

COMING SOON: SIGNIFICANT CHANGES TO ALBERTA'S EMPLOYMENT STANDARDS CODE

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Significant changes to the *Employment Standards Code* (the legislation that prescribes minimum standards of employment in Alberta, hereinafter the “**Code**”) introduced by Bill 32, the *Restoring Balance in Alberta's Workplaces Act* (“Bill 32”), are set to take effect on November 1, 2020.

Upcoming Changes

Key changes to the Code taking effect on November 1, 2020 include:

- Holiday pay. Holiday pay will still be based on an employee's “average daily wage”. However, the average daily wage will soon be calculated by averaging the total wages in whichever of the following periods the employer chooses over the number of days worked by the employee in that period:
 - the four-week period immediately preceding the holiday; or
 - the four-week period ending on the last day of the pay period immediately preceding the holiday.
- Deductions from pay. Employers will be permitted to make deductions from pay – without the employee's written permission – in order to correct an overpayment due to a payroll error or for vacation pay that was paid in advance.
- Rest periods. Employees who work a shift that exceeds 5 hours but is less than 10 hours will have to receive at least one unpaid 30-minute rest period. Employees who work a shift of 10 hours or more will have to receive at least two unpaid 30-minute rest periods. The current rules state that employees who work 5 hours or more must receive at least one unpaid 30-minute rest period within every 5 consecutive hours of work.
- Hours of work. More flexible rules will allow employers to implement overtime averaging arrangements – without employee consent – in non-unionized workplaces upon the provision of two weeks' notice. The number of weeks over which hours may be averaged will increase from 12 weeks to 52 weeks. However, averaging arrangements will still have to be in writing and must include a schedule setting out the daily and weekly hours of work for the averaging period.
- Final earnings. When an employee's employment terminates, employers will be required to pay their final earnings within whichever of the following periods the employer chooses:

- 10 consecutive days after the end of the pay period in which termination occurs; or
- 31 consecutive days after the termination date.

Currently, employers are required to pay final earnings no later than 3 consecutive days after the termination date in most cases.

- Penalties. Penalties imposed on employers for breaching the Code may be adjusted on a case-by-case basis, and employers will be given more time to satisfy payment obligations.

August 15, 2020 Changes

The changes summarized above are in addition to the following amendments to the Code which already came into effect on August 15, 2020:

- Temporary layoffs. Employees can now be temporarily laid off for a total of 90 days in a 120-day period without triggering an automatic termination of employment (previously 60 total days in a 120-day period). However, if the temporary layoff was a result of the COVID-19 pandemic, separate rules still allow employees to be temporarily laid off for 180 consecutive days.
- Group terminations. There is now one set of rules for all terminations of 50 or more employees at a single location within a four-week period. Thanks to Bill 32, employers are only required to give the Minister of Labour and Immigration written notice of at least four weeks, unless the employer is unable to do so, in which case the employer must provide written notice as soon as is reasonable and practicable in the circumstances. Previously, employers were subject to escalating notice requirements depending on the number of employees being terminated.
- Variances and exemptions. More flexible rules now allow an employer, a group of employers or an employer association to seek a variance or exemption to Code requirements by filing an application with the Director of Employment Standards.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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