

***KNOW YOUR RIGHTS IN THE
WORKPLACE:
A YOUTH EMPLOYMENT LAW
HANDBOOK***

**By
Alberta Civil Liberties Research Centre**



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Alberta **LAW**
FOUNDATION

KNOW YOUR RIGHTS IN THE WORKPLACE
ALBERTA CIVIL LIBERTIES RESEARCH CENTRE

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A YOUTH EMPLOYMENT LAW HANDBOOK

**By
Alberta Civil Liberties Research Centre**

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Research Centre**

Mailing Address:
c/o Faculty of Law
University of Calgary
2500 University Drive N.W.
Calgary, Alberta T2N 1N4
(403) 220-2505
Fax (403) 284-0945
E-mail: aclrc@ucalgary.ca

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Board of Directors of the Alberta Civil Liberties Research Centre

Edwin W. Webking, Chairperson; Janet Keeping, Treasurer; Doreen Barrie; Michael Greene; Michael Wylie, Jennifer Koshan and Alastair Lucas.

Principal Researcher and Writer

Mira Kunes, B.Sc., LL.B.

Alberta Network of Immigrant Women

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Legal Editor

Linda McKay-Panos, B.Ed., LL.B., LL.M., Executive Director.

Project Management

Stephanie Williscroft, B.A. (History), Administrator.

Linda McKay-Panos, B.Ed., LL.B., LL.M., Executive Director.

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Foreword

This project evolved from many questions we receive from young people about their rights in the workplace and about some recent changes in Alberta's labour laws regarding children and work. We hope that young people find this handbook useful.

- December 2008.

How to Use this Handbook

This information handbook is designed to help you understand your rights in the workplace and what to do if you feel you are being treated unfairly or your employer is not following the law. A variety of example situations are included throughout the handbook to further illustrate the concepts.

As you use this document, please remember that there are exercises in the Appendix intended to enhance your learning of the laws that are applicable to you.

Although the handbook primarily deals with your legal rights, there are a number of non-legal considerations that are dealt with in the handbook as well. These are found at the end of Part IV. You should also consider non-legal factors before deciding whether it is worth pursuing your legal rights.

A Note of Caution: The rules discussed in this handbook are for Alberta. While other provinces have similar workplace laws, you should check them to make sure you know what they say.

This handbook is divided into five parts.

Part One:

Introduction to Labour and Employment Law

Talks about the laws in Canada and Alberta that are designed to protect the rights of workers in the workplace. Generally speaking, you will find that the law sets the minimum standard of what is expected of employers and employees.

Parts Two, Three, and Four:

Know Your Rights Before You are Hired

Know Your Rights After You are Hired

Ending Your Employment

Parts Two to Four provide answers to your most common employment questions in an easy-to-read Q&A format.

Part Five:

Resource Section

Provides contact information for organizations providing legal assistance or information about the law, as well as organizations and resources about workplace safety.

The Resource Section also includes some useful suggestions in the “*Useful Tips*” section, and a glossary.

The Learning Exercises

The Learning Exercises section in the Appendix includes learning exercises to test your understanding of the law. Some of the exercises include possible solutions. Some exercises do not have solutions; these will be useful for discussion.

Part I: Introduction to Labour and Employment Law

THINGS YOU WILL LEARN

- Your employment contract should be the first place you look to determine what your rights are on the job.
- It is always a good idea to get your contract in writing if possible.
- You should review the law to ensure that your contract follows the law and to determine if there any other rights you may have that are not listed in your employment contract.
- Employment policies are the rules of the workplace. You are generally required to follow the employment policies unless they include rules that are against the law. Your employer cannot have a policy that is against the law.

Labour and employment laws concern the relationship between the employees (workers) and employers (bosses) in the workplace. These laws outline the rights and responsibilities of employers and employees. They also provide a variety of options for workers to address

issues they face at the workplace – both with or without the assistance of lawyers.

The starting point for determining what rights you have in the workplace is usually your employment contract. The employment contract is an agreement between you and your employer that states what you are entitled to on the job, including what you will be paid and when you will work. Some employment contracts are written down and signed by both employee and employer. Even if your employment contract is never written down, as long as you and your boss both agree to those terms, it is still a contract.

The only problem with an employment contract that is not written down is that it can sometimes be difficult to remember exactly what the agreement was years later. It is always a good idea to ask your employer to write down the terms of the contract on paper, and both of you should sign and keep a copy so that if there is a problem later, you both have a copy.

In Alberta, there are also a variety of laws that govern the employer/employee relationship. The most important of these laws are:

- *Employment Standards Code*;
- *Human Rights, Citizenship and Multiculturalism Act*;
- *Alberta Labour Code*; and
- *Occupational Health & Safety Act and Code*.

You can find a copy of the full text of these laws on the Internet.¹

¹ Laws can be found on the Alberta Queen's Printer website, online: <http://www.qp.gov.ab.ca/catalogue/>

It is important to understand that:

- The law sets the minimum standards. Your employment contract cannot break the minimum standards established by the law.
- In some cases, more than one law may apply to you. This means that you may have a number of different rights. This could potentially provide you with several possibilities to address workplace or employment issues.
- Some laws do not apply to ALL employees. Read the following sections carefully to determine whether the law applies to your employment situation.

If you are not sure if the law applies to you, call the Employment Standards Office. Their toll-free number is 1-877-427-3731. (In Edmonton and surrounding areas dial 780-427-3731).



Workplaces, Policies, and Contracts

What is a Workplace?

A workplace is any place that you do work or perform a job for money. Workplaces can include offices, stores, salons, schools, factories, industrial warehouses, construction sites, someone else's home, cars, trains, and airplanes, to name a few examples. Anytime and any place you do work for an employer you have protection under the law.

What is a contract of employment?

A contract is any agreement between two people that can be in writing or oral. All employees have contracts of employment with their employers whether or not they are in writing. This is because they have agreed to work for their employer in exchange for pay.

It is only a contract if you willingly agree. If you were forced or pressured to agree, then there is no contract.

If you continue to work for your employer even if you disagree, the law might view this as "agreement". Therefore, if you disagree, make sure you make this clear to your employer. You may even wish to put your concerns in writing so that you have a copy for your records.

If I don't have anything in writing, how do I know the terms of my employment contract?

When you were hired, you probably had a conversation with your employer about:

- The job title;
- The job duties;
- How much pay you would get and when you would be paid;
- Whether you will receive benefits, such as health care or disability insurance;
- The start date; and
- The hours of work.



If you agreed to these terms by accepting the job and starting to work, these terms form your employment contract.

What if the terms of my employment contract are different than what the law says they should be?

If the *Employment Standards Code* applies to your job, your employment contract *has to meet the minimum level provided by the law*. However, you and your employer are free to have a contract that entitles you to *more* than the minimum established by employment standards.

