

Change is in the air:

Are you ready for changes to the
Alberta *Employment Standards*
Code and the Ontario
Employment Standards Act,
2000?

Presented By: Adrian Elmslie, Edmonton and
Meaghen Russell, Toronto

Change is on the way

- Alberta:
 - Bill 17 – *The Fair and Family-Friendly Workplaces Act*
 - Most of the amendments to the Code will come into force on January 1, 2018
 - Collective agreement provisions will continue to apply until expiry
 - The provisions on youth employment will come into force on proclamation
- Ontario:
 - Bill 148 - *The Fair Workplace, Better Jobs Act, 2017*
 - Most of the amendments to the Act will come into force on January 1, 2018
 - Some notable exceptions:
 - Employee Classification Requirements came into force immediately with Royal Assent (November 27, 2017)
 - Extended Parental Leave will come into force on December 3, 2017
 - New Critical Illness Leave will come into force on December 3, 2017

Wages - Ontario

CURRENT MINIMUM WAGE	NEW MINIMUM WAGE
\$11.60 (general)	\$14.00 → \$15.00 1 Jan 2018 → 1 Jan 2019
\$10.70 (students < 18)	\$13.15 → \$14.10
\$9.90 (liquor servers)	\$12.20 → \$13.05

- Followed by annual CPI increases @ October 1, 2019
- Published annually by April 1

Wages - Alberta

CURRENT MINIMUM WAGE	NEW MINIMUM WAGE
13.60 (general)	\$15.00 1 October 2018

- Employers will no longer be allowed to pay employees with disabilities less than minimum wage.
- Deductions
 - Changes to allowable and prohibited deductions from earnings

Holiday pay - Ontario

NOW	JANUARY 2018
Wages earned and vacation pay payable in 4 work weeks before week of holiday \div 20	Wages earned in preceding pay period \div number of days worked
Can agree to a substitute holiday	If agree to a substituted day, written statement required

Vacation - Ontario

NOW	JANUARY 1, 2018
2 weeks for all employees	2 weeks initially 3 weeks after completion of 5 years of service
Retain records for 3 years	Retain records for 5 years

Holiday pay and vacation pay – Alberta

- General Holiday and General Holiday Pay
 - Requirements will be simplified.
 - Requirement to have worked for 30 days in the 12 months before the holiday will be removed.
 - Distinctions between regular and non-regular days of work will be eliminated.
 - General holiday pay will be calculated as 5% of wages, holiday pay and vacation pay earned in the 4 weeks immediately preceding the holiday.
- Vacations and Vacation Pay
 - Half-day vacation increments will be allowed, up from 1 day.

Changes to job-protected leaves of absence

ALBERTA	ONTARIO
<ul style="list-style-type: none">• Changes to current leaves<ul style="list-style-type: none">• Eligibility• Maternity Leave• Paternity Leave• Compassionate Care Leave• New leaves<ul style="list-style-type: none">• Personal and Family Responsibility Leave• Long-Term Illness and Injury Leave• Bereavement Leave• Domestic Violence Leave• Citizenship Ceremony Leave• Death or Disappearance of a Child	<ul style="list-style-type: none">• Changes to current leaves<ul style="list-style-type: none">• Maternity Leave• Paternity Leave• Personal Emergency Leave• Death of a Child/Crime Related Disappearance Leave• Family Medical Leave• Critical Illness Leave• New leaves<ul style="list-style-type: none">• Domestic Violence/Sexual Violence Leave

Job-protected leaves of absence – Alberta

- Employees will be eligible for current and new leaves after 90 days (rather than a year)
 - Maternity/parental and compassionate care leave changes currently have a 52 week eligibility period
 - Exception – Reservist Leave – eligibility period is still 26 weeks

Maternity leave

	NOW	NEW
Ontario	6 weeks in case of a still-birth, miscarriage or birth where no entitlement to parental leave	12 weeks
Alberta	15 weeks	16 weeks

Parental leave

	NOW	NEW
Ontario (changes to be effective December 3, 2017)	35 weeks Birth mothers who take maternity leave	61 weeks (combined 78 weeks with maternity leave to match E.I.)
	37 weeks Adoptive parents, fathers	63 weeks
Alberta	Parental Leave will remain at 37 weeks; future changes may be effected via regulations to better align with Employment Insurance Benefits	

