided for compassionate care leave. This definition includes the employee's:

- Partner (spouse, adult interdependent partner, common-law partner);
- Children, current or former foster children (and their partner/spouse);
- Current or former wards;
- Parents, step-parents and/or current or former guardians (and their partner/spouse);
- Current or former foster parents;
- Siblings, half-siblings, step-siblings (and their partner/spouse);
- Grandchildren, step-grandchildren (and their partner/spouse),
- Grandparents, step-grandparents;
- Aunts, uncles, step-aunts, step-uncles (and their partner/spouse);
- Nieces, nephews (and their partner/spouse);
- The employee's partner's family members; and
- A person to whom the employee is not related but considers like a close relative.

Q. How is critical illness different from compassionate care leave?

A. While critical illness leave requires the family members to be critically ill or injured and in need of care, critical illness leave does not require the family member to be at significant risk of death. Compassionate care leave is only accessible when an employee needs to provide care to a family member (of any age) who has a serious medical condition and is at significant risk of death within a 26-week period.

Flexible Averaging Agreements & Hours of Work Averaging Agreements

Q. What is a Flexible Averaging Agreement (FAA) for individuals?

A. FAAs provide flexibility in scheduling for an employee who regularly works at least 35 hours per week. This allows employers to schedule an employee, at the employee's request, to work longer hours per day paid at the employee's regular wage rate.

Under a FAA, hours of work that exceed the scheduled hours (and are otherwise not considered overtime hours) are considered flexible time. Flexible time must be provided as time off with pay at the employee's regular wage rate and is to be taken before the end of the next averaging period.

In effect, this allows the employee's work schedule to be adjusted after agreement and at any time, allowing them to work longer or shorter days when they need to (i.e. temporarily working a shorter day to attend to family responsibilities, or temporarily

working longer days to accommodate a higher workload) as long as hours average back to 44 hours in the averaging period.

Unlike an Hours of Work Averaging Agreement, a FAA is flexible so that the work schedule can be adjusted by either party without incurring additional costs for their employer.

Q. What is an Hours of Work Averaging Agreement (HWAA)?

A. HWAAs provide predictability in scheduling for an employee or a group of employees.

Under an HWAA employer and employees agree to enter into a system of scheduling to allow for longer hours of work per day paid at the employee's regular wage rate. Typically, any time worked in excess of the scheduled hours is considered overtime and frequent or last-minute changes to the schedule may incur additional overtime costs to employers.

Q. How does an HWAA differ from a compressed work week?

A. As of Jan. 1, 2018, any existing compressed work week arrangements can remain in effect until the earlier of: the expiry of the compressed work week arrangement, or Jan. 1, 2019.

One of the key differences between these scheduling arrangements is that compressed work week arrangements may be imposed by an employer, whereas averaging agreements must be part of a collective agreement or authorized through written agreement between the affected parties. In an individual agreement, authorization may be obtained directly from the affected employee. In a group agreement, authorization may be obtained from the majority (51%) of affected employees.

Another key change from compressed weeks is the introduction of a maximum averaging period (cycle). Averaging agreements will now require that hours of work must be averaged over one to 12 weeks.

Youth

Q. What are the new rules for youth workers?

A. Youth aged 12 and under can only work in artistic endeavours with a permit. Youth aged 13-15 can only do jobs on the light work list, or other jobs with a permit, and not in jobs that involve hazardous work. 16 and 17-year-olds can do light work, plus jobs that involve hazardous work with a permit, along with proper training and supervision. Restrictions on hours also apply.

A new list of light work jobs is currently being developed, along with a definition for hazardous work. These will be part of the rules for youth. They will be available in early 2018 and will come into effect June 1.