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Borden Ladner Gervais

Labour & Employment Law in Alberta

A Practical Guide

2018

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Introduction

In Alberta as in other Canadian provinces, laws dealing with employment matters come within provincial jurisdiction, except where employment in a work or undertaking falls within one of the heads of federal legislative power of the Parliament of Canada. The latter include aeronautics, shipping and navigation, longshoring (stevedoring) activities, national railways, banking, inter-provincial and international bus and transport companies, radio and television broadcasting, cable TV and other forms of telecommunications, operations which are declared to be for the general advantage of Canada or two or more provinces (such as grain elevators and nuclear facilities) and any other business which is an integral and essential part of a federal work or undertaking.

The federal Parliament has exclusive jurisdiction over employment insurance benefits and bankruptcy, whereas workers' compensation is a provincial matter.

Distinct federal and provincial legislation and regulations exist governing minimum employment and labour standards, collective bargaining, occupational health and safety, human rights, collective dismissal, protection of personal information, pension plans and successor rights and obligations, all of which provisions apply separately to federally and provincially-regulated employers.

Since this document provides only an overview of Alberta's provincial legislation and regulations, employers operating in Alberta, or contemplating carrying on business in Alberta, should consult with their professional advisors to determine their specific rights and obligations under applicable statutes and regulations. Employers falling under federal jurisdiction should exercise particular care, as many of the statutes and regulations reviewed in this paper do not apply to them.

Employment Contracts

Individual Contracts of Employment

Individual contracts of employment are generally governed by the common law and by the *Employment Standards Code,* RSA 2000, c E-9 (the "**Code**"). A contract of employment, whether it be oral or in writing, is defined as a contract by which the employee undertakes to do work for remuneration, according to the instructions and under the direction or control of the employer. It is to be distinguished from a contract of services, under which the contractor or provider of services (often a consultant) is free to choose the means of performing the contract and under which no relationship of subordination exists between the contractor or the provider of services and the client.

Under a contract of employment, the employer is bound not only to allow for the performance of the work and to pay the remuneration agreed upon, but it must also take any measures consistent with the nature of the work to protect the health and safety of the employee.

The employee is bound not only to carry on their work prudently and diligently, but must also act faithfully and honestly and not use any confidential information that they may obtain by virtue of the employment.

The parties may stipulate in writing and in express terms that, even after the termination of the contract, the employee may not compete with the employer, or solicit any employees or customers of the employer, either for the employee's own benefit or on behalf of any other person. However, in order to be enforceable, the non-competition and non-solicitation provisions must be limited with respect to duration, location, and type of competitive activity, to only what is necessary for the protection of the legitimate interests of the employer. In the employment context, courts are more likely to enforce a non-solicitation provision than a non-competition provision.

Contracts of employment are either for a fixed term or an indeterminate term. When an employee with a fixed term contract of employment continues working, with the consent of the employer, beyond the expiration of the contract, the contract will become one of indefinite term.

Termination of the Contract of Employment

Employees may be terminated for just cause without reasonable prior notice of cessation of employment or a payment in lieu thereof.

Subject to certain very important statutory exceptions, employees may be terminated without cause by giving prior notice of termination or pay in lieu of notice. There are two sources of notice of termination: statutory notice and common law reasonable notice.

Statutory notice is provided for in the *Employment Standards Code,* and varies from 0 to 8 weeks, depending on the number of years of service. This is the minimum amount of notice of termination that employers must provide to their employees. It cannot be reduced by contract.

Common law reasonable notice is determined by the courts, and may be awarded in addition to statutory notice. The amount of common law reasonable notice of termination that an employee is entitled to is determined by consideration of a number of factors, including the nature of the employment, the availability of alternate employment, the age of the employee and the length of service. There is no "rule of thumb" for how much notice an employee will be entitled to, nor is there a maximum notice period at common law, but it usually ranges from 1 to 24 months. Most employees will be entitled to between 2 to 4 weeks' notice per year of service, although it can be more in the case of senior or technical roles, and in the case of short service employees.

An employee whose employment has been terminated has an obligation to make reasonable efforts to obtain alternative employment in order to mitigate their damages. In this regard, there is a positive obligation placed upon terminated employees to seek comparable alternative employment. Any income which an employee may derive or should have derived from alternative employment will reduce the amount of pay in lieu of common law reasonable notice that the employee is entitled to receive, however, it will not reduce the employer's mandatory minimum obligation under the *Employment Standards Code*.

Parties to an employment contract may specify the amount or pay in lieu of notice that an employee will be entitled to receive upon the termination of their employment, so long as the amount of notice is at least as much as the employee would be entitled to under the *Employment Standards Code.* If a termination provision in an employment contract purports to provide less notice than the employee would be entitled to under the Code, it will be considered void as against public policy, and the employee will be entitled to common law notice, or pay in lieu thereof. An employee who has a contractual notice provision is not required to mitigate their damages unless otherwise stipulated in the contract.

In the event a fixed-term contract is terminated prior to its expiry, the notice requirement is the unexpired portion of the term.

Medical Testing

In Alberta, an employer's right to require a medical exam is limited both by an employee's human rights and their right to privacy.

Medical conditions, including drug and alcohol dependencies, are forms of disability, and are thus protected grounds under the *Alberta Human Rights Act*. Generally, testing for a condition that is a physical or mental disability is only allowed if the condition would prevent the applicant from carrying out their key job duties, and if there is no way to accommodate the condition without undue hardship on the employer, taking into account factors such as cost, additional sources of funding, if any, and the health and safety requirements of the job.

The results of the medical exam cannot serve as a reason to exclude candidates, unless the candidate could not, even with accommodation, satisfy the employment requirements. Additionally, employers may not refuse to hire applicants because they have disabilities, ailments, or physical anomalies that could be problematic in the future if they pose no problems at the time of hiring.

In order to minimize exposure to discrimination complaints, pre-employment medical testing should only be done after the candidate receives a formal offer of employment which is made conditional on the results of the exam, and only if there are no other reasonable ways for the employer to determine the applicant's ability to perform the key duties of the position. The results of the testing should be kept strictly confidential, and used only as necessary to determine the candidate's suitability to perform the job.

Drug Testing

Drug testing is permitted in Alberta, subject to certain conditions. Like medical testing, it should only be done after the candidate has received a formal offer of employment, conditional on the drug and alcohol test.

Random drug and alcohol testing of employees is allowed only if the employer demonstrates that: (i) it has a dangerous workplace; and (ii) there is a general problem with drug or alcohol abuse in the workplace.

Drug and alcohol dependency is considered a disability under human rights law, and is thus a protected ground under the *Alberta Human Rights Act.* However, recreational use of drugs and alcohol is not protected. If an employee or potential employee fails a drug or alcohol test and is found to have a drug or alcohol dependence, the employer has the duty to accommodate that employee to the point of undue hardship.

Screening Assessments

Alberta employers occasionally screen potential employees by making them undergo pre-employment aptitude or psychological testing. In doing so, employers must tread carefully because of Alberta's strict privacy and human rights laws.

Generally, employers may ask candidates to undergo pre-employment aptitude or psychological testing so long as they do not infringe on the applicant's privacy and human rights either in the testing process itself or the way in which the test results are managed.

The aptitude requirements must be based upon the qualities and abilities objectively required of the profession or job. Employers must be very careful that the characteristics they are screening for, and the testing process, are not directly or indirectly discriminatory.

Credit Background Check

The information sought by an employer pursuant to a pre-employment credit check is clearly information that would fall within the scope of Alberta privacy laws. Moreover, as opposed to the use of court records to conduct criminal background checks, credit records are not public information.

Consequently, any credit background check conducted on prospective employees in Alberta could be challenged on the basis of a guiding principle of Alberta privacy law, which limits an employer's right to collect personal information to what is reasonably required for the purposes of establishing, managing or terminating an employment relationship. As in the

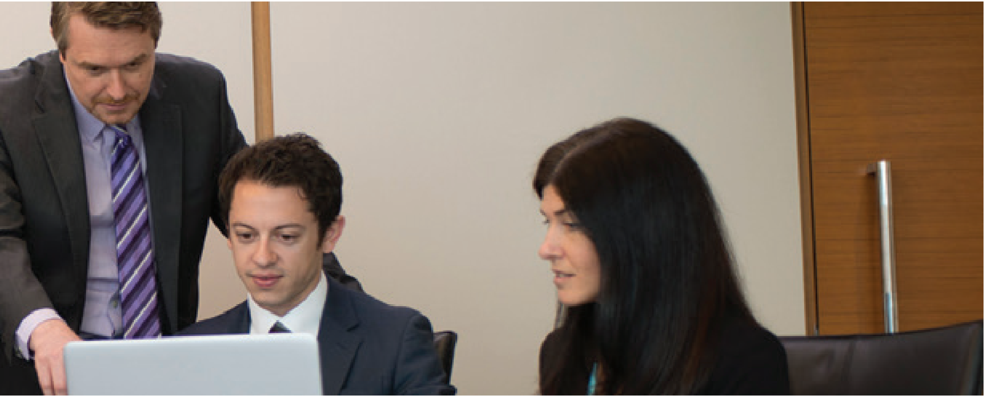
case of restrictions relating to criminal background checks, credit background checks should only be performed where an employee has freely consented to such a credit check and where the credit check is necessary for the conclusion or performance of the employment contract. Alberta employers must be prepared to demonstrate the reasons for which credit background checks would be considered necessary.

