



EMPLOYMENT STANDARDS TOOL KIT FOR EMPLOYERS

Effective January 1, 2018



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alberta.ca/EmploymentStandards

or call the Employment Standards Contact Centre at 1-877-427-3731 to order a copy.

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Introduction

This tool kit was developed by the Government of Alberta to help business owners and their employees understand and comply with the *Employment Standards Code* and Regulation.

Following the Code is your responsibility and this tool kit is designed to help you do that.

The laws for Employment Standards are minimum requirements. Some tools, forms and a list of resources are provided to assist business owners in meeting or exceeding the minimum requirements. You may use the sample tools provided, or you may develop your own.

Not all requirements under the *Employment Standards Code* and Regulation are discussed in this resource.

This is not a definitive guide to the legislation and does not exempt readers from their responsibilities under applicable legislation.

In case of inconsistency between this resource and the Employment Standards legislation, the legislation will always prevail.

Availability of legislation

In Alberta, the requirements for Employment Standards are outlined in the *Employment Standards Code* and Regulation. These documents are available for viewing or downloading on the Employment Standards website at: www.qp.alberta.ca.

Official printed copies may be purchased from the Alberta Queen's Printer online at www.qp.alberta.ca or in person at:

7th floor, Park Plaza
10611-98 Avenue
Edmonton, Alberta T5K 2P7
Phone: 780-427-4952

Call any Government of Alberta office toll-free:
Dial 310-0000, then the area code and telephone number you want to reach.

Other legislation that may apply to you includes:

Canada Labour Code: www.laws.justice.gc.ca/eng/acts/L-2

Labour Relations Code: www.alrb.gov.ab.ca/legislation.html

Occupational Health and Safety Act, Code and Regulation: www.work.alberta.ca/ohs

Alberta Human Rights Legislation: www.albertahumanrights.ab.ca

Workers' Compensation Board: www.wcb.ab.ca/home

Employment Standards website

Further information on Alberta's Employment Standards can be found online at: alberta.ca/EmploymentStandards.

The website provides detailed information on the rights and obligations of employers and employees under the Code, as well as information for specific groups, occupations and industries.

The website also provides access to other resources including an interactive self-assessment tool for employers, webinars, interactive videos, work-site posters and brochures.



Section 1: Employment Standards overview

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Section Overview

This section will provide you with an overview to the *Employment Standards Code*, who is covered, the core standards and your basic responsibilities as an employer in Alberta.

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The *Employment Standards Code*

The *Employment Standards Code* (Code) is a provincial law describing the minimum standards that must be provided to employees working in Alberta. The Code includes the following:

- Minimum wage
- Hours of work
- Overtime and overtime pay
- General holidays and general holiday pay
- Vacations and vacation pay
- Unpaid, job-protected leaves
- Termination of employment
- Restrictions on the employment of employees younger than 18
- Payment of earnings and employment records

The Regulation sets out exceptions to exemptions from the Code for certain employees and modifies the rules relating to hours of work, overtime and other standards for certain industries. The Regulation also provides special rules for the employment of youth, and sets out the minimum wage. To see the *Employment Standards Code* and Regulation visit www.qp.alberta.ca.

Three things employers need to know about Employment Standards

1 Minimum standards cannot be avoided

This means the Code has a rule that prevents people from opting out of the core standards, either directly or indirectly.

2 Greater benefits

There are cases when employers and employees agree to benefits that are greater than what is provided by the Code. These agreements are enforceable under the Employment Standards legislation.

3 Employment deemed continuous

When a business changes ownership and the employees continue to work for that business, the Code considers the employees' employment to be continuous.

This guarantees that entitlements provided by the Code (such as general holiday pay, vacation pay, termination notice, and job-protected leaves), which have been earned by the employees through length of service, are not lost due to the change of ownership.

Note: This rule also applies when a company is placed in receivership and when the receiver sells the company to a new owner.

Reference: *ES Code*, Part 1



Under the Code, an employee must get an annual vacation of at least two weeks after one year of employment. If the employer agrees to provide more than two weeks of vacation, that agreement becomes a greater benefit that will be enforced.

Who is covered by the Code?

With few exceptions, the Code applies to all employees and employers in Alberta. Most employees have full coverage of earnings under the Code, whether they are considered full-time, part-time, casual, temporary, pieceworkers, commissioned, students or salaried.

Who is not covered by the Code?

There are several groups of workers who fall outside of the Code's jurisdiction:

Employees who work out of the province, inter-provincially or internationally

If an employee works in another province or country, that province's or country's labour laws may apply.

Employees who fall under federal jurisdiction

Employees who work in the following industries fall under federal jurisdiction and are covered by the *Canada Labour Code*:

- Airports and air transportation
- Inter-provincial transportation
- Chartered banks
- Broadcasting and telecommunications
- Railways
- Postal service
- Grain elevators
- Shipping and navigation
- Canal, ferries, tunnels and bridges
- Inter-provincial/international pipelines
- First Nations (any work completed on a Reserve for the Band)
- Uranium mining and atomic energy

Employees covered by other Acts

Coverage under the Code excludes employers and employees who are covered by other more specific legislation.



Municipal police covered by the *Police Act* are excluded from the entire Code except for job-protected leave benefits. Academic staff covered by the *Post-secondary Learning Act* are excluded entirely from the Code.

Self-employed workers/contractors

Under the Code, an employer is “a person who employs an employee”. The definition includes former employers. An employee is defined as “an individual employed to do work who receives or is entitled to wages”. The definition includes former employees.

The Code applies only to employees and employers. Self-employed workers are not covered by the Code, unless they are also employers, in which case the Code will protect the employees that they hire.

For guidelines on determining if an individual is an employee or contractor, look for *Employee or contractor: How to know the difference* in the Additional Resources section.

Collective agreements

Some employees choose to have union representation and bargain collectively for the terms and conditions of their employment. The collective agreement is binding, so long as it provides for the minimum standards stipulated by the Code.



Remember! When working outside Alberta for an Alberta employer, the application of Alberta's legislation will depend on the circumstances and the nature of the employment contract. When employers based in other jurisdictions do work and employ people to work in Alberta, they must follow Alberta's legislation, not those of their “home jurisdiction”.

Note: Collective agreements entered into before January 1, 2018 continue to be binding until the earlier of:

- a) a new collective agreement being signed, or
- b) January 1, 2019

Enforcing Alberta's Employment Standards

To ensure Alberta employers and employees understand and follow employment standards, Employment Standards provides:

Telephone services

Information on employment standards is available by calling our Contact Centre at 1-877-427-3731 (dial 780-427-3731 in Edmonton and surrounding areas), or from the Employment Standards offices listed below.

Advisors are able to address a broad range of employment standards questions and issues, and are available during regular business hours (8:15 am to 4:30 pm, Monday to Friday).

Recorded messages on core employment standards are available 24 hours a day.

Employers and employees who fall under federal jurisdiction should contact the Federal Labour Program of Human Resources and Skills Development Canada at 1-800-641-4049 for information about their rights and responsibilities.

Online services

Employment Standards advisors answer many questions electronically. Submit your questions online at: alberta.ca/ESquestions

Visit the Employment Standards website at: alberta.ca/EmploymentStandards

Educational programs

Employment Standards staff provide educational programs designed to provide participants with a better understanding of the rights and obligations of employers and employees under the *Employment Standards Code* and Regulation. We offer webinars and other training opportunities.

Visit: alberta.ca/EmploymentStandards

Investigations and compliance initiatives

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 or online complaint. Employees who want to file a complaint with Employment Standards must file within six months of the date on which their employment terminated. Current employees can also file a complaint.

Unionized employees are covered by the Code, but minimum standards are generally enforced through the collective agreement's grievance procedures. Employees should contact their union to learn more about the grievance procedures.

For more information on the enforcement of Alberta's employment standards, see Page 63.

Contact

Call us

To be connected toll-free to the province-wide information line, call 1-877-427-3731

Deaf or hearing impaired with TDD/TTY units,
Call: 780-427-9999 in Edmonton

Other locations call 1-800-232-7215

Employment Standards website
alberta.ca/EmploymentStandards

Employment Standards office locations

Suite 150, 717 – 7 Ave. SW, Calgary T2P 0Z3
Fax: 403-297-5843

8th Floor South Tower, Seventh Street Plaza
10030 107 St., Edmonton T5J 3E4
Fax: 780-422-4349

2nd Floor, 4920 – 51 St.
Red Deer T4N 6K8
Fax: 403-340-7035



Section 2: Payment of earnings

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Section Overview

Information provided in this section is intended to help you, as an employer, understand your responsibilities under the Employment Standards legislation and give you tips and tools on how to comply with the law.

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Under the Code employers are responsible for:

- Keeping accurate employment records; and
- Providing employees with a statement of earnings (pay stub).

Employment records

The Code requires employers to keep accurate and current employment records for each of their employees. An employer must keep records for **at least three years** from the date each record is made.

Reference: *ES Code*, Section 15

e.g.

A pay record that was created in December 2017 must be kept until December 2020.

The following records must be kept for each employee:

Employment records checklist:	
✓	Name, address and date of birth
✓	Wage rate and overtime rate
✓	Regular and overtime hours of work
✓	Earnings paid showing each component of the earnings separately for each pay period
✓	Deductions from earnings and the reason for each deduction
✓	Time off instead of overtime pay provided and taken
✓	The date that the present period of employment started
✓	The date on which a general holiday is taken
✓	Each annual vacation, showing the date it started and finished and the period of employment in which the annual vacation was earned
✓	The wage and overtime rates when employment starts, the date of any change to those rates, and particulars of every change to them
✓	Copies of documentation notices relating to job-protected leave benefits
✓	Copies of termination notices and of written requests to employees to return to work after temporary lay-off
✓	Copies of overtime agreements
✓	Copies of averaging agreements
✓	Copies of parental consent for youth employment
✓	Copies of agreements to use banked overtime during termination notice period
✓	Copies of permits and variances issued

Reference: *ES Code*, Section 14

Pay Statements

The Code requires an employer to make available or provide employees with a written pay statement at the end of each pay period.

The pay statement (or pay stub) must include:

Payment statements checklist	
✓	Pay period covered by the statement
✓	Number of regular and overtime hours worked
✓	Number of hours taken off in lieu of overtime
✓	Wage rate and overtime rate
✓	Earnings paid <ul style="list-style-type: none"> • showing each component of the earnings separately (e.g. wages, overtime, general holiday pay and vacation pay)
✓	Amount of deductions from earnings and the reason for each deduction



Remember! The pay stub must be in a form that the employee can keep for their records. Employers may provide electronic statements if employees can view and print them.

To see an example of a pay stub, search for *Pay Statement* under the Additional Resources section.

Keeping good records is important. If an employee asks, the employer must provide a detailed statement showing how the employee's earnings were calculated.

Reference: *ES Code*, Section 14

Hours of work

The Code requires employers to record the actual hours of work for each employee for each working day.

Hours of work are defined as:

- Doing work as requested by employer
- Taking a paid break provided by the employer if the employee is providing a service

Note: Breaks must be paid if the employee is not allowed to leave the premises in case they are needed to work.



e.g. Doris is asked to remain at her desk over her lunch break in case a client calls. Whether Doris receives the phone call or not, her break must be paid.

- Taking time-off provided by the employer (instead of overtime pay)

Employment records must accurately show how the totals of regular and overtime hours are calculated.

This information does not need to be kept for managers and supervisors.

Reference: *ES Code*, Section 1(1)(n)

For ideas on how to track your employee's hours of work, look for the *Employee time tracking sheet* under the Additional Resources section.

Pay periods

The Code requires employers to establish pay periods for the calculation of wages and overtime. A pay period can be daily, weekly, bi-weekly, semi-monthly or monthly. It cannot be longer than one month.

An employee must be paid all wages, overtime and general holiday pay earned in a pay period **within 10 consecutive days** after the end of the pay period.

Reference: *ES Code*, Sections 7 and 8

e.g.

Calendar of regular pay period and regular pay day						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19 pay day	20
21	22	23	24	25	26	27
28	29	30				

Example pay period

In this example, the pay period runs from Wednesday to Tuesday. The resulting pay day is the following Friday. All of the employee's wages, overtime and general holiday pay earned during the pay period from the 3rd to the 9th of the month must be paid by the 19th. (Earnings from the 10th to the 16th will be paid by the 26th.)

Payment of earnings upon termination

The circumstances surrounding an employee's termination will dictate when their final pay cheque must be issued.

The following table shows maximum times set out by the Code when a terminated employee must be paid. However, employers are encouraged to pay employees as soon as possible after termination.

The rules: payment of earnings upon termination

Conditions of termination	Number of consecutive days after last day of employment when employee's earnings must be paid
Employee quits and no termination notice is required.	10 days
Employer terminates employee and no termination notice is required.	10 days
Employee quits without giving the notice required by the Code.	10 days + notice period that should have been provided
Employer gives employee termination notice (or vice versa) and the employee works out the notice period.	three days
Employer terminates an employee's employment and provides termination pay (or combination of termination pay and notice).	three days
Employer terminates employee without notice for just cause and the employee disagrees.	10 days

Reference: *ES Code*, Sections 9 and 10



It is always a good idea to review the rules on termination of employment **before** terminating an employee.

Wages and earnings

Even though these terms are often used interchangeably, for Employment Standards, wages and earnings are different things.

Wages are payment for work that has been done. This definition **excludes** overtime pay, vacation pay, general holiday pay, termination pay, gifts, non-performance related bonuses (i.e. bonuses NOT based on hours of work, production, or efficiency), expense allowances, tips and other gratuities.

Earnings means wages, overtime pay, vacation pay, general holiday pay and termination pay. Earnings are paid in cash, cheque, money order or direct deposit.

Note: When paying in cash, it is always a good idea to keep records confirming payment and receipt by the employee.

Reference: ES Code, Section 1(1)(j), (x)

The definition of wages is important!

The calculation for overtime pay, vacation pay and termination pay is based on an employee's wages only – not their other earnings.

Deductions from earnings

Employers are only allowed to make certain deductions from an employee's pay. Some deductions are mandatory and some are optional.

The employer must deduct the following from an employee's earnings:

- Federal and provincial income tax
- Employment Insurance premiums
- Canada Pension Plan contributions
- Judgment or an order of the Court

Other deductions must be authorized, in writing, by the employee. The authorization must be clear and specific as to the amount that is being deducted, the date when it is to be deducted and its purpose.

Common optional deductions include:

- Childcare costs
- Personal savings plans
- Medical and/or dental premiums
- Social committee or other employee groups

For examples of authorization for payroll deduction forms, search for *Payroll deduction authorization forms* under the Additional Resources section.



Deductions that **are not allowed**

There are some deductions that are **not allowed**, even with written authorization from the employee.

Deductions that are not allowed:

- Faulty work (examples include breakage in a restaurant or an error in a credit card transaction).
- Cash shortages or loss of property if an individual other than the employee had access to the cash or property.
- Cash shortages resulting from a failure to collect any part of the purchase price from the purchaser (examples include “dine-and-dash” or “gas-and-dash” scenarios).
- Any costs associated with the purchase, use, rental, cleaning or repair of uniforms.

Reference: *ES Code*, Section 12



Section 3: Hours of work and rest

3

Section Overview

This section is about the **maximum allowable hours** of work in a day, **mandatory rest periods** and clarification on what is considered **hours of work**.

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Section 3: Hours of work and rest

The Code requires that:

- The work day cannot be longer than 12 hours;
- Employees must receive at least 30 minutes of rest within each five consecutive hours of work;
- Employees must receive at least one rest day in each work week.

Reference: *ES Code*, Sections 16, 18, and 19

Daily hours of work

Hours of work must be confined within a period of 12 consecutive hours. This means that an employee who starts work at 8 am cannot work past 8 pm.

e.g. If the employee is working a split shift, the hours of work must be confined within the 12-hour period (including breaks).

Unless:

- An accident occurs;
- Urgent work is necessary to a plant or equipment;

OR

- Other unforeseeable or unpreventable circumstances occur

Reference: *ES Code*, Section 16

Note: In some industries and/or for specific projects, it may be necessary to keep an employee beyond the 12-hour maximum. For example, oilwell servicing employees and residential/home caregivers can work more than the 12-hour maximum.

Notice of work times

The Code requires an employer to give employees notice of when their work starts and ends. They can do this by posting schedules where employees can see them or by any other reasonable method.

The posted schedule should include all required shifts for each employee for the entire period covered by the schedule.

Note: It is always advisable to put notice of work times in writing.

Shift changes

An employee must be notified about a shift change 24 hours beforehand. Employees must get at least eight hours of rest between shifts.

e.g. A shift change could refer to a switch from day shift to night shift, or night shift to day shift.

Remember! An employer who allows mutual shift changes is responsible for any overtime that arises as a result of these switches.

Reference: *ES Code*, Section 17

Daily rest periods

Within each shift that is five consecutive hours of work, an employee is entitled to at least a half-hour break, except where it is unreasonable or impossible. The break can be paid or unpaid at the employer's discretion.

This means that where a shift is less than five hours in length, the employer is not required to provide a rest

period. Where the shift is longer than five hours (e.g. eight or nine hours), the employer is required to provide at least 30 minutes of break time sometime during each five hours of the shift. The 30 minutes can be taken in one unbroken period, or may be provided as two 15-minute breaks.

This, of course, is the minimum standard, and in practice for a full day shift the amount of break time provided is frequently more than the specified minimum.



Remember! If the break is unpaid, the employee cannot be called upon to provide service during the unpaid time. If no break is taken, the employee is to be paid for the time worked.

Reference: *ES Code*, Section 18

Weekly days of rest

An employer must give an employee:

- One day of rest each week
- Two consecutive days of rest in each period of two consecutive weeks
- Three consecutive days of rest in each period of three consecutive weeks
- Four consecutive days of rest in each period of four consecutive weeks

After 24 consecutive days of work, employees must be provided with at least four consecutive days of rest.

Reference: *ES Code*, Sections 18 and 19

Employees who are exempt from hours of work, rest periods and days of rest:

- Various types of salespersons
- Professionals such as real estate brokers, and licensed insurance and securities salespersons
- Professions such as architects, engineers, lawyers, psychologists and information systems professionals
- Managers, supervisors and those employed in a confidential capacity
- Licensed land agents
- Instructors or counsellors at a non-profit educational or recreational camp
- Extras in a film or video production

Reference: *ES Regulation*, Section 2

For a more detailed listing of occupations and professionals exempt from these sections of the Code, look at the *Common exceptions from Employment Standards* table under the Additional Resources section.

Defining hours of work



Hours of work

Hours of work refers to the period of time during which an employee works for an employer, and includes time off with pay (instead of overtime pay) provided by an employer and taken by the employee.