Example:

You cannot be paid less than \$8.40/hr. This is because the minimum hourly wage in Alberta is \$8.40. You can, however, be paid more than \$8.40 per hour.

The *Employment Standards Code* applies to most jobs in Alberta. Continue reading this Chapter to find out if it applies to you and read “*Part III*” to learn more about what the law says about the minimum wage in Alberta.

What if my employment contract does not tell me what I am entitled to?

If your contract does not cover certain types of issues the law might be able to “fill in the blanks”. In other words, the law will make the contract automatically include the minimum standards set by the law.

Example:

Your contract does not say anything about how much vacation you get. You will be entitled to take 2 weeks vacation after one year of employment with your employer. If the *Employment Standards Code* applies to your job, this is the amount of vacation that most employees are entitled to in Alberta.

Continue reading to find out whether the *Employment Standards Code* applies to you and how much vacation you might be entitled to in the “Part III”.

What happens if my employer doesn't do what we agreed to in the contract?

If your employer breaks the terms of the contract you can take your employer to court for breach of contract. You will have to prove what you agreed to, which is one reason why it is a good idea to get your contract in writing. The court will look at your contract to see what was agreed to, and whether your employer did what it agreed to do. The court will determine what you are entitled to if your employer breached the contract.



Your employer can also take you to court if you do not follow the terms of the contract.

Going to court can be very expensive, so the law has provided alternative options for individuals dealing with certain types of issues. These will be discussed throughout this chapter.

What are employment policies?

Once you are hired, employers often have policies or rules that outline how things will work in the workplace. Employers usually expect employees to follow these policies.

You are generally required to follow the policy unless it breaks the law. If the policy breaks the law, then you may be able to make a complaint under that law.

Example:

You work in a retail job and have worked a full seven or eight hour shift. A fellow employee calls in sick. Your employer cannot have a policy that requires you to work a second full shift in a row – this would be against the law.

If an employment policy does not break the law, but is one that you are having a problem with, you should try to discuss the problem with your employer. Perhaps your employer can help come up with a solution that works for both of you.

Employment Standards Codes

THINGS YOU WILL LEARN

- The Alberta *Employment Standards Code* and the *Canada Labour Code* both outline the minimum standards to which employees are entitled.
- Both laws outline minimum standards regarding:
 - Wages
 - Vacation
 - Hours of work and rest
 - Overtime and overtime pay
 - Vacations and vacation pay
 - Holidays and holiday pay
 - Maternity and adoption benefits
 - Termination of employment
- Alberta's *Employment Standards Code* applies to most employees in Alberta except for "federal employees" who work in federally regulated industries.
- Parts of the *Code* about hours of work, overtime pay, and vacations do not apply to certain types of employees. Some examples are farm workers, car sales people, and film extras.
- The *Canada Labour Code* applies to all "federal employees" who work in federally regulated industries, such as airlines, radio, television, banks and railways.

Alberta Employment Standards Code

What is it?

The *Employment Standards Code* sets out the rules that govern most workplaces in Alberta. The rules are made by the government to protect employees and to ensure that employees are not taken advantage of in the workplace.

The law provides the minimum standards that employers must maintain in the workplace.

If employees feel that their employer is breaking the law, the *Code* allows the employee to make a complaint to the Employment Standards Office. Staff at the Employment Standards Office will provide information to employees in Alberta and will also help employees file a complaint against their employers.

What does it cover?

The *Employment Standards Code* covers topics such as the payment of wages, hours of work and rest, overtime and overtime pay, vacations and vacation pay, holidays and holiday pay, maternity and adoption benefits, and termination of employment.

Who does it apply to?

The *Employment Standards Code* outlines the basic employment standards that apply to most workplaces in Alberta.

The Code does not apply to:

- Federal Employees. These are people who work for the federal government in industries such as railways, shipping, telephone companies, radio broadcasting companies, television companies, air transport, and banking. These workers are covered by the *Canada Labour Code*.
- Certain types of employees such as those who work for the city police service, or professionals (for example, lawyers and dentists) who are governed by other laws.

Certain parts of the Code do not apply to:

- Farm or ranch workers
- Domestic employees
- Construction workers/repair workers
- Supervisors or managers
- Some types of sale employees
- Extras in films or videos

What should I do if I'm not sure if the Alberta Employment Standards Code applies to me?

Contact the counsellors at the Employment Standards Office. They can help you to determine whether the Code applies to you.

What are my options if my rights are violated under the Alberta Employment Standards Code?

(i) Telephone Counselling Services

The Counsellors at the Employment Standards Office can often help you determine the best way to deal with your problem. They can provide you with more information to determine if your rights have been violated and can help you decide what to do next.

(ii) Self Help Kit

If you are having a dispute with your employer about something covered by the *Alberta Employment Standards Code*, the Self Help Kit will provide you and your employer with information about each of your basic rights and responsibilities. It includes forms that can help you outline your complaint to your employer and information about the law that will help you make your case.

In most instances, the Employment Standards Office will require you to try using the Self Help Kit before taking any further steps. You can find a copy of the Self Help Kit at the Employment Standards website² or by visiting any Employment Standards Office.

You are not required to use the Self Help Kit if:

- Your employment ended more than five months ago;
- Your employer has closed the business;

² Self Help Kit available online at:
<http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/1697.html>

- You received a bounced cheque from your employer; or
- You do not want your name to be released to your employer.

(iii) Filing a Complaint

If the Self Help Kit does not help you to resolve your problem, your next step may be to file a complaint.

Filing a Complaint with Alberta Employment Standards

How do I file a complaint?

You must complete a 'Complaint by Employee' form. You can find this form at the Employment Standards website³ or go to any Employment Standards Office. Counsellors at the Employment Standards Office can help you.

You should also attach any documents that may help to make your case. This includes things like copies of letters sent, pay stubs, or employment contracts.

Sign the form and then either mail or bring it in to the nearest Employment Standards Office; it cannot be submitted by e-mail.

³ 'Complaint by Employee' form available online at:
<http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/1697.html>

How long do I have to file a complaint?

You should file your complaint as soon as possible. A complaint cannot normally be filed more than 6 months after the last day of your employment.

What if more than six months has passed?

If you have very good reason for not filing within the six-month period you can ask for an extension. Extensions are granted only in very limited circumstances.

What if I don't want my employer to know that I am making a complaint?

You can make a confidential complaint if your complaint has to do with a violation of a minimum standard (e.g. employment records, hours of work and overtime, payment of wages, holiday/vacation pay). Confidential complaints concerning maternity/parental leave or termination of employment will not be accepted.

To make a confidential complaint you must complete the 'Confidential Complaint by a Current Employee' form. You will still be required to write out your complaint and sign the form.

Will my employer be told my name if I made a Confidential Complaint?