In light of the foregoing, unless the nature of an employer's business is such that it may justify serious concerns linked with a prospective employee's financial status, requesting information on a prospective employee's credit history would likely constitute a breach of Alberta privacy laws.

Employee Handbook

The employer may also want to provide employees a handbook that details insured benefits plans and employer policies or rules governing probationary period, absences, safety, discipline, IT, social media, and so forth. Employee handbooks are quite common in Alberta. Safety policies and procedures are required, to comply with Occupational Health and Safety legislation.

Should an employer decide to provide employees with an employee handbook, the provisions of the handbook should be stated as binding on the parties, subject to the employer's ability to change the policies. This approach will allow the employer to rely on the provisions included in the handbook, without having to enter into a separate written employment agreement with each individual employee. An acknowledgement of receipt of the handbook on the part of the employee will suffice. If the employer expressly reserves the right to modify the policies unilaterally, while it may in some circumstances be obligated to give advance, reasonable notice of such changes, such a reserved right maximizes the degree of flexibility the employer retains.



Employee Deductions / Employer Contributions

Income Tax

Employers are required to make deductions at source from the earnings of their employees for taxes imposed under the federal and provincial income tax acts. They are also required to have employees complete separate TD1, Personal Tax Credit Return and TD1AB, Alberta Personal Tax Credit Return forms which provide the information that determines the amount to be deducted for income tax purposes.

Employment Insurance

The *Employment Insurance Act* requires an employer to make contributions based on the earnings of all employees, subject to certain exceptions. The contributions are made to the Employment Insurance Account maintained by the Government of Canada, from which unemployed insured contributors may draw benefits. Generally, each employer must deduct and remit a percentage of each employee's wages, up to a maximum annual premium, and must itself contribute 1.4 times the employee's premiums. The contribution rates and maximum annual premium are set each year by the Government of Canada. The employer's portion of Employment Insurance contribution is deductible for income tax purposes as a normal business expense.

An employer's premium can be reduced when it maintains a wage-loss plan that reduces employment insurance benefits payable in respect of unemployment caused by illness or pregnancy.

Canada Pension Plan

The *Canada Pension Plan Act* requires an employer to deduct Canada Pension Plan ("CPP") contributions from an employee's pensionable earnings if that employee is (1) in pensionable employment during the year, (2) not considered to be disabled under the CPP, and (3) 18 to 70 years old. Each year, the government determines the rate, the maximum pensionable earnings from which CPP is deducted, and the year's basic exemption, which is a base amount from which CPP is not deducted.

Social Insurance Card

A Social Insurance Number ("S.I.N.") is required in order to work in Canada, or to have access to government programs and benefits. Employers must obtain each new employee's S.I.N. within three (3) days after the day their employment begins, and maintain a record of the S.I.N. in order to provide the employee with tax reporting slips and Records of Employment. S.I.N.s are also used to record and forward employee payroll deductions for income tax, the Employment Insurance program, and Canada Pension Plan.

Minimum Labour Standards

Alberta's *Employment Standards Code,* RSA 2000, c E-9 (the "**Code**") sets out the minimum standards for the payment of earnings, hours of work, overtime and overtime pay, general holidays and general holiday pay, vacations and vacation pay, termination of employment and temporary layoffs, record keeping and various types of leave.

Hours of Work

Employees may not work over 12 hours in a day except in cases of unforeseeable or unpreventable emergencies. The normal workday is eight hours, though compressed workweeks with extended hours and fewer days per week are frequently found in some sectors of economic activity in Alberta.

Employees must have at least:

- one day of rest in each workweek (midnight Saturday to midnight of the following Saturday);
- two consecutive rest days after two weeks' work;
- three consecutive days after three weeks' work; and
- four consecutive days after four weeks' work.

Minimum Wage

The following minimum wage rates are set out in the Employment Standards Regulation:

Type of employee	October 1, 2017	October 1, 2018
Most employees – General minimum wage	$13.60/hour	$15/hour
Salespersons (including land agents and certain professionals)	$542/week	$598/week
Domestic employees (living in their employer's home)	$2,582/month	$2,848/month

The basic rules are:

- employers must pay at least the minimum wage;
- minimum wage is the same for adults, liquor servers, adolescents, youth and disabled people;
- wages do not include tips or expense money;
- there are separate weekly and monthly minimum wages for some salespersons and domestic employees; and
- maximum deductions below minimum wage for provided meals and lodging will remain at $3.35 per consumed meal and $4.41 per day's lodging.

Generally, employees must be paid for at least 3 hours of pay at the minimum wage each time they are required to report to work, or come to work for short periods. This 3-hour minimum does not apply if the employee is not available to work the full 3 hours.[1]

If an employee works for fewer than 3 consecutive hours, the employer must pay wages that are at least equal to 3 hours at the minimum wage. This applies even if they are sent home after less than 3 hours of work.

If an employee's regular wage is greater than the minimum wage, the employer may pay them for less than 3 hours of work at this higher rate.

If an employee is required to work a split shift and there is more than a 1-hour break between the 2 segments of the shift, the employee must be paid the minimum compensation described above for each segment of their shift.

1 Note that there are exceptions. For example, some employees (such as school bus drivers and home care employees) must be paid minimum compensation for 2 hours.

If a meeting or training occurs on an employee's regularly scheduled day off, the employee must be paid at least the minimum wage and overtime if applicable. If the meeting or training is less than 3 hours in length, the 3-hour minimum rule applies.

Payment of Wages

Part 2, Divisions 1 and 2 of the Code set out the rules for the payment of earnings to employees, as well as, employment records that employers must provide to their employees. Earnings include wages, overtime pay, vacation pay, general holiday pay and termination pay.

The maximum pay period that can be used by an employer to calculate earnings is one month. An employer can establish shorter pay periods such as daily, weekly, bi-weekly or semi-monthly. 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.

At the end of each pay period an employer must provide a written statement to each employee that includes the following information:

- pay period covered by statement;
- number of regular and overtime hours (banked hours);
- number of hours taken off in lieu of overtime;
- wage rate and overtime rate;
- earnings paid showing each component separately (e.g., wages, overtime, general holiday pay and vacation pay); and
- amount of each deduction from earnings and the reason for the deduction.

Employers may provide the statements electronically as long as employees are able to view and print them. Employers should also be mindful of any applicable privacy legislation.

When employment is terminated, employees must be paid their earnings as follows:

Within 3 days after the last day of employment, if:

- an employee provides the required amount of written notice of termination and the employee works to the end of their notice period;
- an employer provides the required amount of written notice of termination, and the employee works to the end of their notice period;
- an employer provides a combination of the required amount of written notice and pay in lieu of notice, and the employee works to the end of the notice period; and
- an employer chooses to pay termination pay in lieu of the required amount of written notice.

Within 10 days after the last day of employment, if:

- an employer or employee is not required by the Code to give notice of termination.

Within 17 or 24 days after the last day of employment, if:

- an employee fails to give the required amount of written notice of termination; the employer must pay the employee's earnings not later than 10 consecutive days after the date on which the notice would have expired if it had been given.

If an employer intends to reduce an employee's wage rate, overtime rate, general holiday pay, vacation pay or termination pay, the employee must be notified before the start of the pay period in which the reduction is to take effect. However, these rates must always be at least the minimum required by the legislated standards.

Deductions from Earnings

The Code allows certain legal deductions to be made from an employee's earnings. The amount of each deduction, and the reason for the deduction, must be listed on the employee's pay statement.

Employers can only take deductions from an employee's earnings if the deduction is:

- required by law, such as federal and provincial tax, contributions to the Canada Pension Plan, Employment Insurance premiums, or a garnishee of the court;
- authorized by a collective agreement (e.g., union agreements); or
- authorized in writing by the employee.

When they start their job, employees can agree in writing to deductions for: company pension plans; dental plans; social funds; and registered retirement savings plans.

Deductions an employer is not allowed to make, even if the employee authorizes the deduction in writing, include those listed below:

Faulty workmanship: Faulty workmanship is a failure by an employee to adequately perform their duties because of an accident, unforeseen circumstance, carelessness or incompetence.

Examples of faulty workmanship include accidental damage to an employer's vehicle or equipment, "walkouts" in a bar, breakage in a restaurant, and mistakes in production.

Cash shortages or loss of property: Deductions for cash shortages or loss of property cannot be taken from the employee's earnings if other individuals have access to the cash or property. This includes access by the employer or their representative, other employees, or customers.

In cases where cash is involved, the employee must be allowed to count their float, account for their sales, and finalize their accounting of the cash. Unless these conditions are met and the employee provides written authorization, the employer cannot make deductions for cash shortages or loss of property.

Overtime

Except for certain industries and professions, most employees are entitled to overtime pay. Overtime is all hours worked over 8 hours a day or 44 hours a week, whichever is greater. This is referred to as the 8/44 rule.

Except where there is a written overtime agreement, an employer must pay an employee overtime pay of at least 1.5 times the employee's regular wage rate for all overtime hours worked.

Sometimes, instead of paying overtime pay, an employer may give an employee time off work with pay (banked overtime) as part of an overtime agreement between the employer and employee.

Employees must use up banked overtime within 6 months of the end of the pay period in which they earned it, unless a special permit issued by the Director of Employment Standards allows the overtime banking period to be extended.