Certain work-related tasks are sometimes considered to be hours of work. Rules around travel time, standby time, minimum call-out pay and training and discussed.

Travel time

In general, home-to-work and work-to-home travel is **not** considered time spent working.

If the employer pays the employee for this travel time, the payment would not generally be considered wages.

Section 3: Hours of work and rest

Travel time is work, when:

- Travelling between two job locations during the time of work.
- The employee is directed to:
 - Pick up materials or perform other tasks on the way to work or home.
 - Report to a given location (hours of work will begin on arrival at that location).

Travel time is not work, when:

- Employees are given the choice of providing their own transportation to or from the work location or reporting to a certain point from which they may take a company-provided bus or receive a ride with the employer.



Remember! Any travel time that occurs after the employee starts to provide services is recorded as hours of work.

Travel time hours may be paid out at a different rate of pay, as long as the employee is informed and the rate is at least minimum wage.

Standby time (on call)

An employer is not required to pay wages to an employee who is on call or on standby waiting to be called to work, unless the employee is waiting at the place of employment. If work is done in the employee's home, he/she is entitled to his or her regular wage for all hours worked.

If the employee is called away from home, the employee is entitled to at least three hours at the minimum wage for each call-out.

There are exceptions to the rule where standby time would be considered work, such as when the employee is required to wear a uniform and/or monitor radio calls.

3-hour pay minimum

If an employee works for fewer than three consecutive hours, but is available for the full three hours, the employer must pay wages that are the higher of three hours at the minimum wage, or the employee's regular hourly rate for the actual number of hours worked.



Minimum wage

The minimum wage is the rate of pay that employers must pay employees. Part 2 of the Employment Standards Regulation sets out this wage for employees.

If an employee has been advised in advance not to report to work, but does report, he/she does not have to be paid if he/she does not work. The three-hour minimum is reduced to two hours for part-time employees in recreation or athletic programs run by municipalities, Metis Settlements or non-profit community service organizations, and for school bus drivers.

Reference: ES Regulation, Section 11

Training

When an employee must attend training that is directly work related, the employer is required to pay the wage agreed to for the training period of at least minimum wage, plus overtime if applicable.

Once an employer/employee relationship is formed, any education or training requested or required by the employer is work.

Note: This includes job shadowing, when a new employee learns from a more experienced employee.

If the employee initiates the education or training, the agreement between the parties will determine whether or not the employee will be paid for training time.

Training is not considered work:

- When an employee is obtaining qualifications necessary to be considered for hiring;
- If, as a condition of hire, the employee agrees to obtain additional training on his or her own time at his or her own expense;
- If a test or training is given to a prospective employee as part of the hiring process.

Averaging agreements

An averaging agreement allows an individual employee or group of employees to average their hours worked over a specified period. This includes allowing for longer hours of work per day paid at the employee's regular wages. There are two types of averaging agreements:

- Hours of Work Averaging Agreements (HWAA)
- Flexible Averaging Agreements (FAA)

Hours of Work Averaging Agreement

An HWAA is an agreement between an individual employee or group of employees and the employer, or as part of a collective agreement, to average work hours over a period of one to 12 weeks. The averaging period can be extended beyond the 12-week maximum, up to 26 weeks, with a variance issued by the Director of Employment Standards.

Reference: ES Regulation, Part 2.1 Division 1

Flexible Averaging Agreement

An FAA is an agreement between an individual employee and the employer, or part of a collective agreement, to average work hours over a period of one to two weeks. Agreements **can only be requested by employees** who work at least 35 hours a week.

An FAA allows the employee to earn flexible time when hours worked are greater than the number scheduled, but less than the daily maximum hours outlined in the agreement (daily overtime threshold) or an average of 44 hours per week (averaging period overtime threshold). Flexible time can be used as time off with regular pay.

Reference: ES Regulation, Part 2.1 Division 2

Averaging agreement requirements

An averaging agreement must be in writing and include:

- Start and end date;
- Term of agreement that cannot exceed two years unless it is part of a collective agreement and terminates the day a subsequent collective agreement is entered into;
- Number of weeks (up to 12 for HWAA, two for FAA) the hours will be averaged over;
- Number of work days and hours per day in the averaging period;
- How overtime pay and time off with pay will be calculated;
- Daily overtime threshold (only for FAA, which cannot exceed 10 hours).

A group HWAA must be posted in a place visible to employees, such as online or in the workplace. A copy of the HWAA or FAA averaging agreement must be provided to all affected employees.

Section 3: Hours of work and rest

The scheduled daily and weekly hours of work must not exceed:

- 12 hours per day;

OR

- An average of 44 hours per week.

An employee's individual work schedule must be provided in advance of when they are expected to work, and an agreement can only have one work schedule.

Reference: *ES Code*, Section 23.1



Compressed work week arrangements entered into before January 1, 2018, will remain valid until the earliest of:

- January 1, 2019;
- The termination of the compressed work week arrangement; or
- The day a subsequent collective agreement is entered into if the compressed work week arrangement was made under a collective agreement.

Averaging agreements and compressed work week (CWW) arrangements differ in that CWW were imposed by an employer. Averaging agreements must be part of a collective agreement or authorized through a written agreement between the affected parties (individual or group agreement). HWAAs and FFAs have a maximum averaging period whereas CWWs did not.

Group agreement

Group agreements are only for HWAAs. Not all employees employed by an employer are required to participate in a group averaging agreement. An employer may choose who will form the group of workers who will be scheduled under the agreement. The employer is allowed to have multiple agreements that apply to different groups or worksites.

The agreement must be authorized in writing by the bargaining agent for the group or by the majority of affected employees.

Individual agreement

In the case of individual agreements (HWAA or FAA) between an employer and employee, written authorization must be obtained directly from the employee.

Overtime

Overtime for an **HWAA** is calculated on the greater of any hours worked when they exceed:

- (Daily) Eight hours a day (if scheduled for less than eight hours) or daily scheduled hours (if eight or more hours were scheduled);

OR

- (Averaging period) An average of 44 hours a week.

Overtime for an **FAA** is calculated on the greater of any hours worked when they exceed:

- (Daily) The daily overtime threshold established in the agreement (which cannot exceed 10 hours);

OR

- (Averaging period) An average of 44 hours a week.

For **HWAAs**, if the employer changes the work schedule less than two weeks before the week is performed, without the employee requesting the change, the employee is to be paid overtime for all hours exceeding eight hours a day that weren't part of the original schedule.

When overtime is payable

Overtime is payable as daily or averaging period overtime.

- Daily overtime is payable at the end of the pay period.
- Averaging period overtime is payable at the end of the averaging period.

Overtime owed is the greater of the daily or averaging period overtime. Therefore, at the end of the averaging period, employers must pay the employee any overtime remaining after the total daily overtime paid is subtracted from the total averaging period overtime owing.

Payment of any remaining averaging period overtime is to be paid within 10 days of the end of the pay period in which the averaging period ends.

Banking overtime

Instead of paying overtime, overtime hours can be banked at a rate of 1:1.5. Banked overtime can be taken off as time off with pay at the employer's regular wage rate. See Page 23 for more information on overtime hours and overtime pay.

Flexible time

When an FAA is in place and an employee chooses to work more than their normally scheduled hours but less than the overtime threshold, the additional hours are considered flexible time earned at a rate of 1:1. Flexible time is to be taken off before the end of the following averaging period in which it was earned.

Reference: ES Regulation, Section 13.43

Length of agreement

Averaging agreements cannot exceed two years, unless it is part of a collective agreement, in which case, it will expire when a subsequent collective agreement is entered into.

Employers and employees may renegotiate or cancel an individual or group agreement (if majority consents) at any time. If parties cannot come to an agreement, one party may cancel the agreement with one month's written notice. An individual employee may not unilaterally exit a group agreement.

The Director of Employment Standards has the ability to cancel an averaging agreement at any time.

Note: To see examples of Hours of Work Averaging Agreements and Flexible Averaging Agreements, search for the Averaging agreement examples under the Additional Resources section of this publication.

Variances for 3-hour pay minimum

The Code requires employers to pay a minimum of 3 hours of wages when an employee is called in to work or attend training if the employee is available for the whole time, even if the employee works for a period of less than 3 hours

The Director of Employment Standards may issue a variance authorizing the employer to pay a minimum of 2.5 hours of wages in these instances.

Rationale for variance approval of 3-hour pay minimum

- Applicants must provide reasons why the 3-hour pay minimum needs to be reduced.
- Variances may be issued for a fixed period of time.
- Variances may be cancelled, reviewed or altered by the Director of Employment Standards at any time.

Applying for a variance to pay less than the 3-hour pay minimum

Applicants must submit a written application for a variance. For details on how to apply for a variance see alberta.ca/EmploymentStandards.

Variations for extended hours of work

The Code requires that hours of work, including breaks, be confined within a 12-hour period.

However, the Director of Employment Standards, may issue a variance authorizing extended hours of work in excess of 12 consecutive hours. A variance can be applied for under an averaging agreement, but only for Hours of Work Averaging Agreements.

Reference: *ES Code*, Section 16

Rationale for variance approval of extended hours

- Applicants must provide reasons why hours cannot be confined within 12 consecutive hours.
- A majority of employees must agree to the extended hours.
- Variations may be issued for a fixed period of time, if appropriate under the circumstances.
- Variations may be cancelled, reviewed or altered by the Director of Employment Standards at any time.
- Variations will not alter, or in any way affect, the overtime provisions that otherwise apply.

Applying for a variance to extend hours of work

Applicants must submit a written application for a variance. For details on how to apply for a variance see alberta.ca/EmploymentStandards.

Variations for extended days of work

The Code also requires employers to provide employees with one day of rest in each consecutive work week, two days of rest in two consecutive work weeks, three days of rest in three consecutive work weeks, or four days of rest in four consecutive work weeks.

The Director of Employment Standards may issue a variance authorizing extended consecutive work days without a rest day beyond 24 consecutive work days.

Rationale for variance approval of extended days of work

Applicants must provide reasons why the days of work need to be extended beyond 24 days and an explanation of why other solutions are not available.

- A majority of employees must agree to the extended hours.
- Variations are issued for a fixed period of time to allow the employer to address the situation that has arisen.
- Variations may be cancelled, reviewed or altered by the Director of Employment Standards at any time.
- Variations do not alter the Code's overtime provisions.

Applying for a variance to extend days of work

Applicants must submit a written application for a variance. For details on how to apply for a variance see alberta.ca/EmploymentStandards.



Section 4: Overtime hours and overtime pay

4

Section Overview

This section is about overtime, how it is paid and how it is calculated.

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Section 4: Overtime hours and overtime pay

With the exception of some supervisory and managerial positions, most employees are entitled to overtime pay for overtime hours worked.

For a list of occupations that have exceptions or are exempt from the overtime rules see alberta.ca/EmploymentStandards.



Remember! All employees, including those working part-time who are paid a salary, must be paid overtime pay for overtime hours they work.

Note: For help determining if a worker is a management or supervisory employee exempt from overtime pay, go to the Management or supervisory employee questionnaire found under the Additional Resources section.

Overtime hours

In most industries, overtime is all hours worked in excess of eight hours a day or 44 hours a week, whichever is greater. See Page 27 for a list of industries and occupations that have an exception to this overtime standard.

The minimum standard for overtime is different when an averaging agreement is in place. See Page 19 for details on averaging agreements. See *averaging agreement examples* under the Additional Resources section for details on how overtime is calculated under averaging agreements.

If overtime is banked to be taken as time off with pay instead, the overtime hours must be banked at a rate of 1.5 hours for each overtime hour.

Reference: *ES Code*, Sections 21 and 22

If an employee is paid a wage that is different in every pay period (e.g. commission or on a piecework basis), then, the employee's wage rate is the minimum wage.

Reference: *ES Code*, Section 24(1)

Note: All employees must meet the minimum standards for overtime pay. Employers and employees cannot make agreements, verbally or in writing, that would allow the employer to not pay the minimum overtime required.

Calculating overtime pay

Overtime hours are to be calculated both on a daily and weekly basis. The greater of the two totals is the correct number of overtime hours worked in the week.



The Basic 8/44 rule

Overtime is all hours worked in excess of eight hours a day, or 44 hours a week, whichever is greater.

Applying the 8/44 rule

1 Calculate the total daily overtime hours for the week.

Each day worked in the week must be considered individually. Any hours more than eight hours worked in each day will be daily overtime hours.

2 Calculate the weekly overtime hours.

You must also look at the week as a whole. Any hours more than 44 hours worked in a week will be weekly overtime hours.

Note: If the employer uses a work week that is less than 44 hours, overtime pay will still be payable under the basic 8/44 rule unless there is a collective agreement, or some other agreement in place, or it is the consistent practice of the employer that overtime hours are counted after less than 8/44.

3 Compare the daily and weekly totals.

4 Pay the greater number of overtime hours.

The Code defines a work day, work week and work month for the purposes of calculating hours of work and overtime.

A **work day** is generally the 24-hour period from midnight to midnight.

Note: An employer can establish a different 24-hour period by consistent practice (e.g. 7 pm to 7 pm the next day).

Unless otherwise established by the employer, a **work week** begins and ends at midnight on Saturday and a **work month** is a calendar month.

Reference: ES Code, Section 21

Time off with pay

Sometimes, instead of paying overtime, an employer will give an employee time off with pay at a rate of 1.5 hours as part of an overtime agreement.

Time off with pay instead of overtime pay is considered hours of work when calculating weekly and daily hours of work.

Calculating overtime when pay period ends mid-week

When a pay period ends mid-week, calculating overtime hours can be confusing.

The following example shows how to calculate overtime hours when pay periods end mid-week. In this case, the employee gets paid on the last day of each month. Look at the hours of work done in the last week of September and the first week of October.

Note: Tuesday is the last day of the September pay period.

	S	M	T	W	T	F	S	Total
September	-	10	9					
October				8	11	8	8	54

1 Calculate the daily overtime hours

September: Monday + Tuesday = three hours

October: Wednesday + Thursday + Friday + Saturday = three hours

There is a total of six daily overtime hours worked this week.

2 Calculate the weekly overtime hours

Adding all six workdays in the work week equals 54 hours.

This means that 10 of the hours worked are weekly overtime hours (according to the 8/44 rule).

3 Pay the greater number of overtime hours

4 Decide what to pay and when

If the employer does not have all of the information necessary to consider the full week calculation, then he/she would pay the employee for the three hours of overtime earned in September, and pay for the remaining seven hours of overtime in October.



Remember!

The 8/44 rule requires employers to pay the greater of the two overtime hour calculations.

Calculating overtime for salaried employees

Calculating overtime hours for salaried employees is no different than employees paid hourly.

Salary is payment only for the regular hours of work. Overtime hours must be compensated for in addition to the regular hours.

To calculate the overtime rate of pay for salaried employees:

1 Calculate the average number of weeks in a month

Divide 52 weeks (in a year) by 12 months = 4.3333

2 Calculate the employee's weekly wage

Divide the employee's monthly salary by 4.3333

3 Calculate the employee's hourly rate of pay

Divide the employee's weekly wage by 44 hours **or** by the number of hours that make up the employee's regular work week.

4 Calculate the employee's overtime rate of pay

Multiply the hourly rate of pay by at least 1.5 to get the overtime rate.

All of the calculated overtime hours should be multiplied by this result to figure out the total pay.

Calculating overtime on general holidays

When calculating overtime hours on a general holiday,

- If the hours worked on a general holiday are paid at 1.5 times the regular rate, the hours of work for that day(s) **are not used** when calculating overtime hours.
- If the employee is paid straight time plus a day off, the hours worked on that day(s) **are used** for calculating overtime hours.

Reference: *ES Code*, Section 33

Note: Some individuals work in averaging periods, which vary the hours worked per day and/or days worked per week. For more information on averaging agreements, please see Page 19.

Industries with different overtime rules

A number of industries and occupations are subject to variations in daily and weekly hours worked before overtime is payable.

Industry/Occupation	Daily hours	Weekly hours before O/T calculated	Monthly hours before O/T calculated
Ambulance attendants	10	60	
Geophysical exploration	10		191
Irrigation districts	9	54	
Logging and lumbering	10		191
Oilwell servicing	12		191
Surveying	10		191
Trucking industry *	10	50	
Field catering and land surveying	10		191
Highway and railway construction and brush clearing	10	44	
Nursery industry	9	48	
Road maintenance activities	10		191
Taxi cab industry	10	60	
Firefighting Services**		44	
Caregivers (homecare and residential care)	Rules depend on the type of shift worked by the employee. See alberta.ca/EmploymentStandards for more information.		

*Trucking overtime can be calculated based on the 8/44 rule or a 10/50 rule. If you're not sure which, call the Contact Centre for assistance at 1-877-427-3731.

**Based on an average of 44 hours per week over the period of the work cycle. The 44-hour limit does not apply when the firefighter is scheduled to work more than 44 hours in a week, in which case the scheduled hours are the threshold for overtime hours.

For more detailed information, see the Employment Standards Regulation online at www.qp.alberta.ca.

Overtime agreements

- An employer may give paid time off instead of paying overtime pay.
- Time off in place of overtime pay is a **mutual** agreement between employee and employer.
- There are two types of agreements:

Individual overtime agreements

An individual overtime agreement is between one employee and an employer. Either the employee or the employer can cancel or change the agreement by giving the other party one month's notice in writing.

Group overtime agreements

A group overtime agreement is between an employer and a designated group of employees. The employer and a majority of the employees in the designated group must sign the agreement. The agreement can be cancelled or changed by either party by giving one month's notice to the other.

Section 4: Overtime hours and overtime pay

Note: If the employees want to cancel the agreement, the notice to cancel must be signed by a majority of the employees affected by the agreement.

Overtime agreements must be in writing, be signed by both parties, and contain certain requirements.

Overtime agreement requirements

- A copy of the written agreement is given to each employee affected by it.
- When overtime hours are worked, they are banked.
- The banked hours are given/taken off at a time when the employee could have worked.
- At least 1.5 hours of time off must be given for each hour of overtime worked.
- Regular wages are paid for the hours when they are given/taken off.
- Time off must be given/taken within six months at the end of the pay period when the overtime hours were worked.
- If the time is not given/taken off within six months, it must be paid out at time-and-a-half and at the rate of pay in place on the day the six months expired.
- An overtime agreement may be contained in a collective agreement or other written agreement.

Reference: *ES Code*, Section 23



Remember! Banked overtime hours are considered wages and vacation pay is owed on them.

For sample overtime agreements, search for *Individual Overtime Agreement* and *Group Overtime Agreement* under the Additional Resources section.