No – Once you submit your form, an Employment Standards Officer will contact your employer and explain that a violation has occurred. The Officer will not tell your employer who made the complaint. If the investigation reveals that your employer has not followed the *Code*, your employer will be informed of the

requirements of the Code and will be required to correct the situation from that day forward.

Note that if your complaint involves payment of earnings, you may not be able to recover the money owed to you by filing a confidential complaint. It is difficult for an investigator to determine if you haven't been paid correctly if he or she is unable to discuss the specifics of your pay history with your employer.

Is there any cost for filing a complaint?

No – There is no cost for filing a complaint or for any of the services offered by the Employment Standards Office. However, if you choose to hire a lawyer, you will have to pay the lawyer yourself.

What happens after my complaint is filed?

An employment standards officer will review your complaint. They may contact you or your employer to request additional information. They usually will also try to help you solve the problem informally.

If the issue is more complex or the problem cannot be solved, an investigator will investigate the matter. At the end of the investigation, the officer will make a decision as to what should be done.

If your employer has breached the Code the officer can order your employer to do certain things to correct the situation. For example, your employer could be ordered to pay you unpaid wages, or order that you get the days off that you are entitled to.

If either you or your employer disagrees with the decision of the officer, you may appeal the decision.

How long will it take to resolve my complaint once it is filed?

It will depend on how complicated the issue is and the amount of cooperation they receive from you and your employer.

Complaints by young people and adolescents get priority and are fast-tracked by the Employment Standards office.

What if my boss fires me because I made a complaint to the Employment Standards Office?

This is illegal – Your employer is not allowed to fire you for making a complaint to the Employment Standards Office. He or she could be fined for firing you. Your employer can also be told to re-hire you or pay you money as compensation for firing you for making a complaint.

See Learning Exercise A in Appendix

Canada Labour Code

What is it?

The *Canada Labour Code* is very similar to the *Alberta Employment Standards Code*. The *Canada Labour Code* also covers topics such as the payment of wages, hours of work and rest, termination of employment.

Who does it apply to?

The *Canada Labour Code* only applies to certain types of employees. In particular, it applies to those who work for the federal government or federally regulated industries. Such industries include railways, shipping, telephone companies, radio broadcasting companies, television companies, transportation, air transport, and banking.

Note that the *Canada Labour Code* does not apply to managers and supervisors who work in these industries.

If the Alberta *Employment Standards Code* applies to you, then the *Canada Labour Code* does not.

What should I do if I'm not sure if the Canada Labour Code applies to me?

You can contact the counsellors at the Alberta Employment Standards office or the Federal Labour Program Regional Office.

What are my options if my rights are violated under the Canada Labour Code?

If your rights are violated under the *Canada Labour Code*, you can file a complaint at the Federal Labour Program Regional Office. (See the “Resources” section for contact information.)

How long do I have to file a complaint?

Complaints should be made as soon as possible after the problem occurs. Complaints of unjust dismissal must be made within 90 days of the date of dismissal. You can make the complaint yourself, or you can also have a

representative (such as a lawyer) file the complaint for you.

What if I need help filing my complaint?

If you require assistance in filing your complaint, contact the counsellors at the Federal Labour Program Regional Office.

What happens after my complaint is filed?

First, an investigator will review the complaint to make sure that the *Canada Labour Code* covers it. Next, the inspector will send you a letter of determination explaining whether your employer has broken the law or not. If either you or your employer disagrees with the investigator's letter you will both have the opportunity to inform the inspector and provide your reasons. The inspector will review all reasons submitted and will make a final decision in writing.



The investigator may try to help you settle the complaint in another way agreeable to both you and your employer. This might include payment of money or getting your job back if you were wrongfully terminated. Disputes are normally settled at this stage.

If this process is unsuccessful, you can request that your complaint be referred to an adjudicator. An adjudicator is an independent individual who has knowledge of the law and who will resolve the problem. The final decision of

whether your complaint will go to the adjudicator is up to the Minister of Labour.

The adjudication process is similar to a court proceeding, but it is not as formal. The employee and employer will be required to provide evidence and bring witnesses to prove their case. The adjudicator will decide on the appropriate solution. The decision of the adjudicator is generally final. In very limited circumstances you may be able to appeal the decision of the adjudicator to the *Federal Court of Canada*.

Is there any cost for filing a complaint?

No – There is no cost to file a complaint or for having an adjudicator hear your complaint. If you choose to hire a lawyer, you must pay the lawyer yourself.

Alberta Human Rights, Citizenship and Multiculturalism Act

What is it?

The Alberta *Human Rights Citizenship and Multiculturalism Act* is designed to protect individuals in Alberta from discrimination and harassment; it protects people's dignity and equality.

There are sections in the *Human Rights Act* that specifically protect individuals from discrimination and harassment in the workplace. More about human rights in the workplace can be found below.

What is discrimination?

Discrimination occurs when you are treated unfairly and differently from other workers due to your:

- Race
- Colour
- Gender (including pregnancy)
- Religion
- Ancestry
- Where you were born
- Age (if you are over 18)
- Physical disability
- Mental disability
- Family status (who you are related to by blood, marriage or adoption)
- Marital status (whether you are single, married, separated, divorced or single)
- Source of income (where you get your income)
- Sexual orientation



These are known as the **protected grounds of discrimination**.

Note: Discrimination can be either intentional or unintentional. Neither are allowed under the Act.

What is harassment?

Harassment is considered a form of discrimination. Harassment happens when someone is subjected to unwelcome or unwanted physical or verbal conduct. Sexual harassment refers specifically to harassment of a sexual nature. Harassment of any form based on the grounds listed above is prohibited in Alberta under the *Act*.

Some examples of harassment include:

- Verbal or physical abuse;
- Jokes, remarks, or comments;
- Threats or threatening behaviour;
- Sexual touching, suggestive remarks, compromising invitations;
- Sexually graphic images, signs, notices in the workplace;
- Demands for sexual favours.

It is not harassment if the behaviour is acceptable to everyone involved. For example, flirting is not harassment as long as it is welcome and entertained by both parties.

Filing a Complaint: What can I do if I have been discriminated against or harassed in relation to one of the protected grounds?

You, or someone else on your behalf with your permission, may make a complaint to the Alberta Human Rights Commission. Youth under age 18 can file complaints about discrimination based on any ground except age.

How do I file a complaint?

Contact one of the intake officers at the Alberta Human Rights Commission. They can help you file your complaint.

Complaint forms can be found on the Commission's website⁴. The complaint must include the details of what

⁴ Human Rights Complaint Forms available online at:
<http://www.albertahumanrights.ab.ca/complaints/forms.asp>

happened, the grounds of the discrimination, and the parties involved.

How long do I have to file a complaint?

You have 1 year from the date at which the incident occurred to file a complaint.

Is there any cost for filing a complaint?

No – There is no fee for the Commission’s services.

What will happen after my complaint is filed?