When a business changes ownership, it does not affect an employee's overtime benefit entitlement. The previous owner must pay all overtime pay accumulated up to the date of transfer of ownership, and the new owner must grant any banked overtime.

Calculating Overtime for Salaried Employees

Whether basic or special overtime rules apply, the formula for calculating overtime pay is the same. Overtime hours are calculated both on a daily and weekly basis, except in few instances that require overtime to be calculated on a monthly basis. The greater of the two calculations is the overtime.

It is important to note that even though the pay period may end mid-week, overtime pay is based on overtime hours for the work week, not the pay period.

Basic Overtime Pay Rate

Overtime hours must be paid out at least 1.5 times the employee's wage rate. This overtime rate of pay is multiplied by the total number of overtime hours that an employee has worked.

Exceptions

Overtime hours must be paid out at least 1.5 times the employee's wage rate. This overtime rate of pay is multiplied by the total number of overtime hours that the employee has worked.

If an employer establishes a work week of fewer than 44 hours (e.g., a 40-hour work week), overtime pay is still payable under the basic 8/44 rule. The exception to this is when a collective agreement, some other agreement, or the consistent practice of an employer, establishes that overtime hours are to be counted after working fewer than 8 hours in a work day or 44 in a work week.

Supervisors, managers, employees working in a confidential capacity and members of professions specified in regulations issued under the Code, are not required to be paid overtime. However, these employees may be entitled to be paid at their regular rate of pay for additional hours worked, depending on how those employees are paid. Care must be taken in the offer letter to ensure that the compensation offered is expressly offered for all hours worked and that overtime exempt status is addressed in the terms of employment as well.

Overtime Agreements

Employees and employers may enter into a mutual overtime agreement where, instead of paying overtime pay, an employer gives paid time off with regular pay. For every hour of overtime worked, 1.5 hours of time off must be banked.

Prohibition on Agreements not to Pay Overtime

Employers and employees cannot make agreements verbally or in writing that overtime pay is not to be paid.

If an investigation determines that an employer and employee agreed that the overtime rate is not to be paid, the agreement is contrary to the Code. Both the employer and employee can be prosecuted and the minimum standards of the Code for the payment of overtime pay will be enforced.

Statutory Holidays and Holiday Pay

Most employees in Alberta are entitled to take general holidays and to receive holiday pay immediately upon starting employment.

An employee is not eligible for holiday pay, if the employee:

- does not work on a general holiday when required or scheduled to do so; or
- is absent without consent from the employer, on their last regular working day preceding, or first regular working day following, the general holiday.

If an employee does not work on a general holiday, they are entitled to their average daily wage.

If an employee does work, the employer may:

- pay the employee's average daily wage plus 1.5 the employee's wage rate for all hours worked; or
- pay regular wages (plus overtime, if applicable) and provide a future day off with payment at the employee's average daily rate.

If an eligible employee is on vacation when a general holiday occurs, the employee can take off with pay the first scheduled working day after their vacation, or in agreement with their employer, they can take another day that would otherwise have been a work day, before their next annual vacation.

When an employee works on a general holiday and is paid general holiday pay at least 1.5 times the employee's wage rate, the hours worked on the holiday do not count when calculating overtime hours worked for the week in which the holiday falls.

The Code designates the following nine days as general holidays.

General Holiday	Definition of Holiday	2018	2019
New Year's Day	January 1	January 1	January 1
Alberta Family Day	Third Monday in February	February 19	February 18
Good Friday	Friday before Easter Monday	March 30	April 19
Victoria Day	Monday before May 25	May 21	May 20
Canada Day	July 1, except when it falls on a Sunday, then it is July 2	July 2	July 1
Labour Day	First Monday in September	September 3	September 2
Thanksgiving Day	Second Monday in October	October 8	October 14
Remembrance Day	November 11	November 11	November 11
Christmas Day	December 25	December 25	December 25

Optional General Holidays

If an employer, by agreement, designates additional general holidays for their employees, all employment standards rules related to general holiday pay still apply. Employees should confirm this and any pay entitlements with their employer.

The optional general holidays in Alberta are:

Optional Holiday	Definition of Holiday	2018	2019
Easter Monday	First Monday following Good Friday	April 2	April 22
Heritage Day	First Monday in August	August 6	August 5
Boxing Day	December 26	December 26	December 26

Vacation and Vacation Pay

Most employees are entitled to annual vacation time and vacation pay to make sure they can rest from work without loss of income. Also:

- employers must give vacation time, and employees must take the vacation to which they are entitled;
- employees must work for 1 year before they are entitled to vacation time; and
- employees are entitled to these minimum paid vacations:
  a) 2 weeks with pay – after each of the first 4 years of employment; or
  b) 3 weeks with pay – after 5 consecutive years of employment.

Employers can establish a common anniversary date for employees, for vacation purposes. However, an employee must not lose any entitlement to vacation time or pay as a result of the introduction of a common anniversary date.

When a business changes ownership, it does not affect an employee's vacation benefit entitlement. The previous owner must pay all vacation pay accumulated up to the date of transfer of ownership, and the new owner must grant any vacation time accumulated.

Vacation pay is based on an employee's wages (not other earnings) accrued at the time the vacation is taken. Wages are payment for work. For the purpose of calculating vacation pay, this definition does not include: overtime pay, general holiday pay, termination pay, an unearned bonus, tips and gratuities, or expenses and allowances.

For employees paid by monthly salary, the employer must pay the employee's regular rate of pay for the time of their vacation. Each week of vacation pay is calculated by dividing their monthly wage by 4.3333 (which is the average number of weeks in a month).

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

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

Temporary Leave

The Code provides for a number of unpaid leaves for employees who have been employed with the same employees for a minimum of 90 days:

- up to 16 weeks per calendar year of sick leave for long-term illness or injury;
- up to 27 weeks of compassionate care leave to care for family members who are gravely ill;
- up to 3 days of bereavement leave per calendar year;
- up to 36 weeks to provide care or support to a critically ill child and up to 16 weeks due to critical illness of an adult;
- up to 104 weeks due to the death of a child;
- up to 52 weeks due to the disappearance of a child;
- up to 10 days per calendar year for domestic violence leave; and
- up to 5 days per calendar year for personal or family responsibility leave.

Reservist Leave is available for employees who have completed at least 26 weeks of continuous employment to take part in operations with the Canadian Forces. The time allowed for this unpaid leave will depend on the operation or training situation.

If an employee suffers an injury or contracts an illness that could amount to a disability under the *Alberta Human Rights Act*, the employer will be required to reasonably accommodate the employee's absences related to illness and disability.

Maternity and Paternity Leave

The Code provides up to 16 weeks unpaid maternity leave for pregnant employees and up to 62 weeks unpaid parental leave immediately following the last day of maternity leave. Maternity and parental leave benefits payable under the federal *Employment Insurance Act* provide substantial income replacement for employees on maternity or parental leave.

In order to be eligible for job protection during a maternity or parental leave in Alberta, the employee must have worked for the employer for at least 90-days before the maternity or parental leave commences.

Notice of Termination of Employment or Layoff

Employees in Alberta are usually hired for an indeterminate term. Under the common law in Alberta, as in all common law jurisdictions in Canada, either an employer or an employee may terminate such a contract by giving reasonable notice in advance to the other party. Employers may, and frequently do, give pay in lieu of notice. An employer may terminate the contract for cause of a disciplinary nature without advance notice.

Employees may also be hired for a fixed term. In such cases, an employer putting an end to the contract before it expires will normally have to pay the employee the salary owed for the balance of the term, unless cause exists for a summary dismissal of the employee.

The Code provides for a 90-days probation period during which the employer may summarily terminate the employee's employment without notice or pay in lieu of notice. Equally, an employee may resign on the spot, during the probation period. Employers who wish to hire on a probationary basis, must specify the period of probation at the beginning of employment.

The Code provides for termination notice periods of between one and eight weeks (after the probation period is completed), depending on the length of the employee's service, for employees who have been employed for 90-days or longer. The employer has the option of providing pay in lieu of notice or a combination of notice and pay in lieu.

The Code notice periods for employers are minimum. Employees will frequently be entitled to much longer periods of notice in advance, or pay in lieu of notice, at common law in Alberta, unless the termination is for cause. Cause is normally of a disciplinary nature and does not include an employer's need to reduce its workforce for economic reasons.

Under the Code, an employer who wishes to maintain the employment relationship may temporarily lay off an employee. To be enforceable, the 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.

If these conditions are not met, the employee may have been unjustly or constructively dismissed.

A temporary layoff cannot be more than 59 days in duration within a 120-day period. On the 60th consecutive day of a temporary layoff, the employee's employment terminates and the employer must pay the employee termination pay on that day, unless:

- wages or benefits continue to be paid on behalf of the employee; or
- there is a collective agreement that provides other recall rights that are longer than the 59 days.

During the 59-day period, an employer may recall the employee with one week written notice. Should the layoff extend past the 59 days, the employment terminates and termination pay appropriate to the length of service of the employee is required.

The employment of an employee may be terminated while on temporary layoff, however, the employee is entitled to termination pay.

It is recommended that employers consider including a clearly worded termination clause in their employment offer letters or employment contracts to address probation periods, termination and resignation.