Whenever an overtime agreement is in place, the employer must:

- Document and retain an up-to-date record of the number of overtime hours banked and taken with regular pay by the employee.
- Provide the employee with a pay statement showing the number of banked overtime hours taken with regular pay by the employee, for each pay period.

Reference: *ES Code*, Section 23

Paying out banked overtime upon termination

When either the employer or employee ends the employment relationship by giving a written notice of termination, an employer cannot require the employee to use up some or all outstanding banked overtime during the notice period, unless agreed to by both parties.

When overtime is paid for hours worked over eight hours in a day or 44 hours in a week, the total of any hours worked, plus banked overtime taken, cannot exceed eight hours in a day or 44 hours in a week.

When notice of termination is provided, any banked overtime not provided and taken with pay must be paid out at time-and-one-half the employee's regular rate of pay.



Section 5: General holidays and general holiday pay

5

Section Overview

This section is about general holidays, who is eligible, how to calculate what to pay.

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General holidays

Under the Code, the following nine days are recognized as general holidays:

General Holiday	Date
New Year's Day	January 1
Alberta Family Day	3rd Monday in February
Good Friday	Varies with religious calendar
Victoria Day	Monday immediately preceding May 25
Canada Day	July 1*
Labour Day	1st Monday in September
Thanksgiving Day	2nd Monday in October
Remembrance Day	November 11
Christmas Day	December 25

Reference: *ES Code*, Section 25

*By federal law, when July 1st falls on any day of the week other than Sunday, it is celebrated on that day; however, when it falls on a Sunday, it is treated as if it fell on the Monday immediately following.

Boxing Day, Easter Monday and Heritage Day (1st Monday in August) are **not** considered general holidays. However, an employer can designate these, or any other day, as a general holiday.

When this occurs, that day will be subject to the same rules as the nine statutory general holidays.

For a calendar of general holiday dates for 2018 to 2022, go to *General holidays in Alberta* under the Additional Resources section.

Employee eligibility

To be eligible for general (statutory) holiday pay, the employee must:

- Not have been absent without employer's consent on the last scheduled day before the holiday or the first scheduled day after the holiday.
- Not have refused to work on the general holiday when requested/scheduled to.

Failure to meet any of these requirements results in the disentitlement of an employee to general holiday pay.

Reference: *ES Code*, Section 26

What to pay

If an employee doesn't work on a general holiday then they are entitled to general holiday pay that's **at least their average daily wage**.

If an employee **works** on a general holiday, they are entitled to either:

- Their average daily wage, plus 1.5 times the employee's wage rate for each hour worked;

OR

- Their wage rate for each hour worked on the general holiday and a day off with pay that's at least their average daily wage.

General holiday pay and vacation

If an eligible employee is on vacation when a general holiday occurs, the employee is entitled to one day's holiday paid at the average daily wage on their first scheduled working day after their vacation. Or, in agreement with their employer, they may take another day that would otherwise have been a work day, before their next annual vacation.

Reference: *ES Code*, Section 1(1)(6)

What is the average daily wage?

The average daily wage is calculated as 5% of the employee's wages, general holiday pay and vacation pay in the four weeks immediately preceding the general holiday.

General holiday pay and salaried employees

If an employee:

- Receives a salary;
- Does not work on the general holiday; and
- Gets paid full salary, as usual;

then Employment Standards accepts that the employee has received general holiday pay.

No further pay is required.

General holiday pay and employees paid incentives

Incentive pay plans include commission, flat rate, mileage or piecework compensation.

If an employee paid entirely on commission or other incentive-based pay works on a general holiday, they are to be paid their average daily wage plus 1.5 times the employee's wage rate. For the purposes of calculating general holiday pay, the employee's wage rate is deemed to be the minimum wage.

To calculate the average hourly wage for incentive pay, determine if the employee is paid entirely by commission or incentive pay.	
If yes...	The employee's wage rate for time worked on a general holiday is deemed to be minimum wage.
If no and paid partly by salary...	<p>The employee's wage rate for time worked on a general holiday is based on the salary component of the wages if it's greater than minimum wage.</p> <ul style="list-style-type: none"> • If the salary component is less than the minimum wage, then it's deemed to be minimum wage.

To learn how to calculate the hourly wage for an employee paid by incentive-based pay or commission, see alberta.ca/EmploymentStandards.

Reference: *ES Code*, Section 32

Exceptions

- Construction employees are entitled to general holiday pay equal to 3.6% of wages upon beginning employment.
- Farm and ranch employees have rules that differ from the standard rules for calculating general holiday pay. See alberta.ca/EmploymentStandards for more information.

Additional rules

1 When shifts occur partially on a general holiday

If an employer does not have an established practice for determining whether a shift falls on a general holiday, the following guidelines apply:

- If an employee's shift begins on the day before a general holiday and ends during the holiday, all hours worked on that shift will be credited to the day preceding the holiday.
- If an employee's shift begins on the general holiday, all hours worked during the shift will be credited to the day of the general holiday and would be paid accordingly.

e.g.

If the employer has an established work day from 11 pm to 11 pm and the employee begins work at 11 pm on the day of the holiday – all hours worked on that shift would be deemed hours worked on a holiday.

2 General holiday pay and overtime

When an employer pays for hours worked on a general holiday at 1.5 times the employee's wage rate, the hours worked on a holiday **do not** count when calculating overtime hours worked for the week in which the holiday falls.

	S	M	T	W	T	F	S	Total hours worked (incl. general holiday)
Hours worked	-	10	8	8	8	8	0	42

Total hours to be paid	Regular hours (wage rate)	Overtime hours (OT rate)	General holiday pay (1.5 x wage rate)
55	40	0	10

The holiday falls on Monday and the employee worked 10 hours. In this example, the employee would be paid 32 hours at regular pay and 10 hours of general holiday pay. No overtime hours are earned even though over eight hours are worked because overtime is not earned when working on a general holiday.

Reference: *ES Code*, Section 33

3 Employees who work fewer than three hours

If an employee works fewer than three hours on a general holiday, the rule regarding three hours at minimum wage applies (see Page 18).

e.g. An employee eligible for general holiday pay who works on a holiday would be entitled to the greater of 1.5 times their wage rate for the number of hours worked or three hours paid at the minimum wage rate.

4 General holiday pay owed at termination

There are situations when a former employee would be eligible for general holiday pay:

Substitute holiday day not taken

Under the Code, general holidays can be postponed to a later date. If an employee's employment is terminated before this holiday is taken, the following rules apply:

If terminated: the employee must receive their average daily wage **plus** 1.5 times the regular wage rate for all hours worked on the general holiday, less any money previously paid for wages and overtime on that day.

If employee quit: the employee is entitled to be paid his or her average daily wage for each general holiday deferred and still not taken.



Section 6: Vacations and vacation pay

6

Section Overview

Vacations ensure that employees have a rest from work without a loss of income and return to work refreshed. This section will cover who is entitled to vacation, vacation pay and how to calculate it.

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General vacation rules

- Employees must work for one year before they are entitled to vacation time. However, employees can take vacation with pay prior to completing a full 12 months if the employer agrees.
- Vacation pay and vacation time accrues during each 12 month period.
- Vacations must be granted in one unbroken period, unless the employee requests a shorter period in writing.
- An employer must give employees their annual vacation within 12-months of the date it is earned.
- An employer can give two weeks' notice in writing as to when the employee shall take his/her vacation.

Vacation entitlements

After one year of employment, employees are entitled to at least two weeks' vacation with pay.

Vacation pay and time off accrue during this 12-month period. An employee qualifies to take vacation 12 months after his/her anniversary date, or the day that the employee started to work for the employer.

Note: Vacation time is allowed to be taken in half day increments if the employer agrees.

Reference: ES Code, Section 37

Length of employment	Number of weeks' annual vacation	% of wages
Less than 1 year	Not entitled unless stated in contract	4% of wages
1-4 years	2 weeks	4% of yearly wages
5 years or more	3 weeks	6% of yearly wages

Note: If the employer agrees to provide more vacation, that agreement replaces the Code's minimum annual vacation requirements and is a greater benefit.

Reference: ES Code, Section 34

Employer's responsibility

An employer must give their employees their annual vacation within 12 months of the date it is earned.

Reference: ES Code, Section 37

Vacation pay

The Code allows an employer to pay vacation pay at any time as long as it is paid no later than the next regularly scheduled payday after the employee starts annual vacation.

Sometimes annual payments of vacation pay that coincide with an employee's vacation are not desirable for the employer. In this case, employers can also choose to pay vacation pay on a regularly scheduled basis (for example, with every pay period, quarterly, etc.).

Note: If vacation pay is not paid before the employee's vacation starts, the employee may request their employer to pay the vacation pay at least one day before the vacation starts. The employer must comply with this request.

Reference: ES Code, Section 41

Calculating vacation pay

For employees paid monthly

For employees paid a monthly salary, the Code requires that the employer pay an amount at least equal to the employee's current wage for a normal work week.

A week's wage can be calculated by dividing the wages for normal hours of work in a month by 4.3333.

Note: Vacation pay is based on the employee's wages (current salary) at the time the vacation is taken.

For employees paid other than monthly

For employees who are paid hourly, weekly, by commission or other incentive pay, the Code requires that the employer pay:

- **For two weeks' vacation:** Four per cent of wages earned between anniversary dates in the year before the vacation is taken.
- **For three weeks' vacation:** Six per cent of wages earned between anniversary dates in the year before the vacation is taken.

Reference: ES Code, Sections 34.1 and 34.2

Vacation pay for entitled employees

Number of weeks' vacation entitled to:	% of yearly wages (or number of weeks' salary)
2 weeks	4% of yearly wages (or 2 weeks' salary)
3 weeks	6% of yearly wages (or 3 weeks' salary)

Employers need to know:

Vacation pay is based on an employee's wages (not earnings).



Remember! Wages are payment for work. For the purpose of calculating vacation pay, this definition excludes overtime pay, general holiday pay and termination pay.

Generally, a year's paid vacation pay **is considered wages** for the purpose of calculating vacation pay for the following year.

However, if an employer pays vacation pay frequently, such as on every pay period or on a quarterly basis, they do **not** have to calculate vacation pay on the previously paid vacation pay.

Disagreements about vacation dates

Most employers and employees are able to agree to a mutually convenient date(s) for annual vacations. However, if they cannot agree, it is up to the employer to give the employee at least **two weeks'** written notice of when an employee's vacation is to start. The employee must take the vacation during that time.

Reduction of vacation entitlements

An employee's annual vacation period can be reduced if that employee is **absent from work** (job-protected leaves are included). The reduction in vacation period may be made in proportion to the number of days the employee was or would normally have been scheduled to work, but did not.

Vacation pay owed at termination

If employment terminates before an employee is entitled to **take a first vacation**, the employer must pay the employee four per cent of the employee's **wages earned** during employment.

If employment terminates after an employee **becomes entitled to annual vacation**, the employer must pay the employee vacation pay of an amount **equal to the vacation pay** to which the employee would have been entitled in that year of employment if the employee had remained employed by the employer.

Reference: *ES Code*, Section 42

*Note: For an employee who is entitled to two weeks' vacation, at least four per cent of the employee's wages for the period from the **date the employee last became entitled to an annual vacation to employment termination date**.*

*Note: For an employee who is entitled to three weeks' vacation, at least six per cent of the employee's wages for the period from the **date the employee last became entitled to an annual vacation to employment termination date**.*



Section 7: Job-protected leaves

7

Section Overview

Job-protected leaves allow employees to take an unpaid leave of absence to attend to personal and family matters without having to worry if they will still have a job upon their return.

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Job-protected leaves are unpaid leaves of absence set out in the *Employment Standards Code*. They allow employees to take time off work for personal reasons without having to be worried about having a job when they return. An employer may not terminate or lay off an employee while they are on leave.

Short-term leaves	Long-term leaves
Bereavement leave	Compassionate care leave
Citizenship ceremony leave	Critical illness leave
Domestic violence leave	Death or disappearance of child leave
Personal and family responsibility leave	Long-term illness and injury leave
	Maternity and parental leave
	Reservist leave



Remember! The employer does not have to pay an employee for days not worked due to a leave being taken.

Employee eligibility

With the exception of reservist leave, all employees are eligible for job-protected leaves after being employed by the same employer for 90 days.

Employees are eligible for reservist leave after 26 consecutive weeks of employment.

Notice to take leave

An employer must be provided with written notice from the employee as soon as is reasonable if they are taking a short-term leave. Some long-term leaves have additional notice requirements. See the following leaves for additional requirements.

Short-term leaves

Employer obligations

An employer cannot terminate or lay off an employee while the employee is on leave.

Bereavement leave

Employees are entitled to bereavement leave upon the death of an immediate or extended family member.

Section 7: Job-protected leaves

Employee's family members:
• Spouse, adult interdependent partner or common-law partner
• Children (and their partner/spouse)
• 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)
• A person the employee isn't related to but considers to be like a close relative

Family members of employee's spouse, common-law or adult interdependent partner:
Children (and their partner/spouse)
Current or former wards
Parents, step-parents, foster parents
Sibling, half-sibling, step-sibling
Grandparents
Grandchildren
Aunts, uncles
Nieces, nephews

Reference: ES Regulation, Section 54.1(2)

Employees can take up to **three days** of bereavement leave in each calendar year. Any leave days not used cannot be carried over into a new calendar year.

Reference: *ES Code*, Section 53.983

Citizenship ceremony leave

Employees can take up to a **half-day** of citizenship ceremony leave once in their lifetime to attend their Canadian citizenship ceremony.

Reference: *ES Code*, Section 53.984

Domestic violence leave

Employees can take up to **10 days** of domestic violence leave each calendar year. Any leave days not used cannot be carried over into a new calendar year.

Domestic violence leave can be taken when an employee, the employee's dependent child or a protected adult who lives with the employee experiences an act of domestic violence.



Acts of domestic violence

- Any intentional or reckless action that causes injury or property damage while intimidating or harming a person.
- Any act or threat that intimidates a person by creating a reasonable fear for property damage or personal injury.
- Psychological or emotional abuse.
- Forced confinement.
- Sexual contact that is coerced by force or threat.
- Any act deemed as stalking.

To be an act of domestic violence, the act must be caused by a person who:

- Is or has been married to the employee.
- Is or has resided together in an intimate relationship.
- Is or has been an adult interdependent partner.
- Is or has been dating the employee.
- Is the biological or adoptive parent of a child with the employee.
- Is related to the employee by blood, marriage, adoption or an adult interdependent relationship.
- Is residing with the employee and has care and custody over the employee by court order.

An employee may take domestic violence leave to:

- Allow the employee, employee's dependent child or a protected adult to seek medical attention for physical or psychological injury caused by domestic violence.
- Obtain services from a victim services organization.
- Allow the employee, employee's dependent child or a protected adult to obtain psychological or other professional counselling.
- Relocate (temporarily or permanently).
- Seek legal or law enforcement assistance, including time relating to legal proceedings.

Reference: ES Code, Section 53.985

Personal and family responsibility leave

Employees can take up to **five days** of leave each calendar year if they are sick, or to attend to their personal health matters, or if they have responsibilities in relation to their family members. Any leave days not used cannot be carried over into a new calendar year.

Reference: ES Code, Section 53.982(1)

Employee's family members:
Spouse, adult interdependent partner or common-law partner
Children or children of the employee's spouse/partner
Current or former foster children
Current or former wards
Parents
Current or former foster parents
Current or former guardian
Siblings, half-siblings
Grandparents
Grandchildren
A person living with the employee as a member of their family

Reference: ES Regulation, Section 54.1

Long-term leaves

Employer obligations

Similar to short-term leaves, employers cannot lay off or terminate an employee while the employee is on leave. For maternity and parental leave, the same rules apply when an employee is entitled to take leave. If the business has been suspended or discontinued during the employee's leave, the employee has hiring priority if the business starts up again within 12 months after the end of the leave.

An employer must also reinstate employees returning from a long-term leave to the same or comparable position. Earnings and benefits must be at least equal to those received when the leave began.

Vacation

An employer must give an employee annual vacation no later than 12 months after the employee becomes entitled to it. If this time falls during the period while the employee is taking a long-term leave, the employee must use the remaining vacation time after the end of the leave or, if the employer and employee agree to a later date, by that later date.

Notice to return to work

Employers are not required to reinstate employees who fail to give notice or report to work the day after their leave ends, unless failure to provide notice is due to unforeseeable or unpreventable circumstances.

Compassionate care leave

Under the Code, an employee who is a caregiver is entitled to compassionate care leave to give care or support to a seriously ill family member who is at risk of death within 26 weeks. The ill family member is not required to live in Alberta.

Those considered a family member may be in relation to the employee or the employee's partner (spouse, common-law partner or adult interdependent partner).

Employee's family members:
• Spouse, adult interdependent partner or common-law partner
• Children (and their partner/spouse)
• 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)
• A person the employee isn't related to but considers to be like a close relative

Family members of employee's spouse, common-law or adult interdependent partner:

Children (and their partner/spouse)

Current or former wards

Parents, step-parents, foster parents

Sibling, half-sibling, step-sibling

Grandparents

Grandchildren

Aunts, uncles

Nieces, nephews

Reference: ES Regulation, Section 53.9

Note: During compassionate care leave, employees may be eligible to receive benefits from the federal Employment Insurance program.

Length of leave

Employees can take up to 27 weeks of unpaid, job-protected leave. The leave can be split into multiple instalments, but each period must be at least one week long.

Reference: ES Code, Section 53.9

Notice to start compassionate care leave**An employee must:**

- Give the employer at least two weeks' written notice of the date on which the leave will start, unless circumstances necessitate a shorter period.
- Employees must give their employer a medical certificate issued by a physician or nurse practitioner who is caring for the ill family member. The medical certificate must contain the following information:
 - The family member has a serious medical condition and there is a significant risk that the family member will die within 26 weeks. The 26 weeks is calculated by the earlier of:
 - The day the certificate is issued;

OR

- The day the leave began, if it begins before the certificate was issued.
- The family member requires the care or support of one or more family members.

Reference: ES Code, Sections 53.9(4) and 53.9(6)

Notice to end compassionate care leave**An employee must:**

- Give the employer at least one weeks' written notice of the date the employee will return to work. However, an employer and employee may agree in writing to a return to work date with less than one weeks' notice.
- Give the employer at least two weeks' written notice if the employee chooses not to return to work.

Reference: ES Code, Section 53.92

Critical illness leave

An employee is entitled to critical illness leave to give care or support to a critically ill child or adult family member.

Immediate and extended family members are allowed to take this leave. See above under compassionate care leave for a list of who is considered a family member.