Your complaint will be served on your employer and he or she will have 21 days to file a response. You will receive a copy of this response.

A person from the Human Rights Commission (called a conciliator) will then contact you and your employer to help try and find a solution agreeable to you both.

If an agreement cannot be reached an investigator will look into your complaint further. The investigator may talk to witnesses and look at other relevant documents to find out what happened.

Based on all the facts gathered, what the Alberta *Human Rights Act* says, and any relevant legal cases, the Commission will decide if the complaint should be dismissed or if it should be referred to a human rights panel for a hearing.

If the complaint is a valid one, the Commission will try to solve the problem one more time by discussing possible solutions with both you and your employer. If that is

unsuccessful, the case will be heard by a human rights panel.

What happens at a Human Rights Panel Hearing?

At the panel hearing one or more Commissioners will hear your case in a process very similar to a court proceeding, but not nearly as formal.

Both you and your employer will be present and will have the opportunity to introduce evidence. The Commission will present your side of the case unless you have told them that you wish to represent yourself or have hired a lawyer to do so.

After hearing the evidence from both sides the panel will make a decision. If your employer has breached the *Human Rights Act* the panel can order your employer to pay you money as compensation for hurt feelings or dignity, pay you money for money you lost as a result of discrimination, give you back your job, or order your employer to stop the discrimination or harassment.

The decision of the human rights panel can be appealed by either one of you to the Court of Queen's Bench of Alberta. An appeal can only be on questions of law.

I am afraid that my employer will make things hard for me on the job if I file a complaint. What can I do?

The *Human Rights Act* prohibits anyone from trying to punish another person who makes a complaint. If your employer retaliates against you he or she can be held responsible and fined.

Canadian Human Rights Act

The *Canada Human Rights Act* is very similar to the *Alberta Human Rights Act* and has a similar complaint process. It is administered by the Canadian Human Rights Commission.

The *Canadian Human Rights Act* applies only to “federal employees”. These are people who work for the federal government in industries such as railways, shipping, telephone companies, radio broadcasting companies, television companies, air transport, and banking.

Alberta Labour Relations Code

What is it?

This law applies to employees who are members of a union. The *Alberta Labour Relations Code* sets out the rules that govern how unions can bargain with employers.

What is a union?

A union is group of employees who have the right to bargain with their employers as a group. Teachers, nurses, and many employees who work for the provincial government are all members of unions.

How do I know if my position is a “union job”?

The job posting will usually say if the position is unionized or not. If it is, the union will likely contact you when you are hired and union dues will be deducted from each paycheck. You should also receive a copy

of the collective agreement that the union has with your employer.

This collective agreement is part of your employment contract!

What if my employer violates the collective agreement?

Contact your union representative to determine the right steps for filing a grievance or to help you speak to your employer to fix the situation.

See Learning Exercises B, C, D and E in the Appendix



SUMMARY OF PART I

- Employment laws and your employment contract tell you what your rights are at the workplace & who your employer is.
- In order to determine what your rights are at the workplace you should ask the following:
 - What are the terms of your employment contract?
 - What laws apply to your employment?
 - What minimum standards (if any) does the law say apply to your employment contract?
- If your workplace rights are violated, what can you do?
 - Speak to your employer or put your complaint in writing. Provide details about what the law or your employment contract says and how your rights were violated.
 - File a complaint with any of the following agencies that apply to you:
 - If the *Alberta Employment Standards Code* applies to you.... then file a complaint with the Alberta Employment Standards Office
 - If the *Canada Labour Code* applies to you... then file a complaint with the Federal Labour Program Regional Office.
 - If the *Alberta Human Rights, Citizenship and Multiculturalism Act* applies to you ... then file a complaint with the Alberta Human Rights, Citizenship and Multiculturalism Commission.
 - If the *Canada Human Rights Act* applies to you... then file a complaint with the Canada Human Rights Commission.
- Visit a lawyer who can tell you if you have a case that you should take to court.

PART II: Know Your Rights Before You are Hired

Job Advertisements

What are employers allowed to post in job advertisements?

Employers are not allowed to discriminate on the prohibited grounds in employment or when posting a job advertisement. Recall from page 21 that these grounds include race or colour, gender, religion, ancestry, disability, etc.

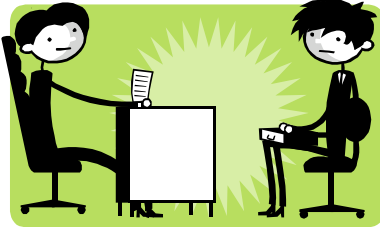


For example, they can't ask for only men to apply, or ask that people born in a certain country not apply.

Employers can post a job advertisement that includes a job description that might exclude some candidates based on the requirements of the position. As long as these “requirements” are necessary for performing the job, the law does not view this as discrimination. (See p.72 for more information on discrimination and bona fide occupational requirements.)

The Interview

Is the employer allowed to ask me personal questions in my interview?



Generally no, the employer can't ask you personal questions that could be used to discriminate against you under any of the prohibited areas such as race, colour, gender, etc.

(Refer back to p. 21 for the full list of prohibited grounds).

There are two exceptions. These are: when an action is considered reasonable and justifiable, or when there is something called a *bona fide* occupational requirement.

- A reasonable and justifiable action would occur when the employer needs to make some distinctions because the job requires it.

Example:

A separate school requests teachers to follow a certain religion or faith. The law says that it is reasonable and justifiable to require this.

- A bona fide occupational requirement means that the employer can require you to meet certain standards for safety reasons.

Example:

A grocery store requires that employees who stock shelves are able to lift a certain amount of weight. This would be considered a bona fide occupational requirement.

Some examples of questions employers cannot ask include:

- Do you have a girlfriend?
- Are you pregnant?
- What is your sexual preference?
- Where are you from?
- What is your religion?

An employer can ask:

- Where did you receive your education?
- Where did you gain your work experience?

Remember, not all employers who ask these questions are necessarily trying to gather information so that they discriminate against you. Sometimes, an interviewer's questions might be innocent and they are just trying to make conversation and get to know you better.

If you don't feel comfortable answering a question, you may ask the person interviewing you why they wish to know.



Can the employer ask me how old I am?



The employer can only ask you how old you are if it is genuinely related to the job. For example, you must be at least 18 years old to work in a place that serves alcohol.

You may also be asked your age to make sure you are old enough to work. For most jobs, you must be at least 15 years old to work.

For example, if you are 13 years old and apply for a retail position, the employer can ask how old you are and will have to get your parent's consent before they can hire you.

Am I old enough to work in this job?

It depends on the job – Although the law says that the minimum age to work is 15, there are some jobs you can do if you are between 12 and 14 years old and your parents give you written permission. These jobs are:

- Delivering newspapers;
- Delivering small items for a store;
- Being a retail clerk;
- Being a clerk or messenger in an office;
- Working at restaurant jobs (as long as you are not working with or near deep fryers, grills, or slicers)
 - host/hostess,
 - busboy/girl,
 - waiter/waitress,
 - assembling food orders,
 - cashier,
 - customer service,

- cleaner.

