



Recruitment and Wage and Hour Law in Alberta

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This Information Bulletin focuses on the requirements of the majority of Alberta workplaces regulated by provincial employment legislation. Employees working on or in connection with federal works, undertakings or business are subject to the federal legislation, including the *Canada Labour Code* and the *Canadian Human Rights Act*. If your workplace is federally regulated, please contact us for more information.

I. Recruitment

a. What are the requirements relating to advertising positions?

Job advertisements should comply with Alberta's human rights legislation and should not contain statements, qualifications, or references related to a protected ground of discrimination. Specifically, unless there is a *bona fide* occupational requirement for precluding a job applicant on basis of a protected ground, job advertisements must not express either directly or indirectly any limitation, specification or preference indicating discrimination against people based on the following protected grounds in the Alberta *Human Rights Act*:

- 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
- Sexual orientation

Job advertisements also cannot require an applicant to provide any information concerning the above protected grounds. These prohibitions apply to any written or oral inquiry of a job applicant.

The Alberta *Human Rights Act* also prevents employers from asking applicants questions about the protected grounds during job interviews, on job application forms, when checking references or when using other ways of collecting information about applicants.

b. What can employers do with regard to background checks and inquiries?

i. Criminal Records and Arrests

Employers may require job applicants to submit to a criminal record check. To prevent discriminatory practices, employers should be careful to use the same checks and standards for all applicants to similar positions. Generally, employers should wait to conduct background checks until a conditional offer of employment has been extended.



Background checks are usually made when a position involves working with money, valuable property/information or with vulnerable populations, such as children or the elderly. In these circumstances, a more extensive vulnerable sector check may also be required.

ii. Medical history

The medical history of an applicant should not be considered in the recruitment and hiring process, except where there is a *bona fide* occupational requirement (i.e. a condition that may affect his or her ability to perform the job safely and will threaten the safety of the applicant or others). If a prospective employee has a legitimate medical condition which may affect his or her ability to do the job, the employer may wish to ask for information from the applicant's doctor clearly stating what the applicant can and cannot do. Otherwise, it may be difficult for the employer to fulfill its potential duty to accommodate the employee.

iii. Drug Screening

Pre-employment drug testing and post-hiring drug and alcohol testing may be permissible if the employer can show the test is reasonable, justifiable and does not violate the employee's human rights.

However, the law on drug and alcohol testing in the workplace is still evolving. Human Rights Commissions across Canada have found that drug and alcohol testing is not justified in all circumstances. While in certain situations drug and alcohol testing itself might not trigger the protection of human rights law, particularly for safety-sensitive positions, the ensuing treatment of employees who are dependent on drugs or alcohol may raise human rights concerns.

Drug and alcohol dependency is a disability, which is a protected ground under the Alberta *Human Rights Act*. Employers should be careful not to discriminate based on a disability, or a perceived disability. They should be aware of their duty to accommodate an employee with a drug or alcohol addiction and be aware that a testing policy should not be applied in a way that discriminates against individuals who have a drug or alcohol dependency.

Random drug and alcohol testing in the workplace can only be justified in specific circumstances. Courts have often found random drug testing policies are unreasonable. A case-by-case analysis is necessary to determine if random drug and alcohol testing is justifiable in a workplace. Contact our office for advice about random drug testing in your workplace.

If testing is conducted, its primary purpose must be to measure impairment, as opposed to deterring drug or alcohol use or monitoring moral values among employees. Even testing that measures impairment can be justified as a *bona fide* requirement only if it is demonstrably connected to performing the job (for example, if an employee occupies a safety-sensitive position). Examples could include a heavy equipment operator (whose inability to perform the job safely could endanger people on the worksite) or a school bus driver. Drug and alcohol testing may be appropriate if an employee is involved in a significant accident or "near-miss" but only as part of a larger assessment of drug and alcohol addiction.



iv. Job-related skills testing

Employers are permitted to test applicants for job-related skills during the hiring process, but Alberta's human rights legislation mandates that this type of testing must be related to actual reasonable and justifiable requirements of the job.

v. Credit Checks

Pre-employment credit checks are typically not permitted under Alberta privacy legislation. Alberta's Privacy Commissioner has previously ordered an employer to stop performing pre-employment credit checks. In that case, the personal information collected by the employer was not reasonably required to assess the applicant's ability to perform the duties of the employment or to assess whether the applicant might have a tendency towards committing in-store theft.

vi. Immigration Status

Employers can request proof from applicants that they are legally permitted to work in Alberta. However, employers are prohibited from inquiring into a prospective employee's race, colour, ancestry or place of origin under Alberta's human rights legislation.

vii. Social Media

As best practice, employers should obtain an applicant's consent before reviewing the applicant's social media presence to ensure that they are in compliance with privacy legislation. While employers may review an applicant's social media presence, social media checks during the recruitment and hiring stage can increase the risk of a discrimination complaint, particularly if the information gained from an applicant's social media presence may be connected to a protected ground of discrimination.