Reference: ES Code, Section 53.96

Note: During critical illness leave, employees may be eligible to receive benefits from the Federal Employment Insurance program.

Section 7: Job-protected leaves

Length of leave

Employees can take up to 36 weeks of unpaid, job-protected leave for the critical illness of a child and 16 weeks for an adult. The leave can be split into multiple instalments, but each period must be at least one week long.

Reference: *ES Code*, Section 53.96

Notice to start critical illness leave

An employee must:

- Give the employer at least two weeks' written notice of the date on which the leave will start, unless circumstances necessitate a shorter period.
- Employees must give their employer a medical certificate issued by a physician or nurse practitioner who is caring for the ill family member in order to take critical illness leave. The medical certificate must contain the following information:
 - The child or adult is critically ill and requires the care or support of a family member.
 - The start date of when the care or support is required.
 - The end date of when the care or support is no longer required.
 - If the leave started before the certificate was issued, the date the leave began is required.

Reference: *ES Code*, Section 53.96(5)

Notice to end critical illness leave

An employee must:

- Give the employer at least one weeks' written notice of the date the employee will return to work. However, an employer and employee may agree in writing to a return to work date with less than one weeks' notice.
- Give the employer at least two weeks' written notice if the employee chooses not to return to work.

Reference: *ES Code*, Section 53.92

Death or disappearance of child

An employee is entitled to death or disappearance of child leave if the death or disappearance is a result of a probable Criminal Code offence.

Reference: *ES Code*, Section 53.95

Note: During death or disappearance of child leave, employees may be eligible to receive benefits from the federal Employment Insurance program.

Length of leave

Employees can take up to 52 weeks of unpaid, job-protected leave if the child has disappeared, and up to 104 weeks if the child has died as a probable result of a crime.

Reference: *ES Code*, Section 53.95(2)

Notice to start death or disappearance of child leave

An employee can begin their leave on the day of the death or disappearance of the child, but must provide the employer with written notice as soon as is reasonable. Notice should include the estimated date of the employee's return to work, if known.

An employee must inform his or her employer of any change in the estimated date of returning to work.

Reference: *ES Code*, Sections 53.96(4), 53.96(5), 53.96(6)

Notice to end death or disappearance of child leave

An employee must:

- Give the employer at least one week's written notice of the date the employee will return to work. However, an employer and employee may agree in writing to a return to work date with less than one week's notice.

- Give the employer at least two weeks' written notice if the employee chooses not to return to work.

Leave ends without notice if:

- The employee is charged with the crime that resulted in the death or disappearance of the child.
- It is no longer probable that the death or disappearance was a result of a crime.

Reference: *ES Code*, Sections 53.95(6), 53.95(7), 53.95(8), 53.95(9), 53.95(10)

Long-term illness and injury leave

An employee is entitled to long-term illness and injury leave if they have a long-term illness, injury or are quarantined.

Note: During long-term illness leave, employees may be eligible to receive benefits from the federal Employment Insurance program.

Length of leave

Employees can take up to 16 weeks of long-term illness and injury leave each calendar year.

Reference: *ES Code*, Section 53.97

Notice to start long-term illness leave

An employee must:

- Give the employer written notice as soon as possible and include an estimated date of return to work.
- Employees must give their employer a medical certificate issued by a physician or nurse practitioner before the leave begins, or as soon as possible if circumstances necessitate. The medical certificate must contain the estimated duration of leave.

Reference: *ES Code*, Section 53.97(4)

Notice to end long-term illness leave

An employee must:

- Give the employer at least one week's written notice of the date the employee will return to work. However, an employer and employee may agree in writing to a return to work date with less than one week's notice.
- Give the employer at least two weeks' written notice if the employee chooses not to return to work.

Reference: *ES Code*, Section 53.972

Maternity and parental leave

A pregnant employee is entitled to maternity leave for the birth of a child. Parental leave can be taken by birth mothers, fathers and/or adoptive parents.

If both parents work for the same employer, the employer is not required to grant parental leave to both parents at the same time.

If an employee has been employed for less than 90 days, an employer cannot arbitrarily lay her off, terminate her employment or require her to resign because of pregnancy or childbirth. For more information, refer to the Alberta Human Rights Commission's interpretive bulletin, titled *Rights and Responsibilities Related to Pregnancy, Childbirth and Adoption*. www.albertahumanrights.ab.ca/Documents/Bull_pregnancy.pdf

Note: During maternity and parental leave, employees may be eligible to receive maternity and parental benefits from the federal Employment Insurance program.

Length of leave

Maternity leave

Birth mothers can take up to 16 consecutive weeks of unpaid maternity leave.

Section 7: Job protected leaves

Leave can start any time within the 13 weeks leading up to the estimated due date and no later than the date of birth.

Pregnancy that ends other than in a live birth

If a pregnancy ends in a miscarriage or stillbirth within 16 weeks of the estimated due date, the employee is still entitled to maternity leave but is not entitled to parental leave. The leave will end 16 weeks after it begins.

Reference: *ES Code*, Sections 46 and 49

Parental leave

Birth and adoptive parents can take up to 62 weeks of unpaid parental leave.

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, but must be completed within 78 weeks of the date the baby is born or placed with the parents.

Two employees working for the same employer may combine parental leave for a maximum of 62 weeks.

Reference: *ES Code*, Section 51

Things an employer should know

- If pregnancy interferes with the employee's job performance during the 13 weeks before their due date, employers can require that the employee start maternity leave earlier by **notifying the employee in writing**.
- An employee who takes maternity leave and parental leave must take the leaves consecutively.
- Birth mothers must take at least six weeks after birth for health reasons, unless:
 - The employer agrees to an early return to duties; and
 - The employee provides a medical certificate stating the return will not endanger her health.
- If the employer employs both parents of a child, the employer is not required to grant leave to both employees at the same time.

Notice to start maternity and parental leave

An employee must:

- Give the employer written notice at least six weeks before starting maternity or parental leave, and aren't required to specify a return date in the notice.



Remember! Employees must give their employer a medical certificate issued by a physician or nurse practitioner before six weeks before starting maternity leave. The medical certificate must confirm pregnancy and estimated delivery date.

If circumstances prevent an employee from providing written notice and/or medical certificate six weeks before starting a leave, employees are still eligible but must provide notice as soon as possible. A medical certificate for maternity leave must be provided within two weeks of the mother's last day at work, or as soon as possible.

Employees who intend to share parental leave with their spouse must advise their employer of their intention to do so.

Note: A birth mother on maternity leave isn't required to provide the employer with notice before taking parental leave, unless she originally arranged to only take 16 weeks of maternity leave.

Reference: *ES Code*, Sections 47, 48 and 51

Notice to end maternity and parental leave

An employee must:

- Give the employer at least four weeks' written notice of the date the employee will return to work, or if the employee chooses not to return to work after their leave ends.

Reference: *ES Code*, Section 53(8)

Extended leave

The Code provides for 16 weeks of maternity leave and 62 weeks of parental leave. There are no provisions for extensions. It is up to the employer to decide whether to extend leave should unforeseen circumstances arise.



Did you know: The *Employment Standards Code* does not require an employer to make any payments to an employee, or pay for any benefits during maternity or parental leave? However, if an employer benefits plan exists, there may be Alberta Human Rights obligations.



Did you know: Under human rights law, employers are required to accommodate the health-related consequences of an employee's pregnancy and childbirth up to the point of undue hardship, regardless of how long she has worked for the employer.

For more information on these and other obligations, contact your local Alberta Human Rights Commission Office:

Edmonton: 780-427-7661

Calgary: 403-297-6571

Toll-free: 310-0000

Website: www.albertahumanrights.ab.ca

Reservist leave

A reservist is a member of the reserve force of the Canadian Forces referred to in the *National Defence Act (Canada)*.

Under the Code, employees who are reservists are entitled to take leave when deployed to an operation outside of Canada (including any required pre- or post-deployment activities) or within Canada to assist with an emergency.

Employees are eligible for reservist leave after 26 consecutive weeks of employment with the same employer.

Reference: *ES Code*, Section 53.2

Allowed operations and activities for reservist leave

- Deployment to a Canadian forces operation outside Canada.
- Deployment to a Canadian forces operation within Canada that is assisting with an emergency or the aftermath of an emergency.
- Annual training, included related travel time, for up to 20 days in a calendar year.
- Other operations set out as such in the *Employment Standards Regulation* by the Minister.

Participation in pre- or post-deployment activities in connection with an operation is also considered part of deployment for the operation.

Section 7: Job protected leaves

Length of leave

Employees can take periods of unpaid, job-protected leave:

- Up to 20 days each calendar year for annual training;
- OR
- As long as necessary to accommodate the period of service required for international or domestic deployment.

Periods of leave do not have to be consecutive days.

Notice to start reservist leave

An employee must:

- Give the employer at least four weeks' written notice of the date on which the leave will start, and the estimated date on which the reservist intends to return to work.

Note: A reservist will not be required to comply with the notice requirement if unable to do so due to deployment in urgent circumstances. In this case, written notice as soon as reasonable is sufficient.

In the case of leave for annual training, an employee must:

- Provide at least four weeks' written notice of the date on which leave will start and the actual date on which the reservist intends to return to work.

Reference: ES Code, Section 53.2



Remember! The employer may ask for a document from the employee's commanding officer for proof that states the employee is taking part in an operation or activity that qualifies for reservist leave, the start date of leave and the estimated or known length of leave.

Notice to end reservist leave

Where a reservist has been on annual training:

- No additional notice to return to work is required for a reservist who returns to work on the date specified in his or her notice to go on leave.

Note: Written notice is required if this date changes.

Where a reservist has been on leave for a domestic or international deployment for more than four weeks:

- Reservist must give at least four weeks' written notice of the day on which the employee intends to return to work.

Note: If this doesn't happen, the employer can postpone the reservist's return to work for up to four weeks from the date of the reservist's notice.

Where the reservist has been on leave for a domestic or international deployment for four weeks or less:

- Reservist must provide advance written notice of the return-to-work date.

Note: In this case, notice can be less than four weeks and employer cannot delay the return date.

Reference: ES Code, Section 53.5



Additional resources

- Duty to accommodate:
www.albertahumanrights.ab.ca/Documents/Bull_DutytoAccom_web.pdf
- Pregnancy, childbirth and adoption:
www.albertahumanrights.ab.ca/Documents/Bull_pregnancy.pdf
- Employment Insurance Maternity and Parental Benefits:
<https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html>



Section 8: Termination of employment

8

Section Overview

This section covers the employer's responsibilities under the Code when an employment relationship ends.

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General termination rules

The Code requires both employees and employers to give each other notice of their intention to end the employment relationship.

This section is divided into two parts:

- When an employee terminates employment
- When an employer terminates employment



Remember! Regardless of who decides to terminate the employment, if the period of employment is 90 days or less, no notice is required from either party.

Deadline of payments for amounts owed

Employer's responsibility

Regardless of who ends the employment relationship with the proper notice, upon termination, an employee's earnings (wages, overtime pay, vacation pay, general holiday pay and termination pay) **must be paid no later than three days after the last day of employment.**

However, if an employer or employee terminates employment and **no termination notice or termination pay** is required, earnings must be paid **no later than 10 days** after the last day of employment.

Reference: *ES Code*, Sections 9 and 10

Note: If an employee fails to give the required notice before ending his/her employment, the employer must pay the employee no later than 10 days after the date on which the notice would have expired.

Reference: *ES Code*, Sections 9 and 10

When an employee terminates employment

If an employee wishes to terminate his/her employment, a **written notice** must be given to the employer as follows:

Notice	Length of employment
1 week	More than 90 days, but less than two years
2 weeks	Two years or more

Reference: *ES Code*, Section 58(1)

Employees are not required to give termination notice if:

- They have been employed for less than 90 days.
- There is a different established custom or practice in an industry.
- Continuing to be employed by the employer would endanger their personal health or security.
- The contract of employment is impossible to perform due to unforeseeable or unpreventable causes beyond their control.
- They are temporarily laid off or laid off after having refused reasonable alternate employment.
- They are not provided with work as the result of a strike or lockout.
- They are casually employed under an arrangement whereby they may elect to work or not when requested to do so.
- They terminate their employment because of a reduction in wage rate, overtime rate, vacation pay, general holiday pay or termination pay.

Reference: *ES Code*, Section 58(2)

Section 8: Termination of employment

Note: Most construction employees are excluded from the Code's notice of termination and termination pay provisions. School employees and school bus drivers are not entitled to termination pay if they work until the end of the school year and are given the opportunity to work at the beginning of the next school year.

Reference: ES Regulation, Sections 5 and 5.1

When an employer terminates employment

Under the Code, an employer who terminates an employee's employment must give written **termination notice** of at least:

Notice	Length of employment
1 week	More than 90 days, but less than two years
2 weeks	Two years or more, but less than four years
4 weeks	Four years or more, but less than six years
5 weeks	Six years or more, but less than eight years
6 weeks	Eight years or more, but less than 10 years
8 weeks	10 years or more

Reference: ES Code, Section 56

The employer may provide termination pay for the appropriate period **or** a combination of **termination notice** and **termination pay**.



Remember! A termination notice is null and void if an employee continues to be employed by the same employer after the date specified for termination of employment.

Reference: ES Code, Section 60

Determining length of service

An employee's length of service is the time that the employee has been employed for the employer. It can include more than one period of employment, if the breaks between periods are not longer than 90 days.

Reference: ES Code, Section 54



Remember! If a business, or any part of it, is bought, sold, leased or transferred and an employee continues to work for the business, the employee retains all previous length of service and would be entitled to a notice of termination based on their full length of service. The original hire date with the initial business would be used for determining termination pay.

Employers are not required to give termination notice (or pay in lieu) to employees who are:

- Employed on a seasonal basis (if their employment is terminated on completion of the season).
- Employed for a definite term or task for a period not exceeding 12 months.

- Employed for 90 days or less.
- Temporarily laid off.
- Terminated for just cause.
- Laid off after having refused reasonable alternate employment.
- Not provided with work as the result of a strike or lockout.
- Casual employees employed under an arrangement where they may elect to work or not when requested to.

Termination notice or termination pay is also not required to be given to employees:

- Who have refused work made available through a seniority system;
- Whose employment has been terminated for failing to return to work within seven consecutive days of a recall (unless provided otherwise in a collective agreement);
- Whose contract of employment has become impossible to perform because of unforeseeable or unpreventable causes beyond the control of their employer;
- Who are employed on-site in the construction industry;

OR

- Who are employed in the cutting, removal, burning or other disposal of trees and brush, or either of them for the primary purpose of clearing land.

The Code does not legislate termination notice for some employees, but these employees may be entitled to notice at common law.

Reference: *ES Code*, Section 55(2)

Contents of the termination notice

To be valid, a termination notice must be:

- In writing and addressed to the employee concerned;
- Given or otherwise provided to the employee; and
- For the correct notice period or longer; and
- Include a termination date.

Note: It is not sufficient to post a termination notice on a bulletin board or other public area.

To see a sample termination letter, search for *Sample termination letter* under the Additional Resources section.

Termination pay (pay in lieu of notice)

If an employer, for any reason, does not wish to have an employee work out the remainder of the notice period, the employer may give the employee pay in lieu in the amount the employee would have earned had the employee worked out the required notice period.

An employer may combine notice (which the employee works out) and pay in lieu of notice to make up the required notice period.

Reference: *ES Code*, Section 57

When an employee terminates employment

If the employee provides less notice than what is required under the Code, the employer only has to pay the wages the employee would have earned for the remainder of the notice period the employee actually provided.

If the employee provides more or equal notice as required in the Code, the employer only has to pay wages the employee would have earned if they worked the remainder of the notice period that was required.

Calculating termination pay

Termination pay must be at least equal to the wages the employee would have earned if the employee had worked regular hours for the termination period.

When an employee's wages vary from one pay period to another, termination pay is determined by taking the average of the employee's regular wages in the 13 weeks preceding the termination date in which the employee actually worked, not just the 13 calendar weeks immediately preceding the termination date.

Situations where termination is not allowed

Generally, an employer has the right to terminate an employee at any time, as long as they provide the required length of notice or pay in lieu.

The exception is where the dismissal is in violation of human rights legislation.

Go to: www.albertahumanrights.ab.ca for more information.

There are also situations where it is considered a violation to terminate an employee.

An employer may not terminate the employment of, or lay off, an employee who:

- Has started a job-protected leave;

OR

- Is entitled to or has started maternity or parental leave.

However, an employee on a long-term job-protected leave can be terminated or laid off if the employer suspends or discontinues the business, undertaking or other activity in which the employee was employed.

Note: If this happens and operations are resumed within 52 weeks following the end of the employee's long-term job-protected leave, the employer is obligated to reinstate the employee or provide the employee with alternative work in accordance with an established seniority system or employer practice.

An employer may not terminate the employment of, or lay off, an employee:

- For the sole reason that garnishment proceedings are being or may be taken against the employee.

Reference: *ES Code*, Sections 82 and 124

An employer may not terminate the employment of, lay off, or discriminate against an employee:

- For exercising their rights – or complying with certain obligations – under the Code.

For example, an employee cannot be discriminated against, terminated or have employment restricted for:

- Making a complaint;
- Giving or having the potential to give evidence at any inquiry or in any proceeding or prosecution;
- Requesting or demanding anything to which he/she is entitled;

OR

- Making or being about to make any statement or disclosure that may be required.

Reference: *ES Code*, Sections 82 and 125

What is just cause?

An employer can terminate an employee **without notice** for just cause.

Termination for just cause typically involves conduct that is serious enough (either on its own account or in combination with other factors) to justify the employer ending the employment relationship.

Employer's responsibility

The employer is responsible for proving that the dismissal is justified.

The employer must show more than just dissatisfaction with an employee's performance. Real misconduct or incompetence must be demonstrated.

It is also the employer's responsibility to prove that:

The employee was aware of the consequences of failure to perform certain duties or obey certain rules.



Employer tip! There are lots of ways to ensure that your employees know the consequences of breaking the rules. Here are a few:

- **Develop an employee handbook and distribute it to all staff.** Include information on vacation and general holidays, overtime, as well as disciplinary measures for misconduct. Post a copy of this handbook in a public place for all staff.
- **Issue warning letters.** If an employee's conduct becomes problematic, issue a warning letter describing the disciplinary action that will be taken if behaviour is not corrected. A Sample *warning letter* is available for review under the Additional Resources section.

As an employer, **it is important to keep accurate records.**

It is a good practice to document the time, date and outcome of any conversations or encounters that you have with an employee about inappropriate behaviour or conduct. This information could be useful if you decide to terminate the employment relationship in the future.