Compassionate care leave - Alberta

NOW	NEW
8 weeks	27 weeks
Leave is limited to 2 installments	Leave no longer limited to 2 installments
Notice for returning to work reduced is 2 weeks	Notice for returning to work is 1 week
	Caregiver status is expanded

Personal emergency leave - Ontario

NOW	NEW
Currently only applies to employers with 50+ employees	Will apply to all employers
10 days per year	10 days per year
Unpaid	2 paid days (to be taken first), 8 unpaid days
Personal illness; death or illness of named family members; urgent matter concerning named family members	Personal illness; death or illness of named family members; urgent matter concerning named family members
Employer can require reasonable evidence	Employer can require reasonable evidence but may not require a doctor's note

Leave for death of a child/crime related disappearance - Ontario

NOW	NEW
Child death due to crime	Child death for any cause
104 weeks, a single period	104 weeks, a single period
Child disappearance as result of crime	Child disappearance as result of crime
52 weeks, a single period	104 weeks, a single period
Unpaid	Unpaid
6 months of employment	6 months of employment

Family medical leave - Ontario

NOW	NEW
Family member with serious medical condition with significant risk of death within 26 weeks	Family member with serious medical condition with significant risk of death within 26 weeks
8 weeks in a 26-week period	28 weeks in a 52-week period
Unpaid	Unpaid

Critical illness leave - Ontario

NOW	DECEMBER 3, 2017
Employees with at least 6 months of service	Employees with at least 6 months of service
Up to 37 weeks of leave to provide care or support to critically ill child under age 18	Up to 37 weeks of leave to provide care or support to critically ill minor child
Nil	Up to 17 weeks to provide care or support to critically ill adult family member
Medical certificate required	Medical certificate required

New job-protected leaves - Alberta

Leave	Length of Leave	Giving Notice	Purpose of Leave
Personal and Family Responsibility Leave	Up to 5 days during calendar year	As much notice as reasonable and practical	For the employee's health or to meet family responsibilities in relation to family members.
Long-Term Illness and Injury Leave	Up to 16 weeks per calendar year.	<ul style="list-style-type: none">- Written notice as soon as practical.- Provide medical certificate stating estimated length of leave.- 48 hours notice of return to work unless otherwise agreed.	For employees' with long term illness or injury.
Bereavement Leave	Up to 3 days per calendar year.	As much notice is reasonable and practical.	For bereavement of a family member.

New job-protected leaves – Alberta

Leave	Length of Leave	Giving Notice	Purpose of Leave
Domestic Violence Leave	Up to 10 days leave during calendar year.	As much notice as reasonable and practical.	To allow employees to seek medical attention, obtain counselling or victim services, relocated or seek legal or law enforcement assistance.
Citizenship Ceremony Leave	Up to ½ day leave.	As much notice as reasonable and practical.	To attend a citizenship ceremony to receive certificate of citizenship.
Critical Illness of a Child Leave	Up to 36 weeks.	<ul style="list-style-type: none">- 2 weeks written notice (except where shorter period is necessary)- Provide medical certificate.- 48 hours notice of return to work unless otherwise agreed.	To allow parents time off to care for critically ill or injured child.

New job-protected leaves – Alberta

Leave	Length of Leave	Giving Notice	Purpose of Leave
Death or Disappearance of a Child	<p>Up to 52 weeks for an employee whose child has disappeared and it is probable that the child disappeared as a result of a crime.</p> <p>Up to 104 weeks for an employee whose child has died and it is probable that the child died as a result of a crime.</p>	<p>Provide written notice and reasonable verification of entitlement to the leave as soon as it is reasonable and practical.</p> <p>48 hours of notice of return to work unless otherwise agreed upon.</p>	<p>For an employee whose child has disappeared or has died and it is probable that the child disappeared or died as a result of a crime.</p> <p>Employee is not entitled to leave if charged with the crime.</p>

New job-protected leave – Ontario

Leave	Length of Leave	Giving Notice	Purpose of Leave
Domestic Violence/Sexual Violence Leave	<p>Up to 10 days and up to 15 weeks of leave per year</p> <p>**First 5 days per year are to be paid</p>	<p>Employee shall advise the employer of the leave as soon as possible after beginning it.</p> <p>Employer may require reasonable evidence</p>	<p>Where an employee or employee's child experiences domestic/sexual violence</p> <p>Purposes include:</p> <ul style="list-style-type: none">• Medical attention• Counselling• Relocating• Victim services organization• Legal or law enforcement

Alberta specific changes

Changes to existing standards – Rest periods

NOW	NEW
<ul style="list-style-type: none">• 30 minute rest period for every shift longer than 5 consecutive hours	<ul style="list-style-type: none">• 30 minute rest period for every 5 hours of consecutive employment

- Breaks may be paid or unpaid

Changes to existing standards – Record keeping

- Changes to the Code will expand the list of records that employers are required to keep for 3 years.