Consent is generally not required for the reasonable collection, use or disclosure of employee personal information for the sole purpose of recruitment or establishing an employment relationship. Employers should restrict such collection, use or disclosure to what is reasonable and necessary for this purpose. Employers should also note that they have obligations to safeguard such information once it has been collected and they must recognize that these obligations may change once a potential employee becomes an actual employee.

c. *Pay Equity*

Alberta's human rights legislation requires employers to pay employees of all genders the same rate of pay when they perform the same or substantially similar work for the employer. An employer is prohibited from reducing the pay of an employee in order to comply with this rule. When an employee is paid less than a member of the another gender for the same or substantially similar work, the employee is entitled to commence a legal action or human rights complaint against the employer to recover the difference in pay and costs.



d. Duty to Accommodate

Employers have a legal duty to take reasonable steps, to the point of undue hardship, to accommodate an employee's needs based on the protected grounds. This is called the **duty to accommodate**. The duty to accommodate may require an employer to adjust the workplace by providing tools, equipment and aids to make a position more accessible, altering the employment premises, altering job duties, or implementing other accommodations.

In almost every case, an employer is required to provide *some* accommodation to support the needs of an employee with a disability. However, accommodation is not limited to employees with disabilities. An employer must take steps to accommodate an employee's individual needs related to any protected ground under the Alberta *Human Rights Act*.

An employer must accommodate up to the point of undue hardship. Undue hardship occurs when the employer's hardship is "substantial in nature." An employer may be able to claim undue hardship if the accommodations would, among other things, create financial loss or intolerable disruption to regular business.

Accommodation is a very fact-specific process. What is reasonable in one case may not be reasonable in another. Each case should be handled and assessed in an individual manner and in consultation with the employee.

Employers should have comprehensive and updated policies on supporting employees with needs related to protected grounds, especially employees with disabilities and the availability of job accommodations for employees with disabilities. It is best practice to provide such policies and access to resources to new employees before or during their orientation or training period.

II. Wage and Hour

a. What are the main sources of wage and hour laws in your jurisdiction?

The *Employment Standards Code* and *Employment Standards Regulation* are the main source of wage and hour law in Alberta.

b. What is the minimum hourly wage?

The general minimum hourly wage is \$12.20.

The minimum hourly wage in Alberta will increase to \$13.60 on October 1, 2017 and to \$15.00 on October 1, 2018.

In Alberta, liquor servers are entitled to the same minimum wage as other employees.

Different minimum wage rules apply to certain types of salespersons and domestic employees (living in their employer's home).



c. What are the rules applicable to final pay and deductions from wages?

In Alberta, employers may deduct from employee's wages in three situations:

- a) when permitted or required by an enactment or a judgment or order of a court:

These are deductions made according to federal and provincial legislation. They include federal and provincial Income Tax, Employment Insurance Premiums and Canada Pension Plan contributions. The money deducted must be remitted to the proper authorities.

A court may also order an employer to deduct an amount from an employee's wages. The money deducted must be paid out in accordance with directions contained in the court order.

- b) when authorized by a collective agreement that is binding on the employee:

These are deductions that are specifically permitted by a collective agreement in a unionized workplace.

- c) when personally authorized in writing by the employee:

An employer may deduct money from an employee's wages if the employee has agreed to this in writing, subject to certain rules. The employee's written authorization must be very specific and state the reason and the amount of any specific deduction.

It is not enough to have an oral statement that the employee authorizes the deduction, or to have a written statement that the employee owes money to the employer without stating that the amount can be deducted from the employee's wages.

Even when authorized by a collective agreement or in writing by an employee, an employer is not permitted to make deductions for faulty workmanship, cash shortages or loss of property if an individual other than the employee had access to the cash or property.

d. What are the requirements for meal and rest breaks?

After five hours of work, an employee must be provided a 30-minute paid or unpaid rest period unless:

- a) an accident occurs, urgent work is necessary or other unforeseeable or unpreventable circumstances occur,
- b) different rest provisions are agreed to pursuant to a collective agreement, or
- c) it is not reasonable for the employee to take a rest period. However, if the employee is unable to take his or her break, then it must be paid.

e. What are the maximum hour rules?