Having an effective policy in place on appropriate workplace behaviour can decrease an employer's liability in the event of a complaint being filed.

Situations that can merit just cause for dismissal

Misrepresentation of qualifications

If an employee does not tell the truth about his or her skills and qualifications, the employer may have just cause for dismissing the employee after determining his or her true abilities.

Sexual harassment

Sexual harassment is any unwelcome behaviour that is sexual in nature (either direct or indirect) that negatively affects (or threatens to affect) a person's job security, working conditions, prospects for promotion, earnings or job prospects.

For more information on an employer's responsibilities in cases of sexual harassment, go to: www.albertahumanrights.ab.ca/Documents/SexualHarass.pdf.

Breach of duty

Breach of duty can occur when an employee knowingly jeopardizes the interests of the employer, reveals confidential information, breaches company policies or conducts him/herself dishonestly.

Conflict of Interest

Just cause for dismissal exists when an employee uses special information obtained while employed for his or her own purposes, and without the consent of the employer.

Competing with employer's interest

If an employee knowingly competes with an employer's interests, it can be just cause for dismissal.



Establishing a competing business while still working for the employer, soliciting employer's customers for a new business or taking benefits from competitors are some examples of just cause.

Section 8: Termination of employment

Willful disobedience

Willful disobedience occurs when an employee disobeys an employer's lawful and reasonable order.

Theft

Theft is just cause for dismissal. The employer is responsible for providing tangible proof that the employee committed the theft.

Fraud and dishonesty

Any fraudulent activity committed by an employee is just cause for dismissal. Unless the employee is in a position of trust, the fraud:

- Must be committed against the employer or as part of the job; and
- Must be deliberate (intent to defraud exists).

Insolence and insubordination

Rude and offensive behaviour toward the employer can be just cause for dismissal. It must be deliberate.

Note: Just cause does not exist if the behaviour is a result of the employee being provoked or a personality clash.

Absenteeism or lateness

Chronic and excessive absences or lateness (even if for a valid reason) is just cause for dismissal. The absences and late arrivals must be the fault of the employee.

Some examples of just cause include:

- Failing to return to work after vacation.
- Leave of absence without notifying the employer.
- Taking time off under false pretenses.
- Chronic tardiness that is intentional and deliberate.

Illness

Temporary illness or disability is **not** just cause for dismissal. However permanent illness or disability may be.

For more information, go to:

www.albertahumanrights.ab.ca/employment/employer_info/Pages/termination_and_severance.aspx.

Intoxication and substance abuse

Intoxication and substance abuse are not just cause for dismissal. It is the consequences of the intoxication or abuse that are significant.

Serious incompetence

Being unable to demonstrate the skills and abilities the employee claims to possess is just cause for dismissal. To prove incompetence the employer must:

- Set objective standards of the competence needed to do the job and make this known to the employee; and
- Give the employee suitable instruction and support to enable him or her to meet the standard required.



Remember! The incompetence must be serious enough to justify dismissal.

Personality conflict

The inability to get along with fellow workers is not just cause for dismissal.



Employer tip! If in doubt, call a lawyer! When dealing with termination for just cause, it is a good practice to seek legal counsel prior to issuing a termination notice.

What is a temporary layoff?

A temporary layoff occurs when an employer wishes to maintain an employment relationship without terminating the employment of an employee. In Alberta, the maximum duration of a temporary layoff is **60 days within a 120-day period**.

An employee's employment is considered to be terminated, and the employer must pay termination pay, on the 61st day of a temporary layoff.

The period of temporary layoff can be extended beyond 60 days if the employer makes regular payment to or on behalf of the employee, such as continuing to pay wages, employee pensions or benefits. The employee has to agree to receive wages/benefits for the employer to extend the temporary layoff period. Termination pay is payable when benefits cease.

If there is a collective agreement that contains recall rights following lay off, the employment terminates and termination pay is owed when recall rights expire.

To be valid, a notice of temporary layoff must:

- Be in writing;
- State that it is a temporary layoff notice and its effective date; and
- Include sections 62, 63 and 64 of the Code regarding layoffs.

Notice for temporary layoff must be provided to employees:

- At least one week prior to the date layoff begins if the employee has been employed by the employer for less than two years.
- At least two weeks prior to the date layoff begins if the employee has been employed by the employer for two or more years.

This notice must be provided unless there is a Collective Agreement that states otherwise, or there are unforeseeable circumstances.

Reference: *ES Code*, Sections 62, 63 and 64

Group terminations

If an employer intends to terminate the employment of 50 or more employees at a single location within a four-week period, the employer must give the Minister of Labour, the affected employees and their unions(s) the following amount of written notice, according to the number of employees affected:

- 8 weeks - 50 or more employees but less than 100
- 12 weeks - 100 or more employees but less than 300
- 16 weeks - 300 or more employees

Note: Group termination notice is not required if employees are employed on a seasonal basis or for a definite term or task.

To be valid, a notice of group termination must:

- Be in writing;
- Be provided to all affected employees as per the timelines above;
- Specify the number of employees whose employment will be terminated; and
- State the effective date of the terminations.

A group termination must also be completed by the employer and submitted to Employment Standards.

The form can be found at alberta.ca/EmploymentStandards

Reference: *ES Code*, Section 137

Note: Group termination notice meets the required individual termination notice if it is given directly to the employee and the employee is identified in the notice as an affected employee.

The notice may be provided to affected employees through mail, fax or email to an address provided by the employee.



Section 9: Youth employment

9

Section Overview

This section describes the regulations surrounding the employment of adolescents and young people in the province of Alberta. It covers the rules of employing a worker under the age of 18, the types of jobs that are allowed and general restrictions concerning their employment.

Note: These changes are in effect May 1, 2018.

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Types of jobs allowed 59
Hours of work 59

Employing youth 13 to 14 years of age 59

Types of jobs allowed 59
Hours of work 59

Employing youth 15 years of age 60

Types of jobs allowed 60
Hours of work 60

Employing youth 16 to 17 years of age 60

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Employment permits 61

Jobs that require permits 61
Apply for a permit to employ youth 61
Types of jobs considered potentially harmful to youth 62

Employing youth 12 years of age and under

Types of jobs allowed

They may be employed only in an artistic endeavour. An artistic endeavour is considered work in:

- Recorded entertainment:
 - Film, radio, video or television
 - Television and radio commercials
- Voice recordings for video and computer gaming
- Live performances:
 - Theatre
 - Musical performances

Employees 12 and under can only be employed with a permit issued on application to the Director of Employment Standards.

Reference: ES Regulation, Section 51

Hours of work

Hours of work will be determined during the permit evaluation process.



Remember! The parent or guardian of a youth aged 12 and under **must** agree to the employment and provide written consent to the employer, prior to starting work.

Employing youth 13 to 14 years of age

Types of jobs allowed

They may be employed in artistic endeavours and light work. With a permit from the Director of Employment Standards, they may also work in other non-hazardous work. Visit alberta.ca/EmploymentStandards for a list of jobs that are considered light work.

Reference: ES Code, Section 65.2

Hours of work

Employees between the ages 13 and 14 are not allowed to work between 9:00 pm and 6:00 am.

On the employee's school day, they may only work up to two hours outside of regular school hours. On the employee's non-school day, they may work up to eight hours.

Reference: ES Regulation, Section 52(1)

Employing youth 15 years of age

Types of jobs allowed

They may be employed in artistic endeavours and light work. They may also work in other non-hazardous work if authorized by a permit issued by the Director of Employment Standards. See Page 59 for a list of jobs that are considered light work.

Reference: *ES Code*, Section 65.2



In order to employ a youth between the age of 13 and 15 in any work other than light work or an artistic endeavor, a permit is required from the Director of Employment Standards. The application requires the consent of a parent or guardian.

Hours of work

Employees 15 years of age are not allowed to work in retail or hospitality establishments between 9:00 pm and 12:01 am without adult supervision.

They are not allowed to work any jobs between 12:01 am and 6:00 am.



Retail includes selling on premises:

- Any food or beverages.
- Any other commodities, goods, wares or merchandise.
- Gasoline, diesel fuel, propane or any other product of petroleum or natural gas.

Hospitality includes hotels, motels or any place that provides overnight accommodation to the public.

Reference: *ES Regulation*, Sections 53(1) and 53(4)

Employing youth 16 to 17 years of age

Types of jobs allowed

They may be employed in any type of work that is not hazardous work, unless authorized by a permit issued by the Director of Employment Standards. See Page 59 for a list of jobs that are considered hazardous work.

Reference: *ES Code*, Section 65.3

Hours of work

Employees 16 to 17 years of age are not allowed to work in retail or hospitality establishments (as listed above) between 9:00 pm and 12:01 am without adult supervision, and are not allowed to work in retail or hospitality between 12:01 and 6:00 am even with adult supervision.

They can work other artistic endeavour, light work or hazardous work jobs permitted by the Director of Employment Standards between 12:01 am and 6:00 am with parental or guardian consent and adult supervision.

Reference: *ES Regulation*, Sections 53(1) and 53(2)

Employer's responsibility

It is the employer's responsibility to ensure that the job is not likely to be dangerous to the life, health, education or welfare of the youth.

The employer must also:

- Complete a written hazard assessment of the youth employee's worksite;
- Keep a copy of the hazard assessment at the worksite;
- Control or eliminate all hazards; and
- Warn the youth about any hazard that might affect them.

To see a sample hazard assessment form, search for the *Sample hazard assessment form* under the Additional Resources section of this publication.

Employment permits

Permits are required for youth to be employed in certain jobs depending on their age. The permit system gives parents or guardians, employers and Employment Standards a chance to investigate if the employment could harm the life, health, education or well-being of the youth, before the employment starts.

Reference: *ES Regulation*, Section 54

Jobs that require permits

- Ages 12 and under – artistic endeavours
- Ages 13 - 15 – work that is not light work or an artistic endeavour (but cannot be for hazardous work)
- Ages 16 - 17 – hazardous work

Applying for a permit to employ an youth

Applicants must submit a written application for a permit. For details on how to apply for a permit see alberta.ca/EmploymentStandards.

The youth may not begin work unless the application is approved and a permit is received. The permit may include conditions such as always working with an adult, or receiving specific training.

Note: An Employment Standards Officer may conduct a site visit of any worksite requesting a permit to employ youths.

Types of jobs considered potentially harmful to youths

- Jobs in the construction industry.
- Jobs requiring heavy lifting.
- Jobs working with or near moving vehicles and equipment (including forklifts).
- Jobs working with potentially hazardous equipment, such as pneumatic drills, conveyors for bulk materials, hand grinders, welding equipment, hammers, blowtorches, deep fryers, grills, slicers, or sharp knives, etc.

Note: Part 2 of the Occupational Health and Safety Code 2009 Explanation Guide gives employers information about hazard assessments, elimination and control. For more information call the Occupational Health and Safety Contact Centre at: 1-866-415-8690 or visit: www.work.alberta.ca/ohscode-guide.



Remember! Youths and their employers have other rights and responsibilities under Alberta's employment standards and occupational health and safety laws.

Archived



Section 10: Complaint resolution process

10

Section Overview

This section is about the Employment Standards complaint resolution process and what happens after a complaint is filed.

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Both employers and employees share the responsibility to comply with Employment Standards legislation and are best able to manage their affairs when statutory rights and responsibilities are clearly established and understood.

Where employment disputes arise and the parties are unable to resolve the matter on their own through voluntary resolution, the Code provides a fair and equitable non-voluntary dispute resolution mechanism that includes investigation, enforcement and appeal provisions.

It is an employee's right to be able to file a complaint with Employment Standards when they believe that the Code's minimum standards are not being met.

Complaints to Employment Standards

Most employers provide benefits that meet or exceed the minimum standards set by law. However, in some instances employers fail to give their employees benefits sufficient to meet these minimum standards.

When this happens, Employment Standards encourages parties to first try to resolve workplace disputes without direct government intervention through voluntary resolution.

Employment Standards provides employers and employees with access to a wide range of information resources, publications, a website, a call centre and education services to help develop strategies for dispute resolution.

Voluntary resolution

The first step to resolving an issue is having a discussion with the employee to see if the issue can be resolved. Voluntary resolution is a way for the employer and employee to reach an agreement that resolves some or all aspects of the complaint.

If both parties reach an agreement, it may be accompanied by a Direction of officer if the employer has been found to be non-compliant with the minimum employment standards. This directs the employer on how to change their actions to be compliant.

Note: Voluntary resolution can be an option at any point during the complaint resolution process, even if the complaint is under a formal investigation.

Voluntary resolution can occur in three ways:

1. When notified of the complaint, the employer accepts responsibility and pays what's owed the employee or provides the missing entitlements.
2. Discussions directly between the employer and employee result in an agreement.
3. Through a mediation process with the involvement of Employment Standards.

Visit alberta.ca/EmploymentStandards for more information on the mediation process.

Non-voluntary resolution

Non-voluntary resolution occurs when a voluntary agreement can't be reached between the employer and employee in terms of paying money owed, reinstatement of the employee, or any other non-compliance with the employment standards.

This results in a formal investigation of a complaint submitted by an employee to Employment Standards and if it is identified that an offence has occurred, enforcement actions will be issued.

How a complaint is filed

If a dispute arises and the employer and employee cannot resolve it on their own, the employee (or former employee) may file a complaint.

Note: When a third party is concerned that an employer is not complying with the Code, they can submit an anonymous tip to Employment Standards.

An individual can make a complaint to an Employment Standards officer:

- At any point during their employment;

OR

- Within six months of termination of their employment.



Remember! Individuals are protected from discrimination and termination of employment if they make a complaint or give information relating to a complaint.

To submit a complaint and learn more about the process visit: www.alberta.ca/EScomplaint.

Note: If an employee is unable to access a computer with internet connection (such as at a local library, friend, family member or local government office), a paper complaint form may be accepted. For more information, please call our Contact Centre at 1-877-427-3731.

Complaint investigation process

Employment Standards assesses all employee complaints and anonymous tips to determine the appropriate course of action based on the circumstances. The overall objective is to ensure employees receive their full entitlements under the Code.

An officer will seek to resolve a complaint through voluntary agreement. Each investigation includes an educational component for both parties to the dispute to understand their rights and obligations under the Code.

Mediation is used by officers as a form of voluntary resolution where:

- Insufficient or contradictory evidence exists concerning the exact entitlements;
- The parties request assistance in mediating a resolution to their dispute;

OR

- The normal complaint process is unlikely to result in collection of the full entitlements due.

Reference: *ES Code*, Section 84



Remember! At any point during the investigation process, the employer and employee may choose the option of voluntary resolution.



Remember! If there's belief that an employer isn't meeting minimum employment standards, an anonymous tip may be submitted to Employment Standards. An anonymous tip can be filed by any person and isn't limited to just employees. Visit alberta.ca/EmploymentStandards for more information on anonymous tips.

During an investigation, an officer may request to review documentation including payroll records and timesheets. If requested, the employer must oblige.

Enforcement actions

Employment Standards has a variety of formal enforcement tools to enforce compliance of the legislated standards, including:

- Notices
- Decision of officer or Director
- Direction of officer or Director
- Order of officer or Director
- Administrative penalties
- Prosecution



Remember! If an employer, employee or other person delays or obstructs an officer, falsifies an employment record or gives false or misleading information about employment records, they are liable for prosecution.

If an investigation reveals that an employer has failed to meet the Code's standards, and voluntary resolution is unsuccessful, the officer, or in some cases the Director of Employment Standards, will issue an order.

If the minimum standards have been met

If the employer has met the minimum standards, the officer or Director can issue a decision stating the employer is compliant with the Code and inform the employee.

If the minimum standards haven't been met

If the employer hasn't met the minimum standards and a resolution can't be reached through mediation, an order of officer or Director can be made and issued to both the employer and the employee.

The order will state the amount owed to the employee as a result of the employer's non-compliance of meeting the minimum standards of the Code. Non-monetary issues including improper suspension, termination or temporary lay-off can only be addressed by an order of Director.

Reference: *ES Code*, Sections 87 and 89

Failure to comply with the Code's minimum standards or an enforcement action can result in administrative penalties issued to the employer or prosecution.

Reference: *ES Code*, Sections 123.1 and 133

For more information on enforcement actions see alberta.ca/EmploymentStandards.

Administrative penalties

If an employer fails to comply with the Code or an enforcement action, they may face additional penalties. An employer may be issued a notice to comply. If they are still non-compliant, a notice of administrative penalty may be issued.

Note: An administrative penalty may be appealed if the employer believes they have been wrongfully issued a notice of administrative penalty.

Reference: ES Regulation, Schedule 2

Administrative penalty fines are progressive, and increase for repeated contraventions. If a penalty is paid and the employer becomes compliant, no further action is required. If a penalty hasn't been paid, prosecution may result.

Reference: ES Code, Section 123.1

More information on administrative penalties can be found at alberta.ca/EmploymentStandards.

Appeals

An employer or employee can appeal an enforcement action **within 21 days**.

An employer may appeal:

- An order;
- A single employer declaration;
- A Director's collection notice;
- A notice of administrative penalty;

OR

- A Director's cancellation of an Hours of Work Averaging Agreement.

More information on appeals can be found at alberta.ca/EmploymentStandards.

Prosecution under the Code

A prosecution for an offence under the Code must begin within two years from the date on which the alleged offence occurred.

Reference: ES Code, Section 133

Employment Standards will consider the following three factors before recommending prosecution under the Code:

- The seriousness of the offence.
- Whether alternatives to prosecution have proven ineffective.
- Whether there is sufficient evidence to conclude there is a reasonable likelihood of conviction.

If a recommendation to commence prosecution proceedings is supported in the department, an Alberta Crown prosecutor will assess the recommendation and determine if it is in the public interest to proceed with a prosecution under the Code.



For more information on the complaint resolution process, see alberta.ca/EmploymentStandards.



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Employee or contractor?

How to know the difference

Employment Standards deals with questions, requests for information and complaints related to *Alberta's Employment Standards Code*. Sometimes interpreting these pieces of legislation can raise questions about the distinction between contractors and employees. For example, who is entitled to certain payments? Or to take time off work?

Most employees and employers in Alberta are covered by the Code. However, the Code does not apply to the self-employed/contractor.

Note: The Code does apply to contractors if they are also employers; the Code will protect the employees that they hire.

Under the Code, an employer is “a person who employs an employee”. The definition includes former employers. An employee is defined as “an individual employed to do work who receives or is entitled to wages”. The definition includes former employees.

Here are some general guidelines to help you determine whether or not an individual is an employee or a contractor.



Remember! While general guidelines apply, it's important to know that different government organizations use their own specific considerations to decide if a worker is an employee or a contractor (for example: the Canada Revenue Agency (CRA)).