Changes to existing standards - Overtime

- Currently, employees receive overtime pay after eight hours of work per day or 44 hours per week, whichever is greater.
 - 1 hour overtime = 1.5 normal hourly wage.
- Currently, banking arrangements in which employees take time off at a later date instead of being paid overtime are also possible.
 - 1 hour overtime = 1 hour off at later date.
- Banking arrangements will change.
 - Employees will receive 1.5 hours off per hour of overtime worked instead of 1 hour.
 - Alignment between overtime pay and banked hours.
 - Every other province that allows overtime uses this system.
- Timelines will change - time off will need to be taken or paid out within 6 months instead of 3 months.

Changes to existing standards – Compressed work weeks / Averaging agreements

- Currently, employers may put in place a compressed work week.
 - Fewer work days with more hours of work per day.
- This type of arrangement will be replaced with averaging agreements.
 - Employer will average an employee's hours of work over a period of 1 to 12 weeks for the purpose of determining overtime.
 - Averaging agreements must:
 - Be in writing.
 - Provide a start and end date with a term no longer than 2 years.
 - Have daily hours of work that do not exceed 12 hours.
 - Have scheduled weekly hours that do not exceed an average of 44 hours.
 - Specify how overtime is calculated.
 - Averaging agreements may be between an employer and an employee or a group of employees where the majority agrees.
 - Current compressed work week arrangements may remain in place for up to a year.

Changes to existing standards - Terminations

- Clarification of rules regarding termination notice required to expedite a resignation.
 - If employee gives less notice of termination than employer would have been required to give, employer can expedite the termination by paying the employee his or her wages during the notice period the employee gave.
- Employers will be prohibited from forcing employees to use entitlements during a termination period unless agreed to (i.e. banked overtime, annual vacation or day in lieu of holiday pay).
- Probationary period changes from 3 months to 90 days

Changes to existing standards - Terminations

- Changes to the group termination notice provisions.
 - Currently, employers terminating 50 or more employees at a single location within a 4 week period are required to give the Minister of Labour 4 weeks written notice.
 - Notice requirements will be graduated and significantly increased:
 - 50 – 99 employees = 8 weeks.
 - 100 – 299 employees = 12 weeks.
 - 300+ employees = 16 weeks.
 - Copy of notice must be given to bargaining agent if applicable and if not, to the employees as per the regulations.
 - Will only constitute notice to employee only if a copy is given to the employee.

Changes to existing standards – Temporary Layoffs

- Changes introduced to eliminate the possibility of an indefinite temporary layoff.
 - Layoffs must be limited to 60 days within a 120 day period.
 - Layoffs may be extended if wages and/or benefits are paid and the employee agrees, or if there is a collective agreement in place with recall rights.
- Unless otherwise provided by a collective agreement, the employer will need to give written notice of the temporary layoff (1 or 2 weeks depending on length of service, or as soon as practicable if unforeseeable circumstances).
- Unless there is a collective agreement in place with recall rights, recall notices must give 7 days written notice and must be served on the employee.

Changes to existing standards – Youth employment

- Various changes to the youth employment provisions.
 - Various categories – artistic endeavours, light work, hazardous work.
- Permits and parental consent may be required.
- Changes are not being made immediately.
 - Consultation process is required pursuant to the regulations to determine what will constitute light work and hazardous work.

Changes to existing standards – Permits, exceptions and variances

- Currently, the Code allows for employers to apply to the Director for permits to modify or provide an exemption from certain standards (ex. hours of work, minimum wage).
- The permitting process will be streamlined.
 - It will contain clear and enforceable criteria that will be published in regulations or policies.
 - It will set time limits on permits or variances.
- Permits previously granted to employer associations or industry-wide exceptions will be replaced with regulations.
- Permits, variances and exemptions will be published.
- Existing permits will continue until no later than January 1, 2019.