Generally, employees cannot work more than 12 hours per day unless an accident occurs, urgent work is necessary to a plant or machinery or other unforeseeable or unpreventable circumstances occur. However, special rules apply for certain industries and occupations (e.g. ambulance attendants), while others are exempt from the hours of work rules altogether (e.g. oilwell servicing, certain professionals).

An employer may also receive a permit from the Director of Employment Standard authorizing extended hours of work beyond 12 hours. However, this permit will only be granted when specific conditions are met.

f. What are the requirements for days of rest?

Employees are entitled to certain minimum days of rest as follows:

- one day of rest each work week,
- two consecutive days of rest in each period of two consecutive work weeks,
- three consecutive days of rest in each period of three consecutive work weeks,
- four consecutive days of rest in each period of four consecutive work weeks, and
- at least four consecutive days of rest after 24 consecutive work days.

g. How should overtime be calculated?

Overtime is payable at one and a half times the employee's regular rate for all hours worked in excess of 8 hours per day or 44 hours per week, whichever is greater. However, special rules exist for employees in certain industries, for managers and supervisors and where compressed work week arrangements are scheduled in advance.

h. What exemptions are there from overtime?

Overtime rules do not apply to managers, supervisors, or employees in a confidential capacity under the *Alberta Employment Standards Regulation*. Employees do not qualify for overtime if the work they do is managerial, supervisory or confidential. For this exemption to apply, the manager or supervisor's duties must not consist of work similar to that performed by other employees, other than in an incidental way.

In order to determine whether an employee's work is considered managerial or supervisory in character, an employer should consider:

- The employee's job duties do not need to be exclusively managerial, supervisory or confidential in nature for the exception to apply. A manager can perform the same work as other employees as long as it is only incidental to their managerial or supervisory function.
- Formal job descriptions do not provide a conclusive answer. What an employee actually does determines if they are a manager or supervisor, not their job description.

While "manager" is not specifically defined in Alberta legislation, a manager is typically a person who has independent authority to make decisions about the administration of the workplace or organization, such as budget planning, allocating expenses, or regulating the workplace.



Special exemptions from overtime rules also exist for some salespersons, professionals (e.g., lawyers, engineers, dentists, and architects), farm workers, licensed land agents, film extras, some camp counselors, domestic employees and information systems professionals.

Certain industries and employees are subject to different overtime rules, including ambulance services, logging and lumbering, oilwell servicing, trucking, caregivers and others.

i. What payroll and payment records must be maintained?

An employer must keep up-to-date records of the following information for every employee:

- a) Regular and overtime hours worked on a daily basis;
- b) Wage rate and overtime rate;
- c) Earnings paid, with a breakdown of each component of the earnings for each pay period;
- d) Deductions from earnings and the reason for each deduction; and
- e) Time off instead of overtime pay provided and taken.

At the end of each pay period, an employer must provide a written statement to each employee that sets out the above information and the period of employment covered by the statement. This is typically done by providing the employee a paystub with all of the required information listed above. At an employee's request, an employer must provide a detailed statement of how the employee's earnings were calculated and the method of calculating any bonus or living allowance paid, whether or not it was paid as wages.

An employer must also maintain up-to-date payroll and pay administration records of the following additional information for every employee:

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| a) Name, address, and date of birth; | f) Starting wage and overtime rates, any changes in rates, and details of those changes; |
| b) The employee's job title and job description; | g) Copies of tax forms (TD1) and waivers. |
| c) The date that the current employment began; | h) Copies of documentation relating to maternity and parental leave, reservist leave, and compassionate care leave; |
| d) The date on which general holidays are taken; | i) Discipline records; |
| e) The start and end date of each annual vacation and the period of employment in which the vacation was earned; | j) Copies of any termination notice; |
| | k) Copies of written requests to employees to return to work after a temporary layoff. |

Employment records must be retained by an employer for at least 3 years from the date each record is made.

While not required, it may be helpful to also include copies of workers' compensation information and claims, copies of the employee's performance reviews, and information about any benefits the employee is receiving.



Special exemptions from keeping records of regular and overtime hours of work exist for employees who are not entitled to overtime pay. The exemption applies only to records about regular and overtime hours of work by these employees. All of the other records for these employees must be maintained by the employer.

The contents of this Information Bulletin were prepared as a joint effort between Emery Jamieson LLP (Edmonton) and Carscallen LLP (Calgary) to inform our clients and friends of important provisions in the field of employment law. The content is for information purposes only and is not legal advice.

Please contact our office if you have specific questions or concerns relating to any of the topics covered in this Bulletin.

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