Record Keeping

The Code requires employers to maintain records for each employee relating to regular and overtime hours worked, wage rate and overtime rate, earnings paid separated by earning period, deductions and reasons for deductions, and any time that was taken in lieu of overtime payment. Following each pay period, the employer must give each employee a written statement accounting for the above information. The employer must also keep a record of the following for each employee:

- name, address, and date of birth;
- the starting date of employment;
- the date on which a general holiday is taken;
- each annual vacation, including the dates of vacation and in which employment cycle the vacation was earned;
- the wage rate and overtime rate when employment began, the date of any change thereto and description of the change;
- copies of documentation relating to maternity and parental leave;
- copies of documentation relating to reservist leave;

- copies of documentation relating to compassionate leave; and
- copies of termination notice and requests for employees to return to work following a temporary layoff.

These records must be maintained for at least three years from the date each record was generated.

Labour Climate in Alberta

Labour relations in Alberta have been generally stable over the last decade. This is expected to remain the same, despite significant amendments to the Alberta *Labour Relations Code* that came into force in 2017. In particular, the amendments include eliminating the requirement for secret ballot voting in certification applications in some instances (where there is card based evidence of more than 65% of the bargaining unit), introducing first contract arbitration, and a broad expansion of the powers of the Alberta Labour Relations Board.

In 2015, approximately 23.5% of workers in Alberta were unionized. However, the unionization rate for the private sector was just 10.8%. 71% of unionized workers in Alberta work in the public sector, even though there are more than three times as many private sector workers as there are public sector workers.[2]

From 2014 to 2016, 5 work stoppages occurred in Alberta, public and private sectors combined. This means there are on average 1.7 incidents per year. This is significantly lower than in the period from 2011 to 2013 where there was an average of 5.7 work stoppages per year.[3]

2 Source: Government of Alberta; Statistics Canada (Government of Alberta)

3 Source: Government of Canada

Union Certification

The Alberta *Labour Relations Code* ("**Code**") is primarily concerned with the recognition, certification, rights and obligations of unions. It is not significantly different from other Canadian jurisdictions' legislation and regulations with respect to the fundamental principles involved, such as the exclusive right of a certified union to represent an appropriate bargaining unit, the obligation for both employer and union to bargain diligently and in good faith and the submission to final and binding arbitration of any disagreement respecting the interpretation or application of a collective agreement.

What it Takes to Obtain Certification

The Code sets out rules governing the union certification process. In order to obtain certification, a union must obtain the membership of more than 50% of the employees included in the bargaining unit. Where between 40% and 65% of the employees have signed a union membership card, the Labour Relations Board must hold a representation vote and the union will be certified if it obtains the support of a majority (i.e., 50% plus one (1)) of the employees included in the bargaining unit. However, when signed membership cards of more than 65% of the targeted employees are filed by the union, no vote is required.

Contestation by the Employer

One of the objectives of the Code is to render union certification easily accessible. As a result, no employer or person acting for an employer or an association of employers may seek to dominate, hinder or finance the formation or the activities of an association of employees in any manner, or participate therein.

Furthermore, the Code forbids the use of intimidation or threats to induce anyone to become, refrain from becoming or cease to be a member of an association of employees.

In addition, no employer or any person acting for an employer may refuse to employ any person because that person exercises a right arising from the Code. Freedom of association is further guaranteed by the *Canadian Charter of Rights and Freedoms* and is a constitutional right according to the Supreme Court of Canada.

Working Conditions Pending Certification

Unless done in accordance with an established custom or practice, the employer may not modify the conditions of employment of its employees from the date of the filing of an application for certification until 30 days after certification is granted.

Employer Communication

Within the context of a union organization drive, an employer's freedom of expression is limited by the freedom of association held by its own employees, as recognized in the Code. When confronted with a union organization campaign, employers must be cautious and prudent in how they deal, both directly and indirectly, with their employees. Alberta courts have outlined examples of unlawful employer conduct in this regard, which include:

- threatening to shut down a business, should a union drive succeed;
- asking the employees how they intend to vote;
- making statements or actions that might show preference to a non-union employee;
- declaring that the employer will not deal with a union if it is certified;
- stating that unionization will take away benefits and privileges presently enjoyed by employees, or that the employer would have to proceed to lay-offs;
- making anti-union statements; and
- during the course of negotiations with the union, sending emails to union members in view of presenting to them the employer's demands and thereby bypassing the union.

An employer's message to its employees must rely heavily on facts and must not be seen to be threatening or coercive in nature. Employers are entitled to tell employees that they are free to join or not to join a union, and that once certified the union will represent all employees in the bargaining unit. Upon being specifically asked by its employees, an employer may also inform its employees of the obligations they would assume once unionized. For example, an employer may inform their employees on dues, initial fees, loss of income when on strike, and exclusive representation by the union.

Employers also remain free to correct any misleading or untrue statements made by union organizers. However, employers must do so in accurate and cautious terms. Employers may also inform employees that union members might attempt to solicit them at their homes.

Strike, Lockout and Anti-Scab Rules

A lawful strike or lockout can only occur if certain conditions are met:

- no collective agreement is in force;
- a majority of employees have voted in favour of a strike, or an employer poll is in favour of a lockout;
- the results of the strike vote or lockout vote have been filed with the Labour Relations Board;
- no more than 120 days have passed since the strike/lockout vote was taken; and
- notice of strike/lockout has been served on the other party.

During the term of a collective agreement, it is strictly prohibited to declare a strike or lockout. In the event of an unlawful strike or lockout, the Labour Relations Board has the power to issue a directive which directs the actions of the parties and what they shall or shall not do in respect of the unlawful strike or lockout. There are also financial penalties for declaring or instigating an unlawful strike or lockout.

First Collective Agreement

In the event the union and the employer fail to conclude a first collective agreement after bargaining collectively for at least 90 days, either party may apply to the Labour Relations Board for its assistance in settling the terms of the agreement. If the Labour Relations Board's efforts are unsuccessful, it may submit the dispute to arbitration. The arbitrator has the power to determine the content of the first collective agreement, however cannot alter any previously agreed to item without the parties' consent.

Term of a Collective Agreement

A collective agreement must be for a duration of no less than one (1) year.

Unfair Labour Practices

An employee who is dismissed, suspended or on whom the employer imposes any disciplinary sanction because they have exercised a right provided under the Code (e.g., signing a union membership card) is afforded special protection under the Code. The employee may file a complaint with the Labour Relations Board within 90 days of the sanction complained of, and, if applicable, seek reinstatement.

If it is established that the employee exercised a right under the Code, there is a legal presumption in the employee's favour that the sanction was imposed because of the exercise of that right, and the employer then has the burden to prove that the sanction was applied for another good and sufficient cause.

Successor Rights

The sale, lease, transfer or other disposition of a business or undertaking, in whole or in part, does not necessarily invalidate any union certification, any collective agreement or any proceedings for the securing of certification or for the making or carrying out of a collective agreement, save for certain exceptions in the case of subcontracting or "contracting out" (as a transfer of work functions alone is not sufficient – there must be a transfer of control).

Once the sale, lease, transfer or other disposition is completed, the union may bring an application to the Labour Relations Board for it to decide if the new employer is bound by both the certification and the collective agreement and becomes a party to any proceedings relating thereto in the place and stead of the former employer. In examining such applications, the Labour Relations Board will look to ensure that significant parts of a business (i.e., a going concern, functioning economic vehicle) have, in fact, been transferred from the predecessor to the successor, and will also look at whether there has been some continuity of work operations.

Revocation (Decertification)

A certification may be revoked by the Labour Relations Board in certain circumstances, including when one of the parties no longer exists, the employer no longer wishes to voluntarily recognize a union, or the employees bring an application for revocation. Where an application is brought by employees, at least 40% of the employees in the bargaining unit must sign a petition in support of revocation and a majority of the employees must vote in favour of revocation in a secret ballot vote.

The revocation of a certification prevents the renewal of the collective agreement made by the decertified union and automatically deprives it of its rights and advantages thereunder.

Alberta Human Rights Act

The *Alberta Human Rights Act* ("**AHR Act**") prohibits discrimination in the area of employment. The AHR Act prohibits discrimination based on the protected grounds of race, colour, ancestry, place of origin, religious beliefs, gender, gender identity, gender expression, age, physical disability, mental disability, marital status, family status, source of income and sexual orientation.

Employer Responsibilities

Employers have the right to run their business as they envision it, so long as they comply with all relevant laws and regulations, including human rights law. In Alberta, employers are responsible for:

- ensuring that there is no discrimination in the workplace;
- building an inclusive workplace by removing barriers that are based on protected grounds; and
- considering requests for accommodation for needs based on a protected ground.

The AHR Act works to ensure that the workplace is free from discrimination in all aspects of the employment process such as recruitment, promotions, assignments, and termination of employment.

Employers, jointly with employees (and unions, if applicable), are responsible for taking reasonable steps to accommodate employees' needs based on the protected grounds. Employers are required to provide accommodation to the point of undue hardship.

Employers are also responsible for ensuring that the work environment is free from discrimination, including harassment based on a protected ground. Employers are responsible for developing non-discriminatory policies and procedures. Any infringement of the AHR Act in the course of employment will likely make the employer liable.

Employers have the responsibility to promptly investigate an allegation of discrimination. If an allegation is substantiated, appropriate action, including disciplinary action, must be taken to stop the discrimination. Employers should consider preventative measures such as introducing policies to maintain a respectful workplace.