Table 11: Working conditions that determine if someone is an employee or a contractor

	Employee	Contractor
Direction and control		
Method of payment	<ul style="list-style-type: none"> Receives an hourly, weekly or monthly wage or salary, or is paid on commission. Receives a pay-related document such as a pay cheque and statement of earnings. 	<ul style="list-style-type: none"> Submits invoices. Receives pay as a lump sum or in installments, often on contracts received as the result of a successful project bid.
Hours of work	<ul style="list-style-type: none"> Usually works specified hours set by the employer. 	<ul style="list-style-type: none"> Generally is free to choose time of work.
Benefit plans	<ul style="list-style-type: none"> Receives benefits such as vacation pay, Employment Insurance and Canada Pension Plan contributions. Benefits are paid for in full or part by the employer. 	<ul style="list-style-type: none"> May pay insurance premiums for privately held-plans. In most cases, does not participate in the Employment Insurance program.
Training	<ul style="list-style-type: none"> Receives in-house, on-the-job or outside training that is provided, paid or reimbursed by the employer. 	<ul style="list-style-type: none"> Has the required training before starting the job. Pays his or her own training costs.

Full-time, personal and exclusive service	<ul style="list-style-type: none"> • Usually devotes all working time to one employer. (Someone with several part-time jobs with different employers is still considered an employee.) • Personally performs the work or service and cannot hire someone else to do it. 	<ul style="list-style-type: none"> • Typically has many potential income streams and serves a number of payers during a given period. (On a large project, for a while, most of the contractor's time may be spent on that project.) • May employ or subcontract others to do the work.
Schedules and routines	<ul style="list-style-type: none"> • Works under the direction and control of an employer. 	<ul style="list-style-type: none"> • May have to meet deadlines, but can set the schedule, sequence or manner in which the work is done.
Right to discharge or terminate employment	<ul style="list-style-type: none"> • Can be discharged from work, provided <i>Alberta's Employment Standards Code</i> and other requirements are met. • Can terminate his or her employment in accordance with <i>Alberta's Employment Standard's Code</i> requirements. 	<ul style="list-style-type: none"> • Normally, as long as he/she has complied with the requirements of the contract, cannot be discharged by the payer without compensation. • Normally, as long as the payer has complied with the requirements of the contract, cannot terminate the contract without liability. • If the contract allows for termination, the payer of the contractor can do so under the specified conditions.
Supervision and compliance with instructions	<ul style="list-style-type: none"> • Works under the supervision of the employer. • Generally must follow the employer's instruction on how, when and where the work is performed. • Generally must follow the employer's instructions regarding the quality or volume of work. 	<ul style="list-style-type: none"> • Generally works without supervision to meet the requirements of the contract. • Does not receive or follow ongoing instructions on when, where and how to work. • Decides what methods will be used to achieve the final outcome.
Specific results	<ul style="list-style-type: none"> • May perform a variety of tasks and duties. (The relationship with the employer continues after these tasks or duties have been completed.) 	<ul style="list-style-type: none"> • Supplies a project or service as required by the contract. (Once these requirements have been met, the contractual relationship ends.)
Ownership of facilities, supplies, tools and equipment		
Facilities and premises	<ul style="list-style-type: none"> • Usually uses a workspace, furniture, phone, computer and related equipment provided, maintained and paid for by the employer. 	<ul style="list-style-type: none"> • Usually supplies (leases, rents or owns) the space, furniture, phones, computers and other equipment needed to work. • When possible or necessary, may work at the payer's premises.
Tools and Equipment	<ul style="list-style-type: none"> • Usually uses tools, equipment and materials provided and paid for by the employer. (Some tradespeople, including mechanics and carpenters, provide their own hand tools even when they are employees.) 	<ul style="list-style-type: none"> • Usually buys, rents or leases the tools, equipment, materials and supplies – including letterhead and business cards – required for the job. • Usually arranges and pays for tools and equipment maintenance and upgrades.

Chance of profit or risk of loss		
Profit	<ul style="list-style-type: none"> Does not necessarily earn more if work is completed more quickly than expected or if other savings occur. May earn more through bonuses or incentive pay plans. May earn more as length of service or experience increases. 	<ul style="list-style-type: none"> Stands to make more money if project work is completed more quickly than expected or if other savings occur.
Risk of loss	<ul style="list-style-type: none"> Is paid for labour or services provided. Receives pay at an established rate that is independent of the employer's sales, profits or losses. Is not responsible for covering bad debts: debts are the employer's responsibility. 	<ul style="list-style-type: none"> Stands to make less money if project work takes longer to complete, if a bid is inaccurate or if costs increase because of damage or for other reasons. Risk having periods with less work (possibly after an unsuccessful contract bid) and therefore less income. May have to deal with bad debts.
Integration		
Independence and self-employment	<ul style="list-style-type: none"> Is not self-employed. Is part of the employer's business and depends on one income source. (Part-time employees with several employers are still employees.) The longer and more permanent the working relationship, the more likely that someone is considered to be an employee. 	<ul style="list-style-type: none"> Acts on his or her own behalf. Is in business for his or her own benefit and is not part of the payer's business. Relies on several income sources or payers over time. Does business with the general public. May hold a business license. Has a GST number or WCB account.

1 Table adapted from: Employee or Contractor? Know the Difference. Catalogue Item # 708399. Alberta Employment and Immigration. 2008. Government of Alberta.

Pay statement

The *Employment Standards Code* requires an employer to provide employees with a written statement of earnings at the end of each pay period.

There are several pieces of information that a statement of earnings must include. Use the statement of earnings checklist to ensure your company’s pay stub includes all the necessary information.

Statement of earnings checklist	
✓	Pay period covered by the statement
✓	Number of regular and overtime hours worked
✓	Number of hours taken off in lieu of overtime
✓	Wage rate and overtime rate
✓	Earnings paid: showing each component of the earnings separately (e.g. wages, overtime, general holiday pay and vacation pay)
✓	Amount of deductions from earnings and the reason for each deduction

Sample Pay Stub

Name: Jack G. Candle
 Pay period: April 21-25, Year
 Wage rate: \$15.00/hour
 Overtime rate: \$22.50/hour
 Overtime hours worked: 2
 Overtime hours banked: 3

	Hours	Earnings	
Earnings:			
Regular hours	30	\$450.00	
Overtime	2		
Time off in lieu of overtime (taken April 22, Year) (3 banked hours x \$15.00/hour)	3	\$45.00	
General holiday pay (8 hours x \$22.50/hour + \$90.00 ¹)	8	\$270.00	
Vacation pay (4%) (Optional – list only if being paid)			
Total earnings:			\$765.00

Deductions: (amounts are examples only)			
Income tax		(\$50.00)	
EI		(\$20.00)	
CPP		(\$9.00)	
Total deductions:			(\$79.00)
Net pay			\$551.00

¹Average daily wage calculated as 5% of wages in the four weeks proceeding the holiday. Assuming \$450 in wages was earned for each of the four weeks, the average daily wage is \$90.00

Employee time tracking sheet

The *Employment Standards Code* requires employers to record the actual hours of work of each employee for each working day. These employment records must accurately show how the totals of regular and overtime hours are calculated, including paid and unpaid breaks.

Time that does not have to be recorded includes: time off provided by the employer when the employee is free to leave the workplace, or time off provided by the employer as sick time, bereavement or leave of absence.

Two sample employee time tracking sheets are attached.

Note: These forms are proposed as examples. They can be modified or adapted to meet your needs. No form is imposed by the Code respecting Employment Standards.

Employee biweekly time record (template 1)

Employee name:	Date:
Employee number:	Department:
Title/Job description:	

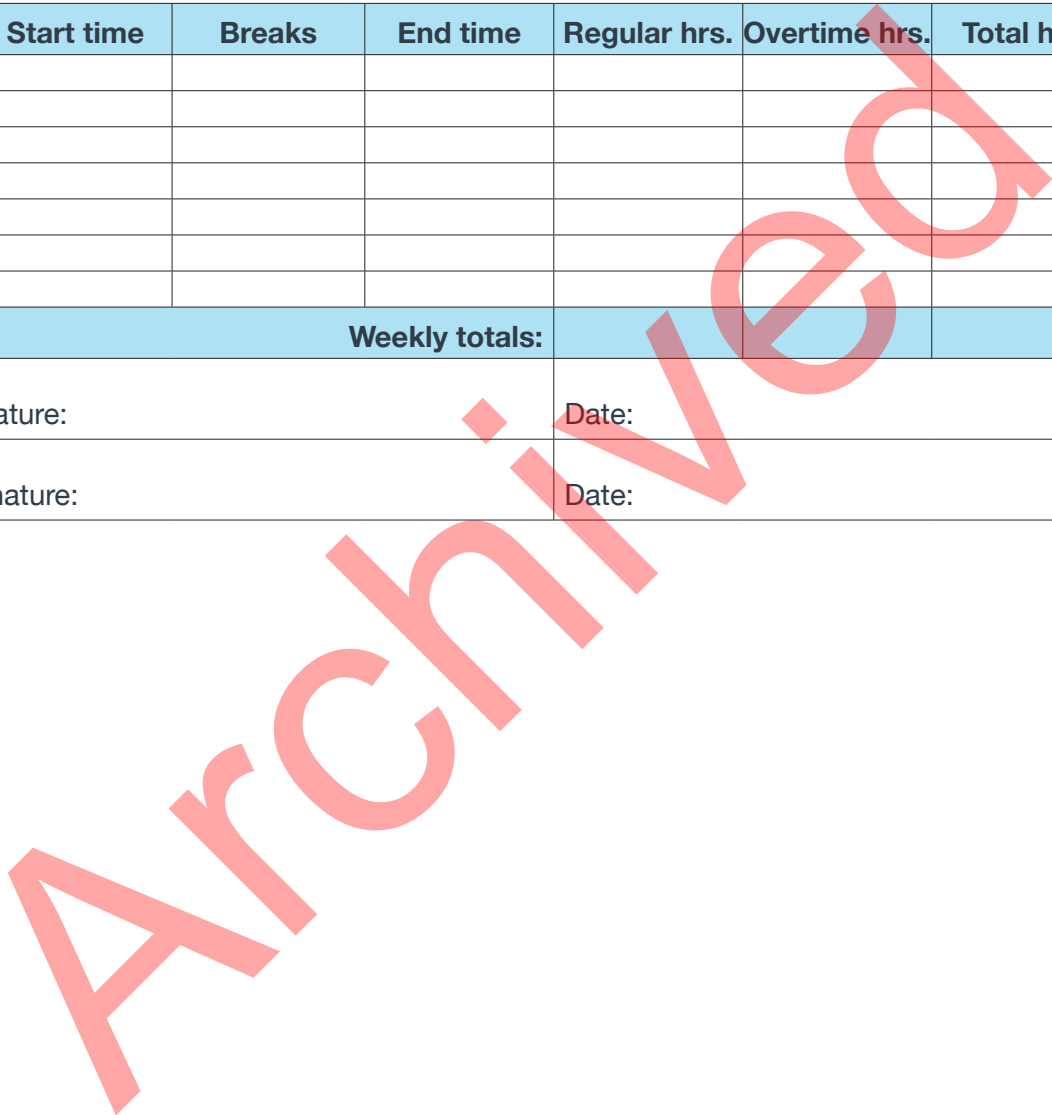
Week one:					
Date	Activity	Time start	Break	Time finish	Hours
Week one total hours:					

Week two:					
Date	Activity	Time start	Break	Time finish	Hours
Week one total hours:					
Authorization required for all overtime hours			Total regular hours:		
Supervisor's signature:			Total overtime hours:		

Employee weekly time tracking record (template 2)

Employer name Address	Timesheet
Employee name:	Title:
Employee number:	Status:
Department:	Supervisor:

Date	Start time	Breaks	End time	Regular hrs.	Overtime hrs.	Total hrs.
Weekly totals:						
Employee signature:				Date:		
Supervisor signature:				Date:		



Payroll deduction authorization forms

Excerpt from the *Employment Standards Code*, Part 2, Division 1, Section 12

Deductions from earnings

- 12(1) An employer must not deduct, set off against or claim from the earnings of an employee any sum of money, unless allowed to do so by subsection (2).
- (2) An employer may deduct from the earnings of an employee a sum of money that is:
- permitted or required to be deducted by an Act or regulation, including a regulation under this Act, or a judgment or order of a court,
 - authorized to be deducted by a collective agreement that is binding on the employee, or
 - personally authorized in writing by the employee to be deducted.
- (3) Despite an authorization in a collective agreement or a written authorization by an employee, an employer must not deduct from earnings a sum for
- faulty work, as defined in the regulations, of the employee or damage caused by the employee
 - cash shortages or loss of property if an individual other than the employee had access to the cash or property,
 - cash shortages resulting from a failure to collect all or any part of the purchase price from a purchaser, or
 - any other circumstance specified by the regulations.

Payroll deduction authorization form (multiple instalment deductions)

Legal Name of Company and Address:

Company Phone Number:

In accordance with Part 2, Division 1, Section 12 of the *Employment Standards Code*, and, by signature below:

I _____ (*print employee's name*) authorize my employer, _____ (*name of employer*) to deduct the total amount of _____ \$ (*total amount to be deducted or amount to be deducted per pay period when total amount is unknown*) off my earnings for receipt of the following:

(*specify purpose of the deduction/rationale, e.g. cell phone, rent, meals, childcare, uniform payment, any invoice #, etc. that is applicable.*)

This payroll deduction will be effective _____ (*start date*) to _____ (*end date, e.g. indefinitely or until repayment to the employer is complete*).

The amount of _____ \$ (*exact dollar amount*) will be deducted from my _____ (*specify monthly / semi-monthly / bi-weekly / weekly or other*) pay periods and is no longer payable after pay period ending _____ (*state payroll end date or upon termination, etc*).

Employee signature

Date



- Faulty work includes accidental damage to an employer's vehicle or equivalent, "walkouts" in a bar or restaurant, "gas and dash" at a service station, breakage in a restaurant and mistakes in production.



- Authorizations for payroll deductions must be given by the employee to the employer in writing.
- The authorization must be clear and specific to the amount that is being deducted and its purpose.
- **Always keep copies of letters on the employee's file.**
- There are some deductions that are **not** allowed – even with written authorization from the employee. These include deductions for: faulty work, cash shortages, uniforms or loss of property.
- In order to change or stop an ongoing deduction from occurring, a new authorization form must be completed.

Payroll deduction authorization form (unique/one time deductions)

Legal Name of Company and Address:

Company Phone Number:

In accordance with Part 2, Division 1, Section 12 of the *Employment Standards Code*, and, by signature below:

I _____ (print employee's name)

authorize my employer, _____ (name of employer)

to deduct the total amount of _____ \$ (total amount to be deducted)

off my earnings for receipt of the following: _____

(specify purpose of the deduction/rationale, e.g. cell phone, rent, meals, childcare, uniform payment, any invoice #, etc. that is applicable).

This payroll deduction will be deducted off my _____

(specify monthly /semi-monthly / bi-weekly / weekly) pay period ending _____

(state payroll end date or upon termination).

Employee signature

Date



A letter format like this one could be used if:

An employee rents the company's maintenance shop for personal use on the weekends. The employer charges the employee an hourly rate when used and deducts payment from the employee's paycheque.



- Authorizations for payroll deductions must be given by the employee to the employer **in writing**.
- The authorization must be clear and specific to the amount that is being deducted and its purpose.
- **Always keep copies of letters on the employee's file.**
- There are some deductions that are **not** allowed – even with written authorization from the employee. These include deductions for: faulty work, cash shortages, uniforms or loss of property.

Averaging agreement examples

Rules that apply to both Flexible Averaging Agreements (FAA) and Hours of Work Averaging Agreements (HWAA):

- No more than 12 hours per day and an average of 44 hours per week are allowed to be scheduled. All work days and the number of hours to be worked have to be identified in the schedule.
- The averaging period overtime threshold is an average of 44 hours per week for all averaging agreements.

The examples for Hours of Work Averaging Agreements can apply to either individual or group agreements. The calculations in these agreements are the same. There are some differences between individual and group agreements around providing copies of agreements and entering/exiting an agreement. See averaging agreements on Page 19 for more information.

Examples of work schedules for typical averaging agreements

Example 1 – Flexible Averaging Agreement (FAA) work schedule

Averaging period: One week

Daily overtime threshold: 10 hours

Hours scheduled: 44

An employee is provided the following one-week work schedule in their Flexible Averaging Agreement. The employee's daily overtime threshold is a maximum of 10 hours as stated in their flexible averaging agreement.

	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Weekly Hours
Week 1	0	8	8	9	9	10	0	44

Any hours worked over the daily scheduled hours, but less than the overtime threshold of 10, is earned as flexible time. Any hours worked over 10 a day are calculated as daily overtime hours. Additionally, any hours worked over 44 hours per week are calculated as weekly/averaging period overtime hours.

Example 2 – Hours of Work Averaging Agreement (HWAA) work schedule

Averaging period: Six weeks

Average hours scheduled: 44

An employee with an individual HWAA is provided with the following work schedule. The employee works four days on and two days off over an averaging period of six weeks. The number of scheduled hours average 44 hours a week over the six-week period.

	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Weekly hours
Week 1	8	10	10	10	0	0	8	46
Week 2	8	10	10	0	0	10	8	46
Week 3	8	10	0	0	10	10	8	46
Week 4	8	0	0	10	10	10	8	46
Week 5	0	0	10	10	10	10	0	40
Week 6	0	10	10	10	10	0	0	40
Average/week over averaging period								44

The scheduled hours averaged over the period cannot exceed 44 a week.

Note: This example could also be provided to a group of employees as part of a group HWAA as the scheduling rules are the same for both individual and group HWAA's.

Examples of overtime calculations for Flexible Averaging Agreement

Example 3 - FAA

Averaging period: Two weeks

Average hours scheduled: 35

Daily overtime threshold: Nine hours

Example 3(a) – Daily overtime and flexible time

An employee is provided the following two-week schedule in their Flexible Averaging Agreement. For one averaging period, the employee works their scheduled hours and some additional hours. Their scheduled hours are averaged over a two-week period for an average of 35 hours a week and their agreement states that the daily overtime threshold is nine hours per day.

Week 1				
	Hours scheduled	Hours worked	Daily OT hours	Flexible hours
Day 1	9	9	0	0
Day 2	9	9	0	0
Day 3	9	9	0	0
Day 4	9	10	1	0
Total hours	36	37	1	0

Week 1				
	Hours scheduled	Hours worked	Daily OT hours	Flexible hours
Day 1	8	9	0	1
Day 2	9	9	0	0
Day 3	9	9	0	0
Day 4	8	8	0	0
Total hours	34	37	0	1

Week 1, Day 4: The employee worked one additional hour over their scheduled hours (10 instead of the scheduled nine). Since the total hours worked are more than the daily overtime threshold outlined in the agreement (nine hours per day), the additional hour is considered overtime.

