

# TAKING STOCK OF ALBERTA'S NEW EMPLOYMENT STANDARDS

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In June 2017, the Alberta Government paved the way for significant changes to the *Employment Standards Code* (the legislation that prescribes minimum standards of employment in Alberta, hereinafter the “Code”) by passing the *Fair and Family-Friendly Workplaces Act* (“**Bill 17**”). Then, in December 2017, the Government passed Order in Council 441/2017, which amended the *Employment Standards Regulation* to the Code (the “**Regulation**”) and gave rise to even more changes to the existing standards.

Most of the changes came into force on January 1, 2018, affecting all provincially-regulated employers in the province. In this article, we will take stock of some of the new rules that employers must follow in the post-Bill 17 era.

## Unpaid Leaves

- **Maternity Leave:** Eligible employees are now entitled to 16 weeks of unpaid, job-protected maternity leave (up from 15 weeks). According to the Regulation, an employee may commence maternity leave at any point during the 13 weeks immediately prior to the estimated date of delivery.
- **Parental Leave:** Under the Regulation, birth and adoptive parents are now entitled to 62 consecutive weeks of unpaid, job-protected parental leave (up from 37 weeks). This change brings Alberta’s parental leave standards into line with the new Employment Insurance parental benefit period, including the one-week waiting period.
- **Compassionate Care Leave:** Employees are now entitled to up to 27 weeks of unpaid, job-protected compassionate care leave (up from 8 weeks) to provide care or support to a family member with a serious medical condition and a significant risk of dying within 26 weeks. Employees are no longer required to be the primary caregiver of the family member in order to take such a leave.
- **Critical Illness Leave:** Under the Regulation, eligible employees can now take up to 36 weeks of unpaid, job-protected critical illness leave for the purpose of providing care or support to a critically ill child. Eligible employees can also take up to 16 weeks of leave for the purpose of providing care or support to certain critically ill family members.
- **New Leaves:** Bill 17 also introduced a number of new unpaid, job-protected leaves, including long-term illness and injury leave, personal and family responsibility leave, domestic violence leave, bereavement

leave, citizenship ceremony leave and death or disappearance of child leave. More information about these new leaves is available [here](#).

## Hours of Work

**Averaging Agreements:** Bill 17 has replaced compressed work week arrangements with “averaging agreements”,<sup>[1]</sup> which allow employers and a majority of affected employees to agree to average work hours over a period of one to 12 weeks for the purpose of determining overtime eligibility. Work weeks may also be compressed under averaging agreements. The Regulation clarifies that overtime is payable to employees subject to an averaging agreement based on the greater of hours worked in excess of:

- i. eight hours a day (if scheduled for less than eight hours) or daily scheduled hours (if eight or more hours were scheduled); and
  - ii. 44 hours a week (in a one-week averaging period) or an average of 44 hours a week (in a multi-week averaging period).
- *Flexible Averaging Agreements:* Similarly, employers and individual employees who work at least 35 hours per week can now enter into “flexible averaging agreements”. Such agreements allow the parties to extend the daily overtime threshold up to a maximum of 10 hours a day. When an employee works more than his or her scheduled hours in a day (but not overtime hours), the employer must provide the employee with time off on a 1:1 ratio, with pay at the employee’s regular wage rate. Flexible averaging agreements also allow the parties to average work hours over a period of up to two weeks for the purpose of determining weekly overtime eligibility.
  - *Variances:* Under the Code, the Director of Employment Standards may, on application by an employer, issue a variance or exemption:
    - i. extending the maximum hours of work from 12 consecutive hours to no more than 16 consecutive hours;
    - ii. extending the maximum period of 24 consecutive work days to a number of days the Director considers appropriate in the circumstances;
    - iii. extending the averaging period to no longer than 26 weeks; and/or
    - iv. reducing the minimum hours of pay to not less than 30 minutes but not more than 2.5 hours.

## General Holidays

The requirement that an employee must have worked for 30 days in the 12-month period before a general holiday has been removed, as has the distinction between regular and non-regular days of work. If an eligible employee does not work on a general holiday, the employee is entitled to their average daily wage rate, which is now calculated as 5% of the employee’s wages, general holiday pay and vacation pay earned in the 4-week

period immediately preceding the general holiday.

### **Deductions from Earnings**

In addition to the existing prohibition against wage deductions for cash shortages or loss of property where someone other than the employee had access to the cash or property, the Code and the Regulation now explicitly prohibit deductions due to:

- faulty work or damage, including any act or omission of the employee causing loss to the employer;
- costs of furnishing, using, repairing or laundering uniforms or apparel that the employer requires the employee to wear during the employee's hours of work; and/or
- cash shortages resulting from a failure to collect any or all of a purchase price from a purchaser.

### **Group Terminations**

As a result of Bill 17, employers intending to dismiss 50 or more employees at a single location within a 4-week period must now provide the Minister of Labour with 8 to 16 weeks' notice of such intention, depending on the number of employees affected. However, the Regulation makes it clear that notice to the Minister is not required where the employees are being let go as part of a seasonal reduction or where fixed-term or task employment contracts come to an end.

### **Enforcement**

In order to ensure that the new employment standards are fully and effectively implemented, the Alberta Government has also introduced the following enhanced enforcement measures:

- *Complaint:* Employees now have the ability to file a complaint with an Employment Standards Officer alleging that an employer failed to provide "anything" to which the employee is entitled under the Code. Previously, complaints were effectively limited to cases where an employer allegedly failed to pay earnings.
- *Self-Audits:* Employment Standards Officers now have the authority to direct employers to conduct self-audits in a form prescribed by the Ministry of Labour.
- *Offences:* Failure to comply with the Code, the Regulation and/or an authorizing or enforcement instrument is now an offence. Previously, only contravention of designated provisions were deemed an offence. Further, prosecution for an offence may be commenced within two years (previously one year) from the date on which the alleged offence occurred.
- *Administrative Penalties:* If the Director of Employment Standards decides that an employer has failed to comply with the Code, the Regulation and/or an authorizing or enforcement instrument, the Director may require the employer to pay an administrative penalty of up to \$10,000 in accordance with the

following schedule:

	1st contravention or failure to comply ("FTC")	2nd contravention/ 1st repeat FTC within 3 years	3rd contravention/ 2nd repeat FTC within 3 years.
Level 1	\$500 minimum	\$1,000 minimum	\$2,000 minimum
Level 2	\$1,000 minimum	\$2,000 minimum	\$4,000 minimum
Level 3	\$1,500 minimum	\$3,000 minimum	\$6,000 minimum

- *Economic Benefit*: Where the Director is of the opinion that an employer or person has derived an economic benefit directly or indirectly from a contravention or failure to comply, a one-time payment may be ordered to address such economic benefit. The amount cannot exceed the amount of the economic benefit that was derived as a result of the contravention or failure to comply.

The foregoing is a non-exhaustive list of changes to the Code and the Regulation. For more information about the new employment standards in Alberta, do not hesitate to contact a member of McMillan's Employment and Labour Relations team.

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[i] Compressed work week arrangements entered into before January 1, 2018, remain valid until the earlier of: (i) January 1, 2019; (ii) the termination of the compressed work week arrangement, or (iii) where part of a collective agreement, the day a subsequent collective agreement is entered into.[ps2id id='1' target='']

### **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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