You cannot work in any other kind of job if you are between 12 and 14 years old unless the Director of Employment Standards approves the job first!

See the section on “Work Hours” on p. 46 for more information on how many hours you may work.

Immigrants/Refugees

Can I work in Canada if I am not a Canadian citizen or permanent resident?

To work in Canada, you must have a valid work permit or be classified as a permanent resident or citizen. If none of these apply to you, it means that you will have to apply for a work permit before you are able to work in Canada.

You can find more information about how to apply for permanent resident status and work permits through Canadian Citizenship and Immigration Canada.⁵

Can I work for anyone if I have a work permit?

The answer to this question depends on what kind of work permit you have.

An “open” work permit means that you can work for whatever employer you want. If you have a “closed” work permit, you can only work for the specific employer named on your work permit.

See Learning Exercises F and G in the Appendix

⁵ Citizenship & Immigration Canada website: www.cic.gc.ca

SUMMARY OF PART II

- A job posting cannot exclude certain candidates based on the prohibited grounds of discrimination listed in the *Alberta Human Rights, Citizenship, and Multiculturalism Act*.
- A job posting can list certain requirements that a candidate must meet in order to be able to successfully do the job. These are called *bona fide* occupational requirements.
- Generally, you should not be asked personal questions at a job interview that could be used to discriminate against you.
- You can be asked how old you are if the employer needs to know whether you are old enough to work or to do the job.
 - You must be at least 18 years old to work in a place that serves alcohol.
 - If you are between 12 and 14 years old there are only certain kinds of jobs that you are allowed to have *plus* your parents must give you written permission to get that job.

PART III: Know Your Rights After You are Hired

Categories of Work

Piecework – Can I accept a job that doesn't pay an hourly wage?

Yes – Piecework is when a person is paid for each item or unit that they produce or process.



For example, an owner of a small store may ask someone to sew a large number of bags and offers to pay \$2.00 for each one that is sewn. Or, a not-for-profit agency might ask one of its workers to input each member's information into a new database and offer to pay the person for

each entry. If the person sews or types quickly, this arrangement might be very profitable.

You must be cautious, however, to see that you are being paid *at least* minimum wage! If the time you spend doing the piecework would not pay minimum wage, you should probably not take the work or negotiate higher pay for each item.

Commissions – Am I entitled to make minimum wage if I'm working on commission?

Yes – no matter what your arrangement is for commission, you must ensure that you are making *at least* as much as you would be if you were paid the

minimum wage on an hourly basis. This is similar to Piecework described above.

Work that is done on a commission usually means an employee is paid a percentage of all sales they make. It can also be a fixed dollar amount per sale or a percentage of profits.

Sometimes a person is paid only on commission. More commonly they are paid a base salary or hourly wage plus a commission. This base salary plus commission is very common in retail. Commission contracts are an incentive for employees to make more sales for the company.

It is important to agree on *when* you will be paid the commission – this is because sometimes an employer won't be able to, or want to, pay commission right away. For example, a store might want to wait to make sure that clients don't return products before paying out the commission.

Alberta Employment Standards requires that the employer pay the commission within 10 consecutive days of the pay period in which it was earned.

Example:

You earned commission January 1st -15th. You normally get paid for those dates on January 31st. Your employer has until February 10th to pay you the commission you earned for the first two weeks of January.

You should also know that an employer might be able to recover a commission that they have already paid you if goods are returned or a contract is cancelled. But, this can only be done if your employment contract allows it, or if it has been clearly agreed to beforehand and the employer does this on a regular basis.

Casual – what is casual labour?

Casual work is when you are not a full or part time employee, but work for the employer on an irregular basis.

Example:

You would be considered casual labour if you work in a retail store during the busiest times of the year, such as Christmas or Boxing Day, or when the store is short-staffed.

Since you will not usually have a formal contract for this type of work, you should be familiar with your rights while you are working.

Contract work – what am I entitled to if I am a contractor?

If you are a contractor, you are likely not covered by the *Employment Standards Code*. This is because you are considered self-employed. In other words, the law considers you to be your own employer.



Volunteer Positions – Are they a type of work?

Yes – Volunteering is also a category of work even though you do not get paid for it. Many young people use volunteer experience as a way of expanding their résumés.

Just because you do not get paid does not mean that you do not have any rights. Like paid employees, volunteers have the following rights:

- You have a right to work in a healthy and safe environment;
- You have a right to work in an environment that is free from discrimination and harassment;
- You have a right to be treated with respect and support, just like a paid employee;
- You have a right to be interviewed and employed on a fair basis;
- You have a right to be reimbursed for any out of pocket expenses that you might incur while volunteering, as long as the expenses are approved by the organization;
- You have a right to request a volunteer contract, which includes your job description, volunteering hours, and any other terms that may form a part of your volunteer contract;
- You have a right to be trained to perform the tasks expected of you.

Because volunteers play a vital role in most non-profit organizations, most employers would like to do their best to keep volunteers happy to ensure that they continue to volunteer in the future.

If you have a problem on the job, you have a right to make a complaint, just like an employee. You can speak to your supervisor or manager and they have an obligation to address the problem.

Pay / Salary

You and your employer should have an employment contract at the beginning of your employment as to:

- How your pay will be calculated (Salary, Hourly Wage, Commission, Piecework);
- How much you are going to get paid; and
- When you will get paid.

The law sets some minimum standards which your employer must follow. Your employer can provide you with *more* than these minimum entitlements, but cannot provide you with less. If the law does not set a minimum standard, then you and your employer are allowed to make your own arrangement, as long as you both agree.



What is the minimum wage in Alberta?

The minimum wage in Alberta is currently \$8.40 per hour.

For certain kinds of salespeople (mobile home, car, truck, bus or farm machinery salesperson, residential home salesperson who is employed by the person building the homes) the minimum wage is currently \$336 per week.

As discussed in the previous section, you must still earn minimum wage even if you are paid by commission or on the basis of piecework.

Other types of employees are not necessarily entitled to minimum wage because they are governed by their own laws. Some examples include real estate brokers, students in work experience programs, and articling law students.

If I am sent home in the first hour of work, how much do I get paid?

Your employer must pay you at least minimum wage for at least 3 hours for every shift, no matter how many hours you actually work.

Example:

Robin works outside for a landscaping company during her summer holidays. She reports to work as scheduled. After ten minutes of work, Robin's employer tells her to go home because it is raining. Robin's employer must pay her at least \$25.20 (\$8.40/hour x 3 hours).

If you are between 12 and 14 years old and working on a school-night you must be paid for at least 2 hours of work even if you work less (the 3-hour rule applies if you are working on a non-school day).