Week 2, Day 1: The employee worked one additional hour over their scheduled hours (nine instead of eight). Since the total hours worked are not more than the daily overtime threshold outlined in the agreement (nine hours per day), the additional hour is considered flexible time. This hour of flexible time is to be taken as one hour of time off with regular pay. It must be taken as time off before the end of the next averaging period.

Note: The weekly hours worked do not exceed the averaging period threshold of 44 hours a week. Therefore, no averaging period overtime is owed.

Example 3(b) – Averaging period overtime and flexible time

During a different period, the employee continues to work their scheduled hours, as well as some additional hours on days the employee is not scheduled to work.

Week 1				
	Hours scheduled	Hours worked	Daily OT hours	Flexible hours
Day 1	9	9	0	0
Day 2	9	9	0	0
Day 3	9	9	0	0
Day 4	9	10	1	0
Day 5	0	9	0	9
Total hours	36	37	1	9

Week 1				
	Hours scheduled	Hours worked	Daily OT hours	Flexible hours
Day 1	8	8	0	0
Day 2	9	9	0	0
Day 3	9	9	0	0
Day 4	8	8	0	0
Day 5	0	10	1	9
day 6	0	5	0	5
Total hours	34	50	0	14

Average hours per week	48
Total averaging period overtime	8
Total daily overtime	2

Week 1, Day 4: The employee worked one additional hour over their scheduled hours (10 instead of the scheduled nine). Since the total hours worked are more than the daily overtime threshold outlined in the agreement (nine hours per day), the additional hour is considered overtime.

Week 1, Day 5, the employee worked nine hours when the employee was not scheduled to work and these hours are considered flexible time since the total does not exceed the daily overtime threshold.

Week 2, Day 5: The employee worked 10 hours when the employee is not scheduled to work. Since the daily overtime threshold is nine hours, nine of the hours worked are earned as flexible time and the other hour is overtime.

Week 2, Day 6: All hours worked are earned as flexible time hours since the hours worked are less than the daily overtime threshold.

Overtime is owed on the greater of daily overtime or averaging period overtime:

- The daily overtime is two hours.
- The averaging period overtime is eight hours.
 - Averaging period overtime is calculated by averaging the hours worked over the period. Hours worked in excess of an average of 44 per week is overtime.
 - $48 - 44 = 4 \text{ hours} \times 2 \text{ weeks} = 8 \text{ hours}$ for the averaging period

In addition to overtime, 23 hours of flexible time is earned by the employee over the period. Flexible time hours are banked and must be used before the end of the next averaging period.

Note: If flexible time is not used by the end of the next averaging period, it must be paid at the employee's regular wage rate in the following pay period.

Examples of overtime calculations for Hours of Work Averaging Agreements

Example 4 - HWAA

Averaging period: One week

Average hours scheduled: 40

Example 4(a) – Daily overtime

An employee is provided the following schedule in an HWAA agreement. Their scheduled hours over the period add up to 40 hours. During one period an employee works the following hours, which include hours in addition to what is scheduled:

Week 1				
	Hours scheduled	Hours worked	Daily OT hours	Weekly OT hours
Day 1	8	10	2	
Day 2	9	9	0	
Day 3	8	11	3	
Day 4	4	4	0	
Day 5	6	6	0	
Day 6	5	5	0	
Total hours	40	45	5	1

Overtime is owed on the greater of daily overtime or averaging period overtime:

- The total daily overtime is five hours.
 - Overtime is not owed for Day 2 even though the employee worked more than eight hours since the employee was scheduled to work nine hours. Overtime would be due if the employee worked more than their scheduled nine hours on this day.
- The averaging period overtime is one hour since the hours worked exceed 44.

The employee would receive the greater amount of daily or averaging period overtime, and therefore would be owed five hours of daily overtime.

Example 4(b) – Changes to work schedules with less than two weeks' notice

During the next period, the employer changed an employee's schedule without the employee requesting the change and with less than two weeks' notice. The employer changes the schedule to decrease the hours on Day 1 to three hours and increase the hours on Day 4 to nine hours. An employee works the new scheduled hours for the week:

Week 1					
	Original hours scheduled	Changed schedule	Hours worked	Daily OT hours	Weekly OT hours
Day 1	8	3	3	0	
Day 2	9	9	9	0	
Day 3	8	8	8	0	
Day 4	4	9	9	1	
Day 5	6	6	6	0	
Day 6	5	5	5	0	
Total hours	40	40	40	1	0

Since the employer provided less than two weeks' notice for a schedule change, the daily overtime threshold for the changed schedule is eight hours. One hour of overtime is owed for Day 4 even though nine hours are scheduled and the employee does not work in excess of those hours. The employee is owed the greater of daily or averaging period overtime, which is daily overtime in this scenario.

Note: An employer cannot change an employee's work schedule permanently or frequently as this would breach the terms of the agreement.

Example 5 - HWAA overtime scenarios

Averaging period: Three weeks

Average hours scheduled: 35

Example 5(a) – Scheduled vs. unscheduled hours

An employee is provided the following three-week work schedule as part of an HWAA. The scheduled hours averaged over the period are 35 hours a week. During Week 2 and Week 3 of the averaging period the employee works hours in addition to what is scheduled.

Week 1			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	8	8	0
Day 2	10	10	0
Day 3	8	8	0
Day 4	10	10	0
Day 5	8	8	0
Total hours	44	44	0

Week 2			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	8	8	0
Day 2	9	9	0
Day 3	7	8	0
Day 4	10	10	0
Day 5	0	0	0
Total hours	34	35	0

Week 3			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	9	10	1
Day 2	9	10	1
Day 3	8	9	1
Day 4	0	0	0
Day 5	0	0	0
Total hours	26	29	3

Total hours worked	108
Average total weekly hours	36

Weeks 1 and 2: No overtime is due even though the employee worked more than eight hours a day on some days, since the employee was scheduled to work these hours.

Week 2, Day 3: No overtime is due even though the employee worked more than their scheduled seven hours because the employee did not work more than eight hours that day.

Week 3: Three hours of overtime is owed to the employee since the employee worked more than their daily scheduled hours. The daily overtime threshold is the greater of eight hours a day or their daily scheduled hours (if more than eight were scheduled).

No overtime for the averaging period is to be considered since the average does not exceed 44 hours.

Example 5(b) – Making up missed shifts

The employee missed their scheduled shift on Day 2 of Week 2 and made it up on Day 4 of Week 3 when the employee was not scheduled to work. The employee is to be paid their regular wage rate for hours that were previously scheduled/originally scheduled. Overtime may apply if asked to work beyond the newly scheduled hours.

Week 1			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	8	8	0
Day 2	10	10	0
Day 3	8	8	0
Day 4	10	10	0
Day 5	8	8	0
Total hours	44	44	0

Week 2			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	8	8	0
Day 2	9	0	0
Day 3	7	8	0
Day 4	10	10	0
Day 5	0	0	0
Total hours	34	26	0

Week 3			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	9	10	1
Day 2	9	9	0
Day 3	8	9	1
Day 4	0	10	1
Day 5	0	0	0
Total hours	26	29	3

Total hours worked	108
Average total weekly hours	36

In Week 3 while making up the missed shift, the employee worked 10 hours. The employee is entitled to nine hours of regular pay (based on the number of hours originally scheduled) and one hour of overtime. The employee also worked an additional hour on Day 1 and 3 and is owed two hours of daily overtime for those days. Total overtime for the period is three hours.

Note: No overtime for the averaging period is owed since the average does not exceed 44 hours.

Example 6 – HWAA averaging period overtime**Averaging period: Four weeks****Average hours scheduled: 44**

An employee is provided the following four-week work schedule as part of an HWAA. The scheduled hours averaged over the period are 44 hours a week. During Week 2 and Week 4 of the averaging period the employee works hours in addition to what is scheduled.

Week 1			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	10	10	0
Day 2	10	10	0
Day 3	10	10	0
Day 4	10	10	0
Day 5	10	10	0
Total hours	50	50	0

Week 2			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	10	10	0
Day 2	10	10	0
Day 3	10	10	0
Day 4	10	12	2
Day 5	0	6	0
Total hours	40	48	2

Week 3			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	10	10	0
Day 2	10	10	0
Day 3	10	10	0
Day 4	10	10	0
Day 5	10	10	0
Total hours	50	50	0

Week 4			
	Hours scheduled	Hours worked	Daily OT hours
Day 1	10	10	0
Day 2	10	10	0
Day 3	10	10	0
Day 4	6	8	0
Day 5	0	10	2
Total hours	36	48	2

Total hours worked	196
Average total weekly hours	49

Overtime is paid on the greater of daily or averaging period overtime. In Week 2 and Week 4 the employee worked a total of four hours of daily overtime.

The averaging period hours average 49 hours per week, which exceeds the overtime threshold of 44 hours per week. Averaging period overtime must be calculated.

Average hours worked in excess of 44: $49 - 44 = 5$

Total averaging period overtime = 5 hours/week x 4 weeks = 20 hours

The employee would receive the greater amount of daily or averaging period overtime, and therefore would be owed 20 hours of averaging period overtime.

Note: Daily overtime must be paid at the end of each pay period. Averaging period overtime must be paid at the end of the averaging period. If the employer had already paid the employee daily overtime owed (four hours), the employer would pay the balance of overtime owed ($20 - 4 = 16$ hours) at the end of the averaging period.

Individual Overtime Agreement

1. It is agreed between:

Employee name: _____

Address: _____

and

Employer/company name: _____

Address: _____

that either wholly or partly the employer will provide and the employee will take, time off with pay in place of overtime pay for those hours worked in excess of _____ in a work day or _____ in a work week, whichever is greater.

The work week is _____ to _____.
(Day of the week) (Day of the week)

2. Time off with pay is banked at a rate of 1.5 hours for each overtime hour worked.
3. The time off with pay in place of overtime pay shall be provided, taken and paid at the regular rate of wages at a time that the employee could have worked and received wages from the employer.
4. The time off with pay shall be provided, taken and paid within 6 months of the end of the pay period in which it was earned unless the agreement is part of a collective agreement which provides for a longer period of time.
5. If the time off with pay instead of overtime is not provided, taken and paid in accordance with paragraph 3, the employee shall be paid overtime pay of at least 1.5 times the employee's wage rate for the overtime hours worked.
6. Time off in place of overtime shall be treated as hours of work and remuneration paid in respect to time off in place of overtime pay shall be treated as wages.
7. The employer shall provide a copy of this agreement to the employee.
8. No amendment or termination of this agreement shall be effective without at least one month's notice in writing by one party to the other.

Dated this _____ day of _____ 20 _____

Signed _____
For employer/company

Employee

Group Overtime Agreement

1. It is agreed between:

The employees listed on Part A attached

and

Employer/company name: _____

Address: _____

that either wholly or partly the employer will provide and the employees will take time off with pay in place of overtime pay for those hours worked in excess of _____ in a work day or _____ in a work week, whichever is greater.

The work week is _____ to _____.
(Day of the week) (Day of the week)

2. Time off with pay is banked at a rate of 1.5 hours for each overtime hour worked.
3. The time off with pay in place of overtime pay shall be provided, taken and paid at the regular rate of wages at a time that the employee could have worked and received wages from the employer.
4. The time off with pay shall be provided, taken and paid within 6 months of the end of the pay period in which it was earned unless the agreement is part of a collective agreement which provides for a longer period of time.
5. If the time off with pay instead of overtime is not provided, taken and paid in accordance with paragraph 3, the employee shall be paid overtime pay of at least 1.5 times the employee's wage rate for the overtime hours worked.
6. Time off in place of overtime shall be treated as hours of work and remuneration paid in respect to time off in place of overtime pay shall be treated as wages.
7. The employer shall provide a copy of this agreement to all employees in the group and to any employee who joins the group during the course of the agreement.
8. No amendment or termination of the agreement shall be effective without at least one month's notice in writing by one party to the other. In the case of the group giving notice, the notice in writing must be signed by the majority of the employees in the group.

I certify that the employees who have signed **Part B** attached to this form are the majority of the employees in the group described and named on **Part A** attached.

Dated this _____ day of _____ 20 _____

Signed _____
For employer/company Employee

Group Overtime Agreement - Part A and Part B

Part A (to be completed by the employer)

Description of group _____

(Provide a complete description, e.g., "all office employees" or "all shipping and receiving employees")

Following is a complete list of all employees who together form the group described above as of

Day	Month	Year
-----	-------	------

Type or print names legibly

Signature	Print name legibly	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Part B (to be completed by participating employees)

The employees whose signatures appear below wish to join the group overtime agreement attached to this form.

Signature	Print name legibly	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Management or supervisory employee questionnaire

The Employment Standards Regulation exempts supervisory, managerial and employees employed in a confidential capacity from the *Employment Standards Code's* provisions relating to overtime, hours of work and keeping records of hours of work. The purpose of this questionnaire is to assist in determining whether an individual falls within the exemptions set out in the Regulation.

This questionnaire is only an indicator of an employee's status.

The more "yes" answers you check, the greater the likelihood that the employee is working in a managerial or supervisory role.

Employee duties	Yes	No
Does the individual direct the activities of other employees?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual supervise the activities of other employees?	<input type="checkbox"/>	<input type="checkbox"/>
Do the individual's duties differ from other persons who are supervised?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual receive payment or time off for extra time worked?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual receive a rate of pay that is higher than those supervised?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual have privileges over and above those of the employees he/she supervises/manages (e.g., company car, expense account, more vacation, more work flexibility)?	<input type="checkbox"/>	<input type="checkbox"/>
Employee authority	Yes	No
Does the individual have the authority to grant time off or grant leaves of absence?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual make work schedules and assign work to other employees?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual have the authority to authorize overtime?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual have the authority to authorize wage increases for other employees?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual have cheque-signing authority?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual have the authority to discipline workers (such as warn, reprimand and/or suspend employees)?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual have the authority to promote, demote or transfer employees?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual complete performance appraisals for the employees he/she supervises?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual have the authority to hire and fire?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual participate in meetings where policies are made?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual participate in meetings where business decisions are made?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual have the authority to order supplies and pay for them without prior approval by the company?	<input type="checkbox"/>	<input type="checkbox"/>
Does the individual's authority include approving maintenance orders for equipment, repairs, etc.?	<input type="checkbox"/>	<input type="checkbox"/>
How do other employees perceive this individual?	<input type="checkbox"/> Manager <input type="checkbox"/> Supervisor <input type="checkbox"/> Co-Worker	

General holidays in Alberta

Under the Code, the following nine days are recognized as general holidays:

General Holiday	Date
New Year's Day	January 1
Alberta Family Day	3rd Monday in February
Good Friday	Varies with religious calendar
Victoria Day	Monday immediately preceding May 25
Canada Day	July 1*
Labour Day	1st Monday in September
Thanksgiving Day	2nd Monday in October
Remembrance Day	November 11
Christmas Day	December 25

General holiday	2018	2019	2020	2021	2022
New Year's Day	Jan. 1, 2018	Jan. 1, 2019	Jan. 1, 2020	Jan. 1, 2021	Jan. 1, 2022
Alberta Family Day	Feb. 19, 2018	Feb. 18, 2019	Feb. 17, 2020	Feb. 15, 2021	Feb. 21, 2022
Good Friday	Mar. 30, 2018	Apr. 19, 2019	Apr. 10, 2020	Apr. 2, 2021	Apr. 15, 2022
Victoria Day	May 21, 2018	May 20, 2019	May 18, 2020	May 24, 2021	May 23, 2022
Canada Day	July 2, 2018*	July 1, 2019	July 1, 2020	July 1, 2021	July 1, 2022
Labour Day	Sep. 3, 2018	Sep. 2, 2019	Sep. 7, 2020	Sep. 6, 2021	Sep. 5, 2022
Thanksgiving Day	Oct. 8, 2018	Oct. 14, 2019	Oct. 12, 2020	Oct. 11, 2021	Oct. 10, 2022
Remembrance Day	Nov. 11, 2018	Nov. 11, 2019	Nov. 11, 2020	Nov. 11, 2021	Nov. 11, 2022
Christmas Day	Dec. 25, 2018	Dec. 25, 2019	Dec. 25, 2020	Dec. 25, 2021	Dec. 25, 2022

**By federal law, when July 1st falls on any day of the week other than Sunday, it is celebrated on that day; however, when it falls on a Sunday, it is treated as if it fell on the Monday immediately following.*

Boxing day, Easter Monday and Heritage Day (1st Monday in August) are not considered general holidays. However, an employer can designate these, or any other day, as a general holiday.

Sample warning letter (on company letterhead)

Date:

Employee address:

Dear employee:

Paragraph 1:

Describe incident/situation/etc. which has led to the warning. Be clear and specific, using dates and times where possible. Avoid making assumptions about the employee's conduct where possible. Stick to facts. If the employee has received prior verbal or written warnings, make note of this in this letter.

Paragraph 2:

Describe specifically the change(s) you want to see and your expectations of the employee.

Paragraph 3:

Advise the employee of a 'review date', to meet and discuss progress. You may wish to include a positive statement regarding your belief in the employee's ability to make the changes necessary. If this is the final warning letter, advise the employee that any further incidences of the behaviour, etc., will result in termination.

Sincerely,

Supervisor's/manager's name

Title



- Disciplinary warnings and termination notices **should be in writing**.
- Use your **company letterhead** or include the **company address** in the letter. **Always keep copies of letters on the employee's file.**
- **Stick to the facts.** Be specific about the issue to be addressed.
- Be sure to **reference previous warning letters or disciplinary action** that has been taken on this matter.
- **Be clear about next steps.** Identify future disciplinary action that will be taken if the issue is not corrected.
- **Keep it professional.** Avoid allowing the letter to become personal. It is best to write when you are calm and in control of your emotions.
- Keep in mind that your letters may be needed in the future to support your case for termination.

Sample termination letter (on company letterhead)

Date:

Employee address:

Dear employee:

Paragraph 1:

Advise the employee that they are terminated effective date (usually the date you are giving the letter).

Paragraph 2:

Include a statement reflecting that the reasons for termination have been outlined in the previous warning letters. State that the employee has not corrected these issues, which has led to their termination.

Paragraph 3:

Request the return of any company equipment, etc. State when the employee will receive the final pay cheque (under the *Employment Standards Code*, the employee must be paid within 10 calendar days of their last day worked).