An employer's liability for discrimination is not necessarily limited to the workplace or work hours. Human rights law includes the notion of the "extended workplace." Employers may become liable for behaviour or actions that occur away from the physical workplace but that have implications or repercussions in the workplace. For example, staff may be held liable for discriminatory behaviour during business trips, company parties or other company-related functions.

When an allegation of discrimination is made, an employer has the responsibility to protect the privacy of the parties involved. This is true whether the matter is being handled under a company's anti-discrimination policy or through a complaint to the Alberta Human Rights Commission. All aspects of the internal process should be handled with the utmost confidentiality and neutrality. Employers should not take sides with coworkers or managers and supervisors.

Recruiting

Job descriptions and advertisements should describe the requirements and key duties of the position rather than qualifications, preferences or requirements that relate to a ground protected under the AHR Act. Selection based on the following grounds is prohibited: race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.

Section 8(1) of the AHR Act prohibits discrimination against job applicants in:

- the use or circulation of employment applications or advertisements; or
- inquiries, including interview questions,

that directly or indirectly express any limitation, specification, or preference indicating discrimination based on a protected ground or that require an applicant to furnish information concerning the protected grounds of that person or of any other person.

Should an application or advertisement contain a qualification or requirement that prevents or discourages a person from applying for a position for reasons related to a protected ground, the employer must demonstrate that the qualification or requirement is necessary as a bona fide occupational requirement.

Hiring

Employers generally use interviews to gather more information about a job application in addition to the information provided in the job application. Interviews and inquiries should focus on the applicant's ability to perform the key duties of the job.

Questions that may result in an applicant providing information related to a protected ground or questions about issues such as disability or accommodation of an applicant should generally not be explored during interviews. It is more appropriate to discuss accommodation issues after a conditional job offer is made. Employers are required to accommodate both job applicants and employees to the point of "undue hardship." Undue hardship is a legal concept related to the steps that an employer must take to accommodate an employee.

Terms and Conditions of Employment

Under the AHR Act, employers have a duty to take reasonable steps to provide a discrimination-free workplace to ensure that employees are not discriminated against based on the grounds protected under the Act. Employers are responsible for ensuring that all employees are treated equitably in all terms and conditions of employment including: applying for a job, recruitment, training, transfers, promotions, terms of apprenticeship, rate of pay, overtime, hours of work, holidays, benefits, shift work, performance evaluations, and discipline.

Providing Benefits, Leave and Accommodation

In Alberta, an employer cannot discriminate when providing employment benefits and leave to employees.

An employer is required to accommodate an employee to the point of undue hardship. What constitutes undue hardship will depend on the specific facts of the particular circumstances.

Privacy and Protection of Personal Information

In Alberta, there are two pieces of privacy legislation which govern the collection, use and disclosure of personal information: the *Freedom of Information and Protection of Privacy Act,* which applies to public bodies, and the *Personal Information Protection Act,* ("PIPA"), which applies to non-public organizations (i.e., the private sector).

Under PIPA, an employer can collect, use or disclose personal employee information without consent, provided that it is for reasonable purposes related to establishing, managing or terminating the employment relationship and provided that advance notice of the collection, use or disclosure is given to the affected employee. Personal information can only be retained by an employer for as long as it reasonably requires the information for legal or business purposes, after which records containing personal information must be destroyed or rendered non-identifying.

Employers are responsible for personal employee information that is in its custody or control, and are required to develop and follow policies and practices to ensure compliance with PIPA. Specifically, employers must make a reasonable effort to ensure that personal information which it collects, uses and discloses is accurate and complete, and must protect personal information in its custody and/or control by making reasonable security arrangements against risks (i.e., unauthorized access, copying, modification, disposal, destruction).

Employers are generally required by PIPA to ensure that any personal employee information remains confidential. Communication of the information to third persons without the consent of the person concerned is prohibited, subject to certain exemptions under PIPA. The use of personal information for purposes that are not relevant to the object of the file in which it is kept is prohibited, except with the consent of the person concerned.

In order to be valid, the consent to the communication or use of personal information must be manifest, free, enlightened and given for specific purposes. Consent is valid only for the length of time necessary to achieve the purposes for which it was requested.

PIPA establishes the conditions and procedure according to which an individual may request a copy and/or correction of their personal information (i.e., employee file). It is possible for any interested person to submit a written request for their personal information directly to an organization, and organizations have a duty to assist with that request and to provide a reasonably complete response within a prescribed time limit.

An Information and Privacy Commissioner, following a complaint from an interested person, has the power to inquire into, or entrust another person with inquiring into, any matter relating to the protection of personal information and the methods used by an organization who collects, holds or uses personal information or communicates it to third persons. Following a complaint, the Information and Privacy Commissioner has the power to recommend or order the application of remedial measures to ensure the protection of personal information.

Whistleblower Protection

Until recently, employees who, as whistleblowers, denounced their employer to the authorities on grounds that the employer had breached a law or a regulation, were liable to disciplinary measures or termination by their employer for their lack of loyalty or for breach of trust.

Amendments to the Canadian *Criminal Code*, which took effect on September 15, 2004, however, now make it illegal for an employer, or a person acting on its behalf, to take or threaten to take any sanctions or reprisals against an employee who provides information to authorities concerning an offence that is (or that the employee thinks is) being committed by the employer contrary to any federal or provincial act or regulation.

Employers found guilty of this offence are liable to imprisonment for a term not exceeding five (5) years.

Currently, the *Public Interest Disclosure (Whistleblower Protection Act*) only protects public sector employees. The application of the legislation also extends to political staff for reporting wrongdoing of Alberta cabinet ministers, Members of the Legislative Assembly and the premier.

In Alberta, all employees are protected from dismissal or other disciplinary action by reason of compliance with occupational health and safety laws. Employers may not terminate the employment or otherwise discriminate against any individual who has made a complaint under the *Employment Standards Code,* or retaliate against a person because the person has made a complaint under the *Alberta Human Rights Act.*

Workers’ Compensation

No Fault Compensation

The *Workers’ Compensation Act*[4] (“**WCA**”) sets out the workers’ compensation system for workplace injuries in Alberta. As in all Canadian jurisdictions, workers’ compensation in Alberta is administered by the Workers’ Compensation Board (“**WCB**”). The board provides no-fault compensation based on salary or wages to employees who have been injured at work or who contract occupational illnesses and provides rehabilitation assistance to them. All employers in the designated mandatory coverage industries in Alberta are required to make payments into the workers’ compensation fund administered by the board under the WCA. The size of an employer’s payments is largely determined by the number of its employees in Alberta (size of its payroll), the type of industry the employer is engaged in and its individual experience rating. Employers in non-mandatory coverage industries may opt-in to the WCB system.

4 WCA, RSA 2000, c W-15.

Reporting Workplace Injuries

In Alberta, workplace injuries or accidents can trigger reporting obligations to Alberta Occupational Health and Safety ("**Alberta OHS**") and the WCB.

Under the WCA, employers are required to provide notice to the WCB of any accident that disables or is likely to disable the worker for more than the day of the accident.

Under the WCA, an employer must notify the WCB within 72 hours after the employer acquired knowledge of the accident or the allegation of an accident.

Under the WCA, the employer must record details of the injury or illness, even if first aid is not administered. Additionally, the employer is required to record:

- the name of the worker;
- the date and time of the injury/illness;
- the date and time the injury/illness was reported to the employer;
- a description of the injury/illness, where it occurred and the cause;
- first aid provided; and
- the name and qualifications of the person giving first aid.

Occupational Health and Safety

The Alberta *Occupational Health and Safety Act* [5] ("**OHS Act**"), the Regulations issued under it and the Alberta Occupational Health and Safety Code ("**OHS Code**") set out a comprehensive set of standards aimed at ensuring workplace safety in industries under provincial jurisdiction in Alberta. These include industry-specific technical standards for equipment and for safe working procedures. Prevention of workplace violence and workplace harassment is considered a facet of occupational health and safety.

The OHS Act is the enabling legislation in Alberta. It sets out the rights and duties of all parties in the workplace and establishes procedures for dealing with workplace hazards and provides for enforcement of the law where compliance has not been achieved voluntarily by workplace parties. It sets out matters such as: employer and worker general obligations, reporting and investigation requirements, offences, penalties, and remedies available.

The *Occupational Health and Safety Regulation* ("**OHS Regulation**")[6] sets out the generic administrative requirements such as: issues around permits and certificates, required documents, technical specifications, and requirements for "competent workers" and safety training.

5 SA 2017, c 0-2.1
6 Alta Reg 62/2003.

The *OHS Code 2009* is the Alberta legislation which sets out the technical details for specific work tasks. Examples include: core requirements, requirements applicable to all industries, requirements applicable to specific industries and activities, first aid requirements, and occupational exposure limits for various chemicals.

Alberta OHS legislation provides for fines for employers and individuals guilty of violations of its worker safety provisions. A person who contravenes the OHS Act, the OHS Regulations or the OHS Code or fails to comply with an order is guilty of an offence and may be liable to a fine of not more than $500,000 CAD for a first offence or not more than $1,000,000 CAD for a second or subsequent offence[7]. The federal *Criminal Code* imposes fines on employers of up to $100,000 CAD in summary conviction proceedings and in an unlimited amount in proceedings by way of indictment. Individuals may be fined and/or imprisoned for up to 14 years for violations of the duty of ensuring worker safety prescribed in the OHS Code.