Example:

Mary is 14 years-old and has a part-time job after school. She makes minimum wage. Mary's employer sends her home after a half-hour of work because there are not very many customers. Mary's employer must pay Mary at least \$16.80 (\$8.40/hour x 2 hours).

Am I allowed to work for less than minimum wage if I agree?

NO! It is against the law for an employer to pay you less than minimum wage and it is against the law for you to work for less than minimum wage. You or your employer can be fined a substantial amount for breaking this law.

I work in a hotel. My employer provides me with a room and meals. Is my employer able to deduct money from my paycheque for the room and meals?

Yes – if you have agreed to the deduction your employer can reduce your wage, even if you are being paid minimum wage, to account for every meal you eat and for lodging.

There is a limit to how much can be deducted. The maximum that your employer can deduct is \$2.75 per meal, or \$3.65 per day for lodging. No deduction can be made for a meal that you do not eat.

My employer has given me a uniform that I have to wear at work. Do I have to pay for the uniform?

Maybe – An employer can deduct money from your wages for supplying or cleaning uniforms and work clothing if:

- the deduction does not reduce your wages below the minimum wage; and
- the employer does not deduct more than the actual cost of the uniform or work clothing.

Before I started my job I had to attend a week of training. Should I get paid for this week?

It depends – if you provided a service while you were in training, then yes. If you were simply “learning” (for example, sitting in a classroom) then no.

Example:

You got a job at the local grocery store as a cashier. During your training week you worked the till while a more senior employee explained things and helped out when needed. You were providing a service for your employer, so you should probably be paid for that week.

See Learning Exercise H in the Appendix

When does my boss have to pay me?

The law says that your employer must pay you regularly. It does not specifically say when, but it does say that you must be paid at least once per month.



The following are all acceptable pay periods: daily, weekly, bi-weekly (every two weeks), semi-monthly (usually twice per month), or monthly. The length of the pay period really depends on what your employment contract says or on what you have agreed with your employer.

Your employer must pay you within 10 days after the end of the pay period.

If you are not paid when required, immediately write a letter to your employer requesting the amount of wages owing, or complete the 'Request for Wages' form in the Employment Standards Self-Help Kit.⁶ If that is not successful, you can file a complaint with the Employment Standards Office.

Note: This is why it is so important to keep a record of what hours you work! If you need to make a claim for unpaid wages you will have evidence of what hours you should be paid for. Keeping track of your hours can be as simple as writing them in a calendar stuck to your fridge door.

Benefits

What are benefits?

Your employer *may* offer you benefits as part of your employment contract. Benefits include



⁶ Self-Help kit is available online at:
<http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/1697.html>

- Extended medical insurance: might include coverage for eyeglasses, massages, chiropractic, medication, and other health care costs not covered by Alberta Health Care;
- Dental Insurance: includes coverage for having certain dental procedures performed;
- Long-term disability insurance: provides coverage for you if you are unable to work due to a disability that doctors expect you will have for a long time. The insurance company will pay you a certain amount of money per month to help cover your expenses while you are unable to work; and
- Life insurance: provides coverage for friends and family in the case of death of the policyholder. The policyholder will designate a certain person to receive the insurance money when they die.

Am I automatically entitled to benefits if I work “full time”?

No –The law does not entitle you to “benefits” regardless of how much you work (full time usually means 37.5 to 40 hours or more per week). Benefits are something ‘extra’ that your employer *can* offer you, but does not *have to*. It depends on your employment contract.

If your employer has a benefits program, it is common to have to work for a period of time (typically 3 months) before you qualify to get benefits.

Ask your employer if you aren’t sure what the company’s policy is.

How do benefits work?

Insurance companies require the benefit holder to pay a monthly amount (known as a premium) in order to get coverage. Once you have coverage, you are eligible to make certain claims for money to help recover the cost of the service or item you are insured for.



If you get benefits from your employer, the question of who pays for the premium is determined by your employment contract. Sometimes, the employer will pay your premiums to the insurance company for you. In other situations, the employer might agree to pay a portion of your premium, and you will have to pay the other part. Usually, the amount that you will have to pay will be deducted from your pay if you agree.

I had to go to the dentist today. How much will I get from the insurance company?

If you have insurance coverage, the insurance company will cover a certain portion of the cost of having certain procedures performed. You will be responsible for covering the remaining percentage. There are different ways that coverage works. Check the materials that the insurance company sends you to see how it will work.

Example:

Submitting a Claim – You have dental insurance with BlueLife Insurance Company that covers 40% of the cost of certain dental procedures.

Your visit to the dentist cost \$300. When you go for your appointment you pay the full \$300 to the dentist. The dentist's office will fill out and forward a claim form to BlueLife Insurance. You will then get a cheque in the mail for \$120 (40% of \$300) from the insurance company to reimburse you for that portion of the cost that you have coverage for.

Example:

Direct Billing – You have dental insurance with Greenlife Insurance Company that covers 40% of the cost of certain dental procedures.

Your visit to the dentist cost \$300. When you go for your appointment you pay \$120 (40% of \$300) to the dentist. Greenlife will directly pay the dentist the remaining \$180.

What if I don't want benefits?

At some workplaces the benefits package is mandatory. Often when there is a mandatory benefits package it is because the insurance company will offer a better deal if all employees are involved in the program.

At other workplaces, you will have a choice whether you want benefits. Sometimes you may even be able to pick specifically those benefits that you are interested in. Ask your employer if you are not sure if the company's benefits package is mandatory.

Hours of Work & Breaks

Do the rules about hours of work and breaks apply to everyone?



No – Some jobs are exempt from the rules about hours of work, rest periods, and days of rest. These jobs include certain sales people (e.g. car, bus, truck, farm machinery, mobile home), farm or ranch workers, managers and supervisors, and instructors or counsellors at not-for-profit education or recreational camps.

Example:

You are working as a counsellor at a band camp this summer and will live at the camp with the kids for the summer. You will not be entitled to ask for the 8 hours of rest between shifts as is generally the law.

I am still in school. Can I go to work during the school day if I want to?

No – If you are under 18 years old it is illegal for an employer to hire, or permit you to work, during normal school hours.

The only exception is if you are working as part of an off-campus education program such as a Work Experience Course or a Registered Apprenticeship Program. Note that if you are participating in such a program, you are still considered to be in school even when you are at the workplace.

I am 14 years old and have an after-school job as a cashier. How many hours can I work each day?

If you are between 12 and 14 years old you are limited in the number of hours you are allowed to work outside of school.

Your employer cannot let you work:

- More than 2 hours after school on a school day;
- More than 8 hours on non-school day (this includes summer holidays, weekends, and holidays); or
- Between 9pm and 6am.

I am 16 years old. Am I allowed to work late on a school night?