Sincerely,

Supervisor's/manager's name

Title



- Be sure to include the employer's address or use company letterhead.
- A termination letter **must be in writing and addressed to the employee concerned**.
- **Stick to the facts.** Be sure to mention any discussions or written warnings the employee previously received and explain how they lead to the decision for termination.
- **Be specific.** Provide specific reasons for firing the employee, their problematic behaviour and the dates they occurred.
- Include a termination date.
- **A termination letter is a legal document.** You may need it if the employee sues for wrongful dismissal. Carefully consider the contents of your letter.
- The termination letter should include all information on final paycheques, a severance package and when health benefits will end.

Sample hazard assessment form

A hazard is any situation, condition or thing that may be dangerous to the safety or health of workers.

Reference: OHS Code Part 1.

Assessing hazards means taking a careful look at what could harm workers at the work site.

The purpose of hazard assessment is to prevent work-related injury or illness to workers.

Step 1: On the Hazard identification checklist, check off all the hazards or potential hazards that are present at your work site. Add any identified hazards specific to your work site to the list:

Company: _____ **Location:** _____

Date of assessment: _____ **Completed by:** _____

Hazard identification checklist			
Physical hazards		Chemical hazards	
Lifting and handling loads	<input type="checkbox"/>	Chemicals (identify types)	<input type="checkbox"/>
Repetitive motion	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Slipping and tripping	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Moving parts of machinery	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Working at heights	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Pressurized systems	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Vehicles	<input type="checkbox"/>	Dusts	<input type="checkbox"/>
Fire	<input type="checkbox"/>	Fumes (identify types)	<input type="checkbox"/>
Electricity	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Noise	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Lighting	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Temperature – heat or cold	<input type="checkbox"/>	Mists and vapours (identify types)	<input type="checkbox"/>
Vibration	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Ionizing radiation	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Workplace violence	<input type="checkbox"/>	• Type:	<input type="checkbox"/>
Working alone	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Other:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Biological hazards		Psychological hazards	
Viruses	<input type="checkbox"/>	Working conditions	<input type="checkbox"/>
Fungi (mould)	<input type="checkbox"/>	Fatigue	<input type="checkbox"/>
Bacteria	<input type="checkbox"/>	Stress	<input type="checkbox"/>
Blood and bodily fluids	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Sewage	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Other:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

Note: If you work in a high hazard industry, an industry specific checklist may be required.

Sample hazard assessment and control sheet²

Step 2: Take the hazards identified on the checklist above and list them on the Hazard Assessment and Control Sheet. Identify the controls that are in place: engineering, administrative, personal protective equipment (PPE) or combination for each hazard.

Company: _____ **Location:** _____
Date of assessment: _____ **Completed by:** _____

Hazard	Controls in place (list)		Follow-up action(s) required	Due date/Person responsible
	Engineering	Administrative PPE		

²Hazard Identification Checklist and Hazard Assessment and Control Sheet adapted from Small Business Health and Safety Tool kit, Occupational Health and Safety, Alberta Employment and Immigration (2006).



Employer tip! Whenever possible, **hazards should be eliminated.**

If this is not possible they must be controlled. Control means reducing the hazard to levels that do not present a risk to worker health.

Controls, in order of preference include:

Engineering controls:	Administrative controls:	Personal protective equipment (PPE)
<ul style="list-style-type: none"> • Try to eliminate the hazard completely. This could mean removing trip hazards on the floor or disposing of unwanted chemicals, etc. • Isolate the hazard: for example, use sound proof barriers to reduce noise levels, use an enclosed spray booth for spray painting, use remote control systems to operate machinery 	<ul style="list-style-type: none"> • Use safe work procedures • Provide training and supervision for workers • Ensure regular maintenance of machinery and equipment • Limit exposure times by using job rotation 	<ul style="list-style-type: none"> • Includes gloves, hard hats, hearing and eye protection, safety harnesses, protective clothing, respirators, steel-toed boots • Ensure that the right type of PPE is selected for the job, the PPE fits properly and is comfortable under working conditions, the workers are trained in the need for PPE, its use and maintenance • PPE is stored in a clean and fully operational condition

Parent/guardian consent for employment of a youth²

Written consent from a parent or guardian is required in an application for permit to the Director of Employment Standards in order to hire youth under the age of 18.

The consent of only one parent or guardian is required. Parents and guardians do not have to use a specific prescribed consent form, but they must give the employer written consent.

An employer must retain a copy of this consent form on the employee's file and a copy of the form should be retained by the parent.

Note: This form is proposed as an example. It can be modified or adapted to meet your needs. No form is imposed by the Code respecting Employment Standards.

²Adapted from Saskatchewan Ministry of Advanced Education, Employment and Labour, Minimum Age of Employment Tool Kit: Information for Parents and Guardians of 14 and 15 year old Workers.

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Consent for employment of a youth

Section A: Youth information		
Name of young person		
Last	First	Middle initial
Mailing address		
Street/PO Box number		
City	Province	Postal Code
Telephone		Date of birth
Home	Cell	Month/Day/Year
Section B: Employer information		
Name of business		
Mailing address		
Street/PO Box number		
City	Province	Postal Code
Telephone		
Business		E-mail
Section C: Written consent		
I (print your name)		
Confirm that I am the parent and/or guardian (specify)		
This is my written consent for the aforementioned to be employed by		
Name of employer		
I certify that the information I have provided is true and correct to the best of my knowledge and belief. This consent can be withdrawn at any time without notice.		
Signature of parent or guardian		
Mailing address		
Street/PO Box number		
City	Province	Postal Code
Telephone		
Home	Cell	E-mail

Common exceptions from Employment Standards

The Employment Standards Regulation makes exceptions to the minimum standards for employees in certain industries and occupations. In addition, employees in certain industries and occupations are exempted from some of the minimum standards. The table below provides a summary of employees, professions and occupations to whom exceptions and exemptions apply. For more information, please see the Code and Regulation.

Type of salesperson, professional or worker for whom exceptions apply	Records, hours of work and overtime	General holidays and general holiday pay	Vacations and vacation pay	Minimum wage
Agrologist or agrologist-in-training	x	–	–	W
Ambulance attendant	✓	–	–	–
Architect	x	–	–	W
Automotive, recreational vehicle, truck or bus salesperson	x	x	x	W
Caregiver (home care and residential care)	✓	–	–	
Certified general accountant or student member	x	–	–	W
Certified management accountant or student member	x	–	–	W
Chartered accountant or student	x	–	–	W
Chiropractor	x	–	–	W
Construction equipment (heavy duty or road construction) salesperson	x	x	x	W
Construction worker*	–	✓	✓	–
Counsellor or instructor at an educational or recreational camp operated on a charitable/not-for-profit basis	x	x	–	x
Dentist	x	–	–	W
Denturist or student	x	–	–	W
Domestic employee	✓	–	–	M
Engineer, geoscientist or member-in-training, engineering technologist	x	–	–	W
Extra in a film or video production	x	x	x	x
Farm machinery salesperson	x	x	x	W
Farm and ranch worker**	x	✓	–	–
Field catering employee	✓	–	–	–
Geophysical exploration employee	✓	–	–	–

Information systems professional	x	–	–	W
Insurance salesperson	x	x	x	x
Irrigation district employee	✓	–	–	–
Land agent (licensed)	x	–	–	W
Land surveying employee	✓	–	–	–
Lawyer or student-at-law	x	–	–	W
Logging or lumbering employee	✓	–	–	–
Managers, supervisors and those employed in a confidential capacity	x	–	–	–
Mobile/manufactured home salesperson	x	x	–	W
New home salesperson	x	–	–	W
Oilwell servicing employee	✓	–	–	–
Optometrist	x	–	–	W
Open-air nursery employee	✓	–	–	–
Podiatrist	x	–	–	W
Psychologist	x	–	–	W
Realtors	x	x	x	x
Salespersons for direct sellers	x	x	–	***
Securities salesperson	x	x	x	x
Taxi cab driver	✓	–	–	–
Traveling salesperson	x	x	x	W
Truck driver	✓	–	–	–
Veterinarian	x	–	–	W

✓ indicates an exception

x indicates an exemption

– no exception or exemption

W these employees are subject to a weekly rather than hourly minimum wage

M these employees are subject to a monthly rather than hourly minimum wage

* employees specified in the Regulation are also exempt from termination notice and pay provisions in the Code

** minimum standards only apply to waged, non-family employees. Therefore, these provisions only apply to those employees.

*** these salespersons are subject to a weekly rather than hourly minimum wage unless they are under 16 years of age

Term	Definition
Alberta Human Rights Act (AHR Act)	In Alberta, the <i>Alberta Human Rights Act (AHR Act)</i> protects Albertans from discrimination in certain areas based on specified grounds. The <i>AHR Act</i> prohibits discrimination in the area of employment. Specifically it prohibits discrimination based on the protected grounds of race, colour, ancestry, place of origin, religious beliefs, gender, age, physical disability, mental disability, marital status, family status, source of income and sexual orientation.
Alberta Human Rights Commission	The Alberta Human Rights Commission carries out functions under the <i>AHR Act</i> . The Commission's purpose is to foster equality and to reduce discrimination. It fulfills this mandate through public education and community initiatives, through the resolution and settlement of complaints of discrimination, and through human rights tribunal and court hearings. For more information visit: www.albertahumanrights.ab.ca .
Administrative penalty	An administrative penalty is a fine issued to an employer as a result of non-compliance with the minimum employment rules or an enforcement action against the employer.
Anniversary date	This date is important for calculating entitlements for annual vacation and vacation pay. The anniversary date is the date that the employee started to work for the employer.
Average daily wage (as used for calculating general holiday pay)	The average daily wage is used for calculating how much an employee must be paid for a general holiday that was not worked. It is calculated as five per cent of the employee's wages, vacation pay and general holiday pay earned in the four weeks leading up to the general holiday.
Averaging agreement	An averaging agreement is a way to average the number of hours an employee works to determine overtime pay or time off with pay. There are two types of agreements: Hours of Work Averaging Agreement (HWAA) and Flexible Averaging Agreements (FAA).
Bereavement leave	Eligible employees who experience the death of an immediate or extended family member are entitled to an unpaid, job-protected leave of absence for up to three days per year.
Breach of duty	Breach of duty can occur when an employee knowingly jeopardizes the interests of the employer, reveals confidential information, breaches company policies or conducts him/herself dishonestly.
Citizenship ceremony leave	Eligible employees who receive notice to receive their Canadian citizenship certificate are entitled to a half-day of unpaid, job-protected leave of absence once in their lifetime.
Collective agreement	A collective agreement is an agreement, in writing, between an employer or an employers' organization and a bargaining agent containing terms or conditions of employment. It may include one or more documents containing one or more agreements.

Compassionate care leave	Eligible employees who are caregivers are entitled to an unpaid, job-protected leave of absence to give care or support to a seriously ill family member who is at risk of death within 26 weeks. The maximum amount of compassionate care leave is 27 weeks, and may be broken into multiple periods at least one week in length, within the 27 weeks.
Continuous employment	Continuous employment refers to the continuity of service, and all of the benefits that this brings, that an employee who remains employed at a company has when ownership of the company changes hands. It is important for employment records and calculating length of service (upon termination).
Critical illness of leave	Eligible employees who need to provide care for a critically ill child under the age of 18 are entitled to an unpaid, job-protected leave of absence for up to 36 weeks. Eligible employees who need to provide care to a critically ill adult family member are entitled to 16 weeks.
Daily overtime hours	Any hours more than eight hours worked in each day are considered daily overtime hours.
Daily wage	Daily wages means the wage of an employee on a normal work day.
Date of delivery	The date of delivery refers to the date when the pregnancy of an employee terminates with the birth of a child or when the pregnancy otherwise terminates.
Death or disappearance of child leave	Eligible employees who have experienced the death or disappearance of a child under the age of 18, as a result of a probable crime, are entitled to an unpaid, job-protected leave of absence for up to 52 weeks if the child disappeared or 104 weeks if the child died.
Domestic violence leave	Eligible employees who have experienced domestic violence are entitled to an unpaid, job-protected leave of absence for up to 10 days per year.
Earnings	Earnings refer to wages, overtime pay, vacation pay, general holiday pay and termination pay.
Employee	An employee (worker) is someone who works for an employer. He/she is employed to do work and receives wages in exchange for his/her efforts.
Employer	An employer is a person who employs an employee.
Employment Insurance	Employment Insurance provides temporary financial assistance to unemployed Canadians who have lost their job through no fault of their own, while they look for work or upgrade their skills. Canadians who are sick, pregnant, or caring for a newborn or adopted child, as well as those who must care for a family member who is seriously ill with a significant risk of death, may also be assisted by Employment Insurance.
Employment record	An employment record is the employment information required by the Code for the employer to keep up to date and any other record needed to determine whether an employee is entitled to anything under the <i>Employment Standards Code</i> .

Flexible Averaging Agreements (FAA)	At the request of the employee, these agreements allow employers to schedule an individual employee to work longer hours per day paid at their regular wage rate and average the number of hours worked over a period of one to two weeks to determine overtime.
General holidays	There are nine general (statutory) holidays in Alberta. New Year's Day, Alberta Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day.
Group overtime agreements	A group overtime agreement is between an employer and a designated group of employees. The employer and a majority of the employees in the designated group must sign the agreement. The agreement can be cancelled or changed by either party by giving one months' notice to the other.
Hazard	A hazard is any situation, condition or thing that may be dangerous to the safety or health of an employee.
Hazard assessment	A process used to identify the health and safety hazards and evaluate the risk associated with job tasks. Covered under OHS – but necessary when employing adolescents.
Hours of work	Hours of work refer to the period of time during which an employee works for an employer, and time off with pay instead of overtime pay provided by an employer and taken by the employee.
Hours of Work Averaging Agreements (HWAA)	Allow employers to schedule an individual employee or group of employees to work longer hours per day paid at their regular wage rate and average the number of hours worked over a period of one to 12 weeks to determine overtime.
Individual overtime agreements	An individual overtime agreement is between one employee and an employer. Either the employee or the employer can cancel or change the agreement by giving the other party one months' notice in writing.
Just cause	An employer can terminate an employee, without notice, for just cause. Termination for just cause typically involves conduct that is serious enough to justify the employer ending the employment relationship.
Length of service	Length of service refers to the amount of time that an employee has worked for an employer. It can include more than one period of employment if the breaks between periods are not longer than 90 days.
Long-term illness and injury leave	Eligible employees who have a long-term illness or injury are entitled to an unpaid, job-protected leave of absence for up to 16 weeks per year.
Manager	The guideline for Employment Standards is that a manager directs and supervises the activities of other employees and has duties and a level of authority that differ from those individuals.
Maternity leave	Maternity leave is for birth mothers only. It is up to 16 consecutive weeks in duration. It is intended to help mothers recover from the physical strain of childbirth.
Minimum wage	The minimum wage is the rate of pay that employers must pay employees in the province of Alberta. This wage is set out in Part 2 of the Employment Standards Regulation

Occupational Health and Safety Act (OHS Act)	The <i>OHS Act</i> describes obligations and duties that serve to protect and promote the occupational health and safety of workers throughout Alberta. It describes the rights and responsibilities of employers, workers, and others connected with the work site. www.work.alberta.ca/ohs
Overtime agreement	An overtime agreement is an agreement between an employer and employees that explains how overtime and overtime pay will be dealt with.
Parental leave	Mothers, fathers and/or adoptive parents are eligible for up to 62 consecutive weeks of unpaid, job protected parental leave. This leave can be taken by one parent or shared between two parents, but the total combined parental leave cannot exceed 62 weeks.
Pay period	A pay period can be daily, weekly, bi-weekly, semi-monthly or monthly. It cannot be longer than one month. An employee must be paid all wages, overtime and general holiday pay earned in a pay period within 10 consecutive days after the end of the pay period.
Personal and family responsibility leave	Eligible employees who need to address health matters or family responsibilities are entitled to an unpaid, job-protected leave for up to five days per year.
Record of Employment (ROE)	A Record of Employment (ROE) is a form (either paper or electronic) that employers complete for employees receiving insurable earnings who stop working and experience an interruption of earnings. It is the single most important document in the Employment Insurance (EI) program and employees require a ROE before they can apply for and receive Employment Insurance benefits. For more information on ROEs and Employment Insurance visit: www.canada.ca/en/employment-social-development/programs/ei.html .
Regular schedule	A regular schedule is a type of work schedule where employees may work the same or different hours on different days of the week, but in a pre-determined and repetitive pattern.
Reservist leave	Eligible employees who are reservists are entitled to an unpaid, job protected leave of absence when deployed to an international operation or domestic emergency.
Rest periods	Refers to the ½ hour period of time that an employer must give to each employee during a shift that is five consecutive hours.
Split shift	A type of work schedule that is divided into two or more periods of time, such as morning and evening, with a break of several hours between them.
Statement of earnings	A statement of earnings is a written statement detailing the hours of work and rate of pay, that the Code requires employers to provide employees at the end of each pay period.
Temporary layoff	A temporary layoff occurs when an employee is temporarily laid off from a position, but will be returning to that position. In Alberta, the maximum duration of a temporary layoff is 59 days.
Termination notice	Notification provided by either the employer or the employee to signify the end of an employment relationship.

Termination pay	Termination pay is a payment that an employer can give an employee in lieu of the amount that the employee would have earned had the employee worked out the required termination notice period.
The 8/44 rule	This is a rule used to calculate overtime. Overtime is all hours worked in excess of eight hours a day, or 44 hours a week, whichever is greater.
Wage rate	A wage rate refers to the hourly rate of pay for wages.
Wages	Wages can include: salary, pay, money paid for time off instead of overtime pay, commission or remuneration for work. It does not include: overtime pay, vacation pay, general holiday pay and termination pay; payments made as a gift or bonus that is dependent on the discretion of an employer and that is not related to hours of work, production or efficiency; expenses or an allowance provided instead of expenses; or tips or other gratuities.
Weekly overtime hours	Weekly overtime hours are any hours more than 44 hours worked in a week.
Work	Includes providing a service.
Work day	The work day is a 24-hour period ending at midnight or another 24-hour period as established by the consistent practice of an employer (e.g. 8 pm to 8 pm).
Work month	A work month is a calendar month or the period from a time on a specific day in a month to the same time on the same day in the following month as established by the consistent practice of an employer.
Work week	A work week is the period between midnight on a Saturday and midnight on the following Saturday, or seven consecutive days as established by the consistent practice of an employer.
Year of employment	A year of employment is a period of 12 consecutive months.
Youth	A youth is anyone under the age of 18.

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