General Responsibilities under the OHS Legislation

Under the OHS Act, employers are responsible for ensuring the health and safety of all workers at the work site. There are also specific requirements for employers depending on the hazards and the work that is to be done.

The general obligation is set out in section 3 of the OHS Act and provides that every employer must ensure, as far as it is reasonably practicable for the employer to do so:

- the health and safety of workers engaged in the work of that employer, those workers not engaged in the work of that employer but present at the work site at which the work is being carried out, and those at or in the vicinity of the work site who may be affected by hazards originating from the work site;
- that the workers engaged in the work of that employer are aware of their responsibilities and duties under this Act, the OHS Regulations and the adopted OHS Code;
- that none of the employee's workers are subjected to or participate in harassment or violence at the work site;
- that workers are supervised by a person who is competent and familiar with applicable rules and legislation;
- that they consult and cooperate with the joint work site health and safety committee or health and safety representative, to exchange information and resolve concerns;
- that the health and safety concerns raised are resolved in a timely manner; and
- that where a prime contractor is required at a work site, the prime contractor is advised of the names of all the supervisors of the workers (OHS Act, s.3(1)).

7 OHS Act, s. 74

Section 31 of the OHS Act outlines both the employer's and worker's roles in regard to the workers' responsibility to refuse work if the worker believes on reasonable grounds that there is a dangerous condition at the work site or that the work constitutes a danger to the worker's health and safety or that of another worker or person. Upon being notified of refusal to work under imminent danger, the employer shall:

- investigate and take action to eliminate the imminent danger;
- prepare a written record of the worker's notification, the investigation and the action taken; and
- provide the worker who gave the notification a copy of the record.

Specific requirements for health and safety are included throughout the OHS Act, the OHS Regulations and the OHS Code. The OHS Code is an extensive document and is divided into the following parts, each with specific requirements:

Part	Topic
1	Definitions and General Application
2	Hazard Assessment, Elimination and Control
3	Specifications and Certifications
4	Chemical Hazards, Biological Hazards and Harmful Substances
5	Confined Spaces
6	Cranes, Hoists and Lifting Devices
7	Emergency Preparedness and Response
8	Entrances, Walkways, Stairways and Ladders
9	Fall Protection
10	Fire and Explosion Hazards
11	First Aid
12	General Safety Precautions
13	Joint Work Site Health and Safety Committee
14	Lifting and Handling Loads
15	Managing the Control of Hazardous Energy
16	Noise Exposure

Part	Topic
17	Overhead Power Lines
18	Personal Protective Equipment
19	Powered Mobile Equipment
20	Radiation Exposure
21	Rigging
22	Safeguards
23	Scaffolds and Temporary Work Platforms
24	Toilets and Washing Facilities
25	Tools, Equipment and Machinery
26	Ventilation Systems
27	Violence and Harassment
28	Working Alone
29	Workplace Hazardous Materials Information System (WHMIS)

Parts of the OHS Code that apply to specific industries and activities are:

Part	Topic
30	Demolition
31	Diving Operations
32	Excavating and Tunnelling
33	Explosives
34	Forestry
35	Health Care and Industries with Biological Hazards
36	Mining
37	Oil and Gas Wells
38	Residential Roofing – Expired
39	Tree Care Operations

40	Utility Workers – Electrical
41	Work Requiring Rope Access

For more detail and an explanation of each part of the legislation, refer to the OHS Code and the OHS Guide.[8]

Responsibilities of Prime Contractor

Section 10(1) of the OHS Act requires the identification of a prime contractor when there are two or more employers or self-employed persons (or a combination of these) involved in work at a construction, oil and gas, or other work site designated by a Director. They play an important role in coordinating the health and safety of workers and persons on the work site. This is necessary as different employers may all well have very effective, independent health and safety systems but which might not be compatible with other employers' systems. Furthermore, a lack of effective communication and a cohesive approach to health and safety may place workers at risk[9].

The general duties of the prime contractor includes, but is not limited to the following:

- establish a system or process that will ensure work site compliance with all of the applicable OHS legislation;
- coordinate, organize and oversee the performance of all work at the work site to ensure, as far as is reasonably practicable to do so, that no person is exposed to hazards arising out of, or in connection with, the work site;
- maintain the prime contractor's own work activities to ensure, as far as is reasonably practicable to do so, that no person is exposed to uncontrolled hazards at the work site;
- consult and cooperate with the joint work site health and safety committee and safety representative, as applicable, to attempt to resolve any health and safety issues;
- coordinate the health and safety programs of employers and self-employed persons on the work site, if 2 or more employers or self-employer persons or one or more employers and one or more self-employed persons on the work site have a health and safety program;
- cooperate with any other person exercising a duty imposed by the OHS legislation;
- report injuries and incidents to OHS;
- investigate injuries and incidents and prepare a report; and

8 OHS Guide at FN 7 can be found at: https://ohs-pubstore.labour.alberta.ca/li001

9 https://open.alberta.ca/dataset/08e59b06-81f4-4bb2-b923-ac171a89c6f0/resource/20a89530-214d-483d-ad2e-512ea9bfd8b0/download/ohs-prime-contractors.pdf

First Aid: The prime contractor must also ensure that first aid services, equipment and supplies required by the OHS Code are available at the work site. What is required varies depending on the location of the work site, the number of workers at the site and whether the work performed is considered to be of a low, medium or high hazard. Complete details of the requirements can be found in Schedule 2 of the OHS Code.

Equipment, Work Site Infrastructure and Excavations: The prime contractor is not required to design, construct, erect or install shared equipment, infrastructure or excavation. However, should the prime contractor choose to do so, section 10(6) of the OHS Act applies to the prime contractor. This means that the prime contractor must fulfill any employer responsibilities related to the equipment, infrastructure and/or excavation. Note however that this does not absolve the other work parties from their own responsibilities towards equipment, infrastructure and excavations.

Hazard Assessment, Elimination and Control

The OHS Code requires that employers assess a work site and identify existing and potential hazards before work begins at the work site or prior to the construction of a new work site. Section 8(1) of the OHS Code specifies that “an employer must involve affected workers in the hazard assessment and in the control or elimination of the hazards identified”.

Section 9 of the OHS Code specifies that, if reasonably practicable, an employer must eliminate or control a hazard through the use of engineering controls. Examples include: insulating for sound to reduce noise levels, introducing a ventilation system for exhaust, using equipment guards, using less or non-toxic chemicals, etc.

If the hazard cannot be eliminated or controlled in this fashion, the employer must use administrative controls that control the hazard to a level as low as reasonably achievable by, for example, developing and following safe work practices and procedures, providing training and supervision for workers, limiting exposure time by rotating jobs, etc.

If the hazard cannot be eliminated or controlled by engineering or administrative controls, the employer must ensure that the appropriate personal protective equipment is used by workers affected by the hazard.

When a hazard cannot be eliminated or controlled by one of these three control methods alone, the employer may use a combination of engineering controls, administrative controls or personal protective equipment, if there is a greater level of safety because a combination is used.[10]

Hazard identification and control is the foundation of occupational health and safety, and a requirement under the OHS Code.

10 OHS Code, Explanation Guide, Section 9

Under the OHS Code, employers must:

- assess a work site and identify existing and potential hazards before work begins at the site or prior to the construction of a new work site;
- prepare a report of the results of the hazard assessment and the methods used to control or eliminate the hazards identified;
- ensure the date on which the hazard assessment is prepared or revised is recorded on it;
- involve affected workers in the hazards assessment and in the control or elimination of the hazards identified; and
- ensure that all workers affected by the hazards identified are informed of the hazards and of the methods used to control or eliminate the hazards.

An employer must make sure that a hazard assessment is repeated:

- at reasonably practicable intervals to prevent the development of unsafe and unhealthy working conditions;
- when a new work process is introduced;
- when a work process or operation changes; or
- before the construction of a significant addition or alteration to a work site.

Formal Hazard Assessment

A formal hazard assessment takes a close look at the overall operations of an organization to identify hazards, measure risk (to help prioritize hazards), and develop, implement and monitor related controls. Worker jobs or types of work are broken down into separate tasks. Formal hazard assessments are detailed, can involve many people, and will require time to complete.[11]

A formal hazard assessment is the basis for the organization's entire occupational health and safety management system. It outlines the hazards, measures risk (to help prioritize hazards), and points to the necessary control measures. This information can be helpful in other parts

of the health and safety management system, such as worker training, safe work procedures and workplace inspections.[12]

To meet the OHS legislated requirements, the date must be recorded on each hazard assessment. This provides a record of the last revision date and may help determine whether or not the document requires an update.

11 Alberta Government, Hazard Assessment and Control Handbook [Handbook]
12 Handbook, p. 15

Site Specific Hazard Assessment

A site-specific hazard assessment (also called field-level) is performed before work starts at a site and at a site where conditions change or when non-routine work is added. This assessment flags hazards identified at the location (e.g., overhead power lines, poor lighting, wet surfaces, extreme temperatures, the presence of wildlife), or introduced by a change at the work site (e.g., scaffolding, unfamiliar chemicals, introduction of new equipment). Any hazards identified are to be eliminated or controlled right away, before work begins or continues.

In the interest of worker health and safety, the assessment must be repeated as conditions at the work site change. If the work environment itself is subject to change due to changing conditions such as weather or the arrival of new contractors that will impact the work site (new equipment or processes), a site-specific hazard assessment must be conducted.