Changes to existing standards – Enforcement: appeal body, administrative penalties and officers

- Umpires for appeals will be replaced with “appeal body”.
 - Anticipated this will be the Labour Relations Board.
- Introduction of administrative penalties system.
 - Employer may be required to pay a daily amount for each day the contravention or failure to comply occurs.
 - Penalty may not exceed \$10,000 for each contravention or each day.
- Greater ability for Officers to recover an employee’s earnings, conduct an investigation/inspection/audit, require self-audits and dismiss unfounded complaints.
- Time periods for recovery of earnings will no longer be dependent on when the order is issued.

Changes to existing standards – Enforcement and prosecutions

- Limitation period for prosecution increasing from 1 year to 2 years.
- All breaches of the Code or Regulations will be considered an offence.
- Details of enforcement actions to be published.

Ontario specific changes

Equal pay

NOW	APRIL 1, 2018
Can't pay one gender less than other gender for substantially same kind of work under similar working conditions	Can't pay less based on gender or to casual, part-time, temporary, seasonal, employees for same kind of work, substantially under similar working conditions
Exceptions: <ul style="list-style-type: none"> • Seniority system • Merit system • System that determines pay by quantity or quality of production • Any other factor other than gender 	Exceptions: <ul style="list-style-type: none"> • Seniority system • Merit system • System that determines pay by quantity or quality of production • Other factors other than gender or employment status
Nil	<ul style="list-style-type: none"> • Employee can request pay review; employer must adjust pay or provide written response

Temporary help agency employees

- Equal pay as the rates paid to the employer's regular employees when performing the same kind of work in same establishment under similar working conditions (to be effective 1 April 2018)
- Employee can request pay review
- Temp agency must adjust pay or give written response
- 1 week of written notice or pay in lieu of notice by temp help agency of early termination of assignment (for 3+ month assignments); alternatively, can provide a reasonable re-assignment of at least 1 week with a client during the notice period
- Does not apply for early termination due to employee's misconduct, disobedience, neglect of duty

Scheduling rules

Effective 1 January 2019:

- right to request schedule or location changes after having been employed for 3 months, without fear of reprisal; a denial must include reasons
- employees who regularly work more than 3 hours per day, but upon reporting to work are given less than 3 hours, must be paid 3 hours at their regular rate of pay
- employees can refuse to accept shifts or to be on-call without repercussion if their employer asks them to work or be on-call with less than 96 hours' notice
- if a shift is cancelled within 48 hours of its start, employees must be paid 3 hours at their regular rate of pay
- "on-call" employees who are not called in to work or work less than 3 hours, must be paid 3 hours at their regular rate of pay; required for each 24-hour period that employees are on-call

Independent contractors

- Employers shall not treat any employee as if she or he is not an employee
- Employers will be responsible for proving an individual is not an employee, in case of an Employment Standards investigation
- Penalties – including prosecution, monetary penalties and public disclosure of a conviction – for misclassifying an employee as a contractor

Electronic agreements

- Employers and employees can enter into electronic agreements wherever an agreement is required under the Act e.g. agreement to work excess hours

Exclusions

- Ontario government accepting input from public up to December 1, 2017 on
 - ✓ IT Professionals
 - ✓ Managerial and Supervisory Employees
 - ✓ Residential Building Superintendents, Janitors and Caretakers
 - ✓ Pharmacists
 - ✓ Architects
 - ✓ Residential Care Workers
 - ✓ Homeworkers
 - ✓ Domestic Workers

What can employers do in preparation for these changes?

What can employers do in preparation for these changes?

- Familiarize yourself with the changes.
- Educate your staff about the changes (in particular, supervisors, human resources and payroll staff).
- Review (and where necessary revise) existing policies, handbooks, offer letters and employment agreements to ensure they are in compliance with the changes.
- Ensure payroll systems are in accordance with new changes (e.g. general holiday pay).
- If you have existing compressed work week arrangements begin preparing new averaging agreements. Employers have a year to implement new averaging agreements.
- Consider whether you will need new permits. Existing Alberta permits expire January 1, 2019.
- If your workforce is unionized, keep in mind changes to the Code on collective agreement negotiations.
- Check for upcoming changes to employment standards regulations (details of which have not yet been released).

Thank you and questions



Adrian Elmslie

Partner, Edmonton

D +1 780 423 7364

adrian.elmslie@dentons.com



Meaghen Russell

Partner, Toronto

D +1 416 863 4397

meaghen.russell@dentons.com