Yes – if you are between 15 and 17 years old there are fewer restrictions on the hours you can work after school than if you were younger. Remember, you still cannot work *during* the school day.

If you are 15 to 17 years old you can work from 9 p.m. to midnight only if you are directly supervised by an adult employee at all times.

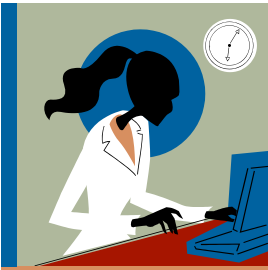


You can even work between midnight and 6 a.m., but must follow certain rules. These rules are:

- You must have your parent's written consent;

- You must be directly supervised at all times by someone 18 years old or older; and
- The job cannot be one in a retail store, gas station, hotel/motel, or food establishment.

When can I take a break in my shift?



If your shift is less than 5 hours long, you are not entitled to take a break.

If you have worked more than 5 hours, you are entitled to at least a 30-minute (half hour) break, unless it is unreasonable or impossible.

You can take your 30 minutes all at once, in two 15 minute breaks, or in three 10 minute breaks. Your employment contract will determine whether your break will be paid or unpaid.

In practice, for full day shifts, employers often give more than the specified minimum 30 minutes.

Does my employer have to pay me while I am on the 30 minute break?

No – it is up to the employer whether they will pay you during the break or not.

Is my employer allowed to make me work a “split shift”?

Yes – A split shift is when you work two “blocks” of time in one day, with a longer unpaid break in between.

Your employer can ask you to work a split shift, but there are rules they must follow:

- Remember the rules about hours of work for young people!
- All the work hours must fall within a 12-hour period (7am to 7pm for example).
- You must get at least 8 hours of rest between shifts (A split shift is considered one shift broken up by a longer break. This means the longer break does not count for purposes of this rule.)
- You are still entitled to your 1/2 hour break if you work for 5 consecutive hours or more (see Breaks section).

Example:

You cannot be asked to work a split shift from 7am-10am and then from 6pm-9pm. Your work hours must fall within the 12-hour period (in this case 7am & 7pm).

You can be asked to work from 8am-3pm and again from 6pm-8pm. You would be entitled to your 1/2 hour break in the first half of your shift.

You are asked to work a split shift from 1pm-4pm and 7pm-midnight. Your next shift is scheduled to start at 6am the next morning. Your employer cannot do this. You are entitled to 8 hours of rest between shifts.

Can I get overtime pay even if I'm working split shifts?

Yes – as long as you have worked overtime (as defined by the law) it does not matter that you were working split shifts (see the section below on overtime).

Overtime

My employer asked me to start working 50 hours a week – does she have to pay me more?

Yes – the *Employment Standards Code* says that any hours you work more than 8 hours per day, or more than 44 hours per week, are considered overtime hours.

The law says that you must be paid 1.5 times your regular pay for these extra hours – so, if your hourly wage is \$9/hr you should be paid \$13.50/hr for those extra 6 hours you worked.



How is overtime calculated?

For each day, ask how many hours did you work more than 8hrs. Add these daily “extras” up for the week. Then ask how many hours more than 44 hours did you work that week? The larger number will be your overtime hours.

Example:
How many overtime hours should you be paid for?

	Mon	Tue	Wed	Thur	Fri	Total Wkly Hrs
A	11hrs	8hrs	8hrs	7hrs	4hrs	38
B	9hrs	10hrs	8hrs	10hrs	11hrs	48

A. You should be paid for 3 hours of overtime. Although you did not work more than 44 hours this week, you worked 3 “extra” hours on Monday.

B. You should be paid for 8 hours of overtime. On Monday you worked 1 hour “extra”, Tuesday 2 hours, Thursday 2 hours, and Friday 3 hours. This adds up to 8 hours of daily overtime. This number is greater than 4 hrs (the time over the 44hr weekly limit).

Can my employer and I agree that my overtime will be paid in a different way?

Yes – You are allowed to enter a written overtime agreement with your employer which says that overtime will be paid a little differently.

Instead of getting your overtime hours paid at the overtime rate when they are worked, you will get paid vacation time instead. If you end up not taking the time off, your employer must then pay you for the overtime hours.

There are a few rules that the agreement must follow:

- The contract must be in writing and you must get a copy of it;
- You have to use the banked overtime hours within three months after you earn them;
- The hours of time off must be at least equal to the number of hours of overtime worked.

Example:

You make \$9/hr and normally work 35 hours per week. You get paid once a month. In the first week of January you worked 6 hours of overtime. On January 31st you were paid \$1,260 for your regular 35 hour weeks.

You must take the banked overtime off by April 30th. If you don't, your employer will have to pay you the 6 hours overtime at the overtime rate.

Is there anyone not entitled to overtime pay?

Yes – There are some jobs that are not entitled to earn overtime by law! These are the same people to whom the hours of work and rest period rules also don't apply. These jobs include certain sales people, managers and supervisors, farm or ranch employees and instructors or counsellors at a not-for-profit education or recreational camp.

This does not mean that these people cannot negotiate something with their employer if they are working more than 44 hours per week. It just means that they do not have the automatic right under the law to receive overtime pay.

Deductions

The law requires employers to take portions of a worker's pay to give to the government or other bodies. These are known as deductions.

What deductions are employers allowed to make from my wages?

Your employer can make only the following deductions from your wages:

- those items that you have agreed to in writing (Example: insurance premiums, charitable donations);
- those authorized by a binding collective agreement if you are a member of a union;
- those required by a court order, such as child support payments if your wages have been garnished;
- those required by the government, which include income tax, Employment Insurance, and Canada Pension Plan

Also recall the discussion on p. 40 about deductions for uniforms and room & board.

My employer told me that I was going to have \$25 deducted from my paycheque for a bottle I broke while stocking shelves. Is this allowed?

No – Even if you have agreed in writing that your employer can make deductions, your employer is never allowed to deduct money from your wages for:



- Broken items at work or faulty workmanship, or
- Shortages at the cash register, or missing property, if anyone else had access to the till or property.

Example:

You work as a waiter and one of your tables “dines & dashes” (i.e. they do not pay their bill). Your employer cannot deduct the amount of the unpaid bill from your paycheque.

I work as a waitress and dropped a tray of glasses. Can my employer deduct an amount from the tips I earned that evening to buy new ones?

Yes – tips are not wages. The rules about deductions apply to *wages* (including overtime pay, vacation pay, general holiday pay and termination pay). This means that your employer could deduct an amount for the cost of the broken glasses from your tips for that evening and give you the remaining balance.

How do I know what deductions have been made from my paycheque?

Your employer must give you a statement of earnings at the end of each pay period that shows: what pay period it's for, how many hours of work (regular & overtime) you are being paid for, your wage rate and over-time rate, the total wages being paid, and all deductions (with reasons).