Specific Requirements for Hazard Assessments

An employer must:

- involve affected workers in the hazard assessment and in the control or elimination of the hazards identified (OHS Code, s. 8(1));
- assess a work site and identify existing and potential hazards before work begins at the work site or prior to the construction of a new work site (OHS Code, s. 7(1));
- ensure that the hazard assessment is repeated: at reasonably practicable intervals to prevent the development of unsafe and unhealthy work conditions; when a new work process is introduced; when a work process or operation changes; or before construction of significant additions or alterations to a work site (OHS Code, s. 7(4));
- ensure that the date on which the hazard assessment is prepared or revised is recorded on it (s. 7(3)); and
- take reasonable measures, if a hazard is identified, to eliminate the hazard, or if elimination is not reasonably practicable, control the hazard (s.9(1)).

Health and Safety Accident Reporting & Government Investigation

In Alberta, workplace injuries or accidents can trigger reporting obligations to two provincial bodies. Alberta OHS must be notified for certain types of injuries or accidents. Additionally, any accident that disables or is likely to disable a worker for more than a day must be reported to the WCB, if the worker is covered under the WCA.

As noted, the OHS Act, the OHS Regulations, and the OHS Code, governs workplace health and safety in Alberta. The WCA sets out the workers' compensation system for workplace injuries in Alberta for those mandatory industries and for employers who opt-in.

OHS Reporting Requirements

Section 40 of the Alberta OHS Act sets out the types of serious injuries and accidents that need to be reported, and includes:

- an injury or accident that results in death;
- an injury or accident that results in a worker being admitted to a hospital;
- an unplanned or uncontrolled explosion, fire or flood that causes a serious injury or that has the potential of causing a serious injury;
- the collapse or upset of a crane, derrick or hoist;
- the collapse or failure of any component of a building or structure necessary for the structural integrity of the building or structure; or
- any injury or incident or class of injuries or incidents specified in the regulations.

If a worker is injured or any other incident that has the potential of causing serious injury occurs, the prime contractor, the contractor or employer responsible for that work site shall:

- report the time, place and nature of the incident to a Director of Inspection;
- carry out an investigation in to the circumstances surrounding the injury or incident;
- prepare a report outlining the circumstances of the injury or incident and the corrective action(s), if any, undertaken to prevent a recurrence of the injury or incident;
- ensure that a copy of the report is readily available for inspection by an officer, and provided to the joint work site health and safety committee, representative, or the workers once investigation is complete.

Injuries or incidents, as defined under the OHS Act, must be reported to the Director of Inspection located at the OHS Contact Centre. This notification is separate from any that are required to be given to the WCB or police. The OHS Act requires injuries or incidents to be reported to a Director of Inspection as soon as possible. The Director must also be provided with a copy of the report.

Under the OHS Act, the employer's report must outline:

- the location of the incident or injury;
- the site contact person's name, job title and phone number(s);
- general details of what happened;
- the time and date the incident or injury occurred;
- the name of the employer;
- the employer's relationship to the worksite (owner, prime contractor, contractor or supplier);

- the injured worker's name, date of birth, and job title (if applicable); and
- the name and location of the hospital the worker was taken to (if applicable).[13]

If the incident or injury happened at a wellsite, additional information may be required.

Under the OHS Act and the OHS Code, it is the responsibility of the prime contractor, or if there is no prime contractor, then the contractor or employer responsible for the work site, to investigate and complete an investigation report. The prime contractor, contractor or employer is required to conduct their own independent investigation regardless of whether the government conducts an investigation.

Under the OHS Act, an employer is required to preserve the scene of a serious injury or accident except as otherwise directed by a Director of Inspection, an occupational health and safety officer or a peace officer, except insofar as is necessary to: (a) attend to persons injured or killed; (b) prevent further injuries; (c) protect property that is endangered as a result of the accident.

Section 53 of the OHS Act provides that, if an accident occurs at a work site, an officer may attend at the scene of the accident and may make any inquiries that the officer considers necessary to determine the cause of the accident and the circumstances relating to the accident. Every person present at an accident when it occurred or who has information relating to the accident shall, on the request of an officer, provide to the officer any information respecting the accident that the officer requests. Further, section 53 provides that an officer may, for the purposes of determining the cause of the accident, seize or take samples of any substance, material, product, tool, appliance or equipment that was present at, involved in or related to the accident.

Alberta's OHS Act provides that a person (which includes a company) who contravenes the OHS Act, the OHS Regulations or the OHS Code is liable: (i) for a first offence, to a fine of up to $500,000 CAD, and in the case of a continuing offence, to a further fine of not more than $30,000 CAD for each day during which the offence continues; or (ii) to imprisonment for a term not exceeding 6 months; or (iii) to both fines and imprisonment.

For a second or subsequent offence, a person (which includes a company) who contravenes the OHS Act, the OHS Regulations or the OHS Code is liable: (i) to a fine of up to $1,000,000 CAD, and in the case of a continuing offence for a further fine of up to $60,000 CAD for each day during which the offence continues, or (ii) to imprisonment for a term not exceeding 12 months, or (iii) to both fines and imprisonment.

13 Samples are set out in Alberta's Workplace Health and Safety Bulletin: Reporting and Investigating Serious Injuries and Incidents, available at: http://work.alberta.ca/documents/whs-pub_li016.pdf

Violating the OHS Act, the OHS Code, the OHS Regulations or failing to follow an order given by an officer, may result in prosecution. Conviction on a first offence can lead to a fine of up to $500,000 CAD and/or a prison term of up to six months. Conviction on a second offence can result in a fine of up to $1,000,000 CAD and/or a prison term up to 12 months.

WCB Reporting Requirements

As previously noted, in addition to the above, section 33 of the *Worker's Compensation Act*, requires an employer to provide notice to the WCB for any accident that disables or is likely to disable the worker for more than the day of the accident.

Worker Competency and Training

The general requirements for worker training are in section 15 of the OHS Regulations. Specific requirements for worker training are identified throughout the OHS legislation.

Employers must ensure that a worker is trained in the safe operation of the equipment the worker is required to operate. This training must include:

- selection of the appropriate equipment;
- limitations of the equipment;
- operator's pre-use inspection;
- use of the equipment;
- operator skills required by the manufacturer's specifications for the equipment;
- the basic mechanical and maintenance requirements of the equipment; and
- loading and unloading the equipment if doing so is a job requirement.

If a worker may be exposed to a harmful substance at a work site, the employer must:

- establish procedures that minimize the worker's exposure to the harmful substance; and
- ensure that a worker who may be exposed to the harmful substances is trained in the procedures, applies the training, and is informed of the health hazards associated with exposure to the harmful substance.

The OHS Regulations also require workers to be competent. Competent in relation to a worker means: adequately qualified, suitably trained, and with sufficient experience to safely perform work without supervision or with only a minimal degree of supervision. If there is work to be done that may endanger a worker, the employer must ensure that the work is done:

- by a worker who is competent to do the work; or
- by a worker who is working under the direct supervision of a worker who is competent to do the work.[14]

14 OHS Code Explanation Guide, section 826

Section 62 of the OHS Act provides that a prime contractor, contractor or employer involved in work at a work site may be required by a written order of a Director or by the regulations or adopted code to establish a code of practice and to supply copies of it to a Director. A code of practice must include practical guidance on the requirements of the regulations or the adopted code applicable to the work site, safe working procedures in respect of the work site and other matters as required by a Director, the regulations or the adopted code.

Under the OHS Code, a worker must be provided training, without limitation:

- where a worker may be exposed to a harmful substance (s. 21);
- where a worker works with asbestos (s. 37);
- where a worker may be exposed to airborne lead (s. 41);
- where a worker may be assigned duties related to confined space or restricted entry (s. 46);
- on any emergency response plan developed by an employer (ss. 115 and 116);
- if they are a designated rescue and emergency worker (s. 117);
- where a worker may work in an area where a fall protection system may be used (s. 141);
- in first aid training to certain candidates (ss. 177 and 178);
- where a worker may be exposed to the possibility of musculoskeletal injury (s. 211);
- where a worker may be exposed to excess noise at a work site (ss. 221 and 222);
- if a hazard assessment indicates the need for personal protective equipment (s. 228);
- in order for a worker to operate powered mobile equipment (s. 256); and
- where a worker works with or near a controlled product (s. 397).

Emergency Response Planning

An employer must have an emergency response plan for an emergency that may require the rescue or evacuation of workers (Section 8 of the OHS Regulations require the plan to be in writing and available to workers). The plan establishes what the employer must do until emergency services personnel arrive.[15]

The response plan must address the emergencies identified in the work site hazard assessment required by Part 2 of the OHS Code. The plan is to be developed by the employer with the involvement of affected workers. The procedures to be followed and the personnel involved in emergency response must be specified in the plan. All affected workers must be aware of the plan and familiar with the procedures.

15 OHS Code, s. 115

Section 116 specifies the minimum elements to be included in an emergency response plan. It includes:

- identification of potential emergencies (based on the hazard assessment);
- procedures for dealing with the identified emergencies;
- identification of, location of and operational procedures for emergency equipment;
- emergency response training requirements;
- location and use of emergency facilities;
- fire protection and requirements;
- alarm and emergency communication requirements;
- first aid services required;
- procedures for rescue and evacuation; and
- designated rescue and evacuation workers.

Section 117 requires employers to ensure designated rescue and emergency workers receive appropriate and adequate training.

Section 118 requires employers to provide designated rescue and emergency workers with personal protective clothing and equipment appropriate to the work site and the potential emergencies identified in the emergency response plan.

Section 115 of the OHS Code requires employers to establish an emergency response plan for responding to an emergency that may require rescue or evacuation. (Section 8 of the OHS Regulations require that the plan be in writing and available to workers.)

Personal Protective Equipment (“PPE”)

If the hazard assessment required by section 7 of the OHS Code indicates that PPE is required, the employer must ensure that workers wear and use the required PPE properly. Ensuring that workers have and wear their PPE is not enough. The employer must ensure that the PPE is used properly.[16]

The OHS Code requires employers to provide PPE in a limited number of situations where, for example, there is a breathing hazard or where noise exposure limits are exceeded. This section does not require employers to provide PPE such as hard hats, safety boots, flame resistant clothing or eye protection. Where such equipment is necessary, employers must make sure that workers use it.[17]

Regardless of who supplies the PPE, paragraph 228(1)(c) makes the employer responsible for ensuring that the PPE is in a condition to perform the function for which it was designed.

16 OHS Code Explanation Guide, s. 228
17 OHS Code Explanation Guide, s. 228

Cracked eye protection, worn out safety boots and excessively dirty flame resistant overalls are examples of conditions that employers need to be aware of and either correct or have corrected.

For PPE to be effective, workers must be trained in its correct use, care, limitations and assigned maintenance. The employer is responsible for providing this training. Workers must be aware that wearing and using PPE does not eliminate the hazard. If the PPE fails, the worker will be exposed to the hazard. Workers need to understand that PPE must not be altered or removed even though they may find it uncomfortable – sometimes equipment may be uncomfortable simply because it does not fit properly.

The OHS Code provides for specific requirements where a worker may fall 3 metres or more.[18] With respect to fall protection, section 140 of the OHS Code requires:[19]

- An employer must develop procedures that comply with this part in a fall protection plan for a work site if a worker at the work site may fall 3 metres or more and the worker is not protected by guardrails.
- A fall protection plan must specify (a) the fall hazards at the work site, (b) the fall protection system to be used at the work site, (c) the anchors to be used during the work, (d) that clearance distances below the work area, if applicable, have been confirmed as sufficient to prevent a worker from striking the ground or an object or level below the work area, (e) the procedures used to assemble, maintain, inspect, use and disassemble the fall protection system, where applicable, and (f) the rescue procedures to be used if a worker falls and is suspended by a personal fall arrest system or safety net and needs to be rescued.

The employer must ensure that the fall protection plan is available at the work site and is reviewed with workers before work with a risk of falling begins.

18 See the OHS Bulletin on Fall Protection, available at: http://work.alberta.ca/documents/WHS-PUB-gs010.pdf
19 OHS Code, s.140.

Private Pension Plans

Private pension plans are governed by the *Employment Pension Plans Act* which establishes rules for the establishment, operation and administration of pension plans, prescribes a set of basic rights granted to plan members and provides for measures of control and supervision of pension plans.

A number of new rules came into effect in 2014. One of the changes was the implementation of immediate vesting of pension benefits, whereas previously vesting did not occur for two years. Another change was the option to permit unlocking of small pensions if the member's employment terminates prior to retirement, so that the member can receive their benefit as a cash lump sum or have their benefit transferred to their RRSP.

The *Employment Pension Plans Act* is administered and enforced by the Superintendent of Pensions. The Superintendent has the power to extend any due dates set in the legislation, accept or reject new plan designs, impose administrative penalties for non-compliance if necessary, and to request additional records or information if necessary for the performance of the Superintendent's duties.

Successor Rights and Obligations

The purchaser of a business will have obligations with respect to individual contracts of employment, collective agreements, pending proceedings, financial obligations and other liabilities attaching to the business.

If the purchase is a share acquisition, the acquired corporation does not change and the purchaser assumes all of the corporation's obligations to its employees. In an asset purchase, the employer changes and technically, the employment of all the employees is terminated. If the new employer does not rehire the employees, this will trigger the employees' termination and severance entitlements. If the employees are rehired, they will not be entitled to common law pay in lieu of notice, as they will be deemed to have mitigated their damages by accepting employment, and their employment will be deemed to be continuous and uninterrupted. However, if the new employer makes a unilateral change to the terms and conditions of an employment contract, the employee may have a claim for constructive dismissal.

The application of successor rights and obligations and the extent of the liabilities deriving therefrom vary depending on the details of the transaction. A careful analysis with the assistance of counsel should be carried out as part of the due diligence process in order to identify and quantify the liabilities which could be transferred to the purchaser (or other contracting party).

Elections and Voting

Federal and Provincial Elections in Alberta

Every employee qualified to vote in a federal election is entitled to three (3) consecutive hours for the purpose of casting their vote and, if the hours of employment do not allow for those three (3) consecutive hours, the employer must allow the employee, at the convenience of the employer, such additional time for voting as may be necessary to provide those three (3) consecutive hours. An employer cannot make a deduction from the employee's pay by reason of their absence during the consecutive hours that the employer is required to allow for voting.

The polling hours for a federal election held in the Province of Alberta are between 7:30 a.m. and 7:30 p.m.

The polling hours for a provincial election held in the Province of Alberta are between 9:00 a.m. and 8:00 p.m.

Work Permits for Foreign Nationals

In Alberta, immigration matters and work permit applications come under the joint jurisdictions of the federal and provincial governments.

General Rule

As a general rule, foreign workers who wish to work in the Province of Alberta (or, for that matter, in any other Canadian province or territory) must obtain a work permit. In principle, a work permit will only be delivered if the prospective employer succeeds in first obtaining a confirmation of job offer approved by Employment and Social Development Canada ("**ESDC**") and the Alberta Immigrant Nominee Program ("**AINP**"). A confirmation of job offer in support of a work permit will only be issued if the ESDC and AINP officers confirm that, in their opinion, the employment of the foreign worker will not have a negative impact on labour market conditions for Canadians. This long process usually requires that the position first be advertised in Canada or that other initiatives be taken in order to eventually satisfy the ESDC officer that no Canadian applicants are suitable.

Note that there are several exemptions from the above rules.

Exemptions

First, some foreign nationals may work in Alberta without having to obtain a work permit. This exception extends in particular to certain short-term work assignments, sales representatives, guest speakers and employees of related companies abroad seeking entry to consult with local employees. Further exceptions can be found in the Canadian *Immigration and Refugee Protection Regulations*, 2002 and in the Business Visitor provisions of the *North American Free Trade Agreement* ("**NAFTA**") and the *General Agreement on Trade in Services* ("**GATS**").

Second, some other foreign nationals can be employed in Alberta by obtaining a work permit without the necessity of a confirmation of job offer. As a matter of fact, a significant number of work permits being delivered do not require that the prospective employer go through the confirmation of job offer process.

For instance, to name only a few of the most common, work permit applications for certain intra-company transferees and professionals processed under the provisions of the NAFTA and GATS do not require the approval of either the ESDC or AINP officers. A similar exemption also extends to other key personnel and self-employed individuals wishing to obtain a work permit and whose employment will create or maintain significant employment, benefits or opportunities for Canadian citizens or permanent residents. Finally, there exist other confirmations of job offer exemptions for working spouses.

Intra-company Transferees

The exemption for intra-company transferees, commonly known as Code C-12, is available to a person of any national origin who is employed in a senior executive or managerial category by a branch, subsidiary or parent of the Canadian entity for a minimum of 18 to 24 months, and who is temporarily transferred to Alberta to hold an identical senior executive or managerial position with a Canadian entity.

Applications by other intra-company transferees who possess the required type of specialized knowledge and meet the requirements of the NAFTA, GATS or Code C-12, can be processed under either one of these Agreements, taking into consideration the important differences between them.

Professionals

Applications by professionals can also be processed under either one of NAFTA or GATS, having consideration for the differences between the two (2) Agreements.

Other Key Personnel

Other key personnel who do not qualify for other exemptions (e.g., highly skilled individuals who do not have prior employment history with a related company abroad), and whose employment will result in significant employment, benefits or opportunities for Canadian citizens or permanent residents can obtain an employment authorization under the Code C-10 confirmation of job offer exemption. However, such an application needs to be carefully prepared as immigration officers are increasingly reluctant to use their discretionary powers, unless the facts strongly support the application.

Self-Employed Individuals

An individual whose services are retained on an independent contractor basis, as opposed to an employee, and where such services will result in significant employment, benefits or opportunities for Canadian citizens or permanent residents, can obtain an employment authorization under the Code C-11 exemption.

Working Spouses

The spouse of a work permit holder can also obtain a work permit under the Code C-41 confirmation of job offer exemption. This exemption applies in circumstances where the principal applicant received a work permit in an occupation requiring a sufficiently high level of expertise to be considered a skilled worker, namely if a work permit was obtained to perform work in a Skill Level 0, A or B occupation listed in the National Occupational Classification dictionary.

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The reader will appreciate that in order to make reference to an extensive number of matters, it has been necessary to do so using general commentary only. Borden Ladner Gervais would be pleased to provide more detailed information should any specific concerns arise from this review. This document is informative only and does not constitute a legal opinion on any given matter.

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