See Learning Exercise I in the Appendix

Days Off, Vacations & Vacation Pay

Workers in Alberta are entitled to days off, vacations, and vacation pay. It is important for workers to have a rest and spend time with their friends and family.



Days Off

Workers are entitled to 1 day off in each workweek, or 2 days off in a row in each two workweeks in a row.

Example:

You work from Monday to Saturday in a restaurant, and get Sundays off. Your boss asks you to work on Sunday the 15th (normally a day off). If you agree to work the extra shift you will be entitled to take the 21st and 22nd off. You will have worked 12 days in a row.

Sun	Mon	Tue	Wed	Thur	Fri	Sat
1 OFF	2	3	4	5	6	7
8 OFF	9	10	11	12	13	14
15	16	17	18	19	20	21 OFF
22 OFF	23	24	25	26	27	28

Vacation Time & Vacation Pay

Most employees in Alberta earn two vacation-related things as they work: vacation time and vacation pay.

Workers earn the right to vacation time during one year and can take their vacation sometime in the next year.

Workers also earn vacation pay as they earn wages. This is money that is meant to provide some income while they are on vacation.

There are some types of employees who do not qualify for vacation time or vacation pay. The following should be familiar from previous discussions under overtime and hours of work:

- employees on a farm or a ranch
- salespersons working mainly away from the employer's premises who solicit orders for later delivery
- professionals such as real estate brokers, and licensed insurance and securities salespersons
- extras in a film or video production
- employees covered by other Acts (academic staff)
- municipal police officers

This does not mean that these workers will not be given any holidays. There are other laws in place that govern these employees and sometimes it will be left up to employers and employees to come up with an agreement about vacations

Am I eligible to receive vacation time and vacation pay?

If you have worked for the same employer for at least 12 months you must be given vacation time.



On the other hand, you start earning vacation pay as soon as you start working. Your employer can decide when and how they will pay it to you.

Do I have to work full time to qualify for vacation and vacation pay?

No – Part-time employees also earn vacation time and vacation pay. Unless your employment contract gives you more, you will earn vacation pay at 4% of your wages.

What if I don't work for my employer for one full year. Do I still get vacation pay or time?

Yes & No – If you have worked for less than one year for your employer you are not entitled to take a vacation. However, you must still receive vacation pay.

Your vacation pay will be equal to 4% of the wages you earned while you were employed.

How much vacation and vacation pay am I entitled to receive after one year of employment?

If you have worked for your employer for between 1 and 4 years, you must be given



2 weeks vacation. Your vacation pay will be equal to 4% of your regular pay.

If you have worked for five years or more, you must be given 3 weeks vacation. Your vacation pay will be equal to 6% of your regular pay.

These are the minimum amounts of vacation time you are entitled to receive. Your employer can always agree to give you more as a part of your employment contract.

For a “vacation pay calculator” go to <http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/5697.html>

When can I take my vacation?

You have to work for a full year before the law says you can take those days off. If you ask, your employer may allow you to take a day off before your 12 months is completed, but they do not have to.

Example

You started work on July 1, 2008. You will earn your two weeks holidays between July 1, 2008 and July 1, 2009. You can then take your two-week vacation after July 1, 2009.

Usually, vacations are taken in a single block of time, but employers may agree that you can take your vacation in shorter periods.

Generally, you and your employer will be able to agree on when you can take your vacation. If you cannot

agree, your employer must give you two weeks written notice of when to take the vacation. You will have to take it at that time.

When do I receive my vacation pay?

Vacation pay can be paid in different ways. It is up to your employer. For example, you may:

- get paid your vacation pay on every pay cheque.
- get all your vacation pay at once before you take your vacation.
- get your vacation pay while you are on vacation on your normal paydays.

In any case, your employer must pay it to you no later than the next regular pay day after you start your vacation.

If I quit my job, must my employer pay me the vacation pay I earned?

Yes – If you have given proper notice to quit (see p.91 for more information on this topic), your employer must give you your vacation pay within 3 days of your last day.

If you have quit without giving proper notice, your employer must pay you within 10 days of the day you would have quit had you given proper notice.

General Holidays

There are special rules about wages to be paid for general holidays.

The following 9 days are general holidays in Alberta:

- New Years Day – January 1
- Family Day – 3rd Monday in February
- Good Friday – Friday before Easter
- Victoria Day – Monday before May 25
- Canada Day – July 1
- Labour Day – 1st Monday in September
- Thanksgiving Day – 2nd Monday in October
- Remembrance Day – November 11
- Christmas Day – December 25

I started my new job at the end of May. I worked Canada Day (July 1). Am I entitled to be paid General Holiday Pay?

Yes – if you have worked at least 30 working days (or shifts) for your employer prior to the general holiday then you are eligible to be paid general holiday pay. If you haven't worked 30 days, you will be paid your regular wage for the hours you work.

See the next question about how much you are entitled to be paid if you are eligible for general holiday pay.

I had to work on Remembrance Day which was a Monday this year. How much should I get paid for working on a Statutory Holiday?

It depends on whether you normally work on the weekday on which the general holiday falls.

If you normally work Mondays, then you are entitled to be paid your regular wage *plus* 1.5x your wage for all the hours you worked that day.

If you do not normally work Mondays, but you did this time (and it was a statutory holiday), then you are

entitled to be paid 1.5x your wage for the hours you worked.

I normally only work Mondays and Fridays. Victoria Day fell on a Tuesday this year. Do I get general holiday pay for the Tuesday?

No – it is your regular day off, so you will not be entitled to any pay that day even though it is a statutory holiday.

If you normally did work Tuesdays, but had Victoria Day off, then you would be entitled to get the day off and collect regular wages for the day.

I have a fairly irregular work schedule. This year Thanksgiving Day falls on a Monday and I am scheduled to work. How do I know if I am “normally” scheduled to work on this Monday?

Look back at the last 9 weeks before Thanksgiving Day. If you worked at least 5 of the last 9 Mondays, then this Thanksgiving Monday will be considered a day that you “normally” would work.

This means you will be entitled to general holiday pay when you work this Monday (i.e. your regular wage plus 1.5x your wage).

See Learning Exercises J and K in the Appendix

Sick Leave

Sick leave is time off from work because you are sick. Employment laws do not specifically cover sick leave.



Most employers will likely allow you a day or two off from work if you are ill. They may require a note from your doctor. Usually, these days off are without pay.

Paid sick leave is sometimes provided for in your benefits package or your collective agreement if you are belong to a union. Check with your employer to find out how many sick days you are entitled to every year.

Privacy

As an employee, you may not be entitled to much privacy while you are at work. Since you will be using your company's resources while you are working, such as a computer, you must comply with any policies that the employer sets for using their equipment.

Employers can publish policies that restrict you from looking at certain websites, downloading programs, or using chat programs while at work. The Employer also has the right to monitor or "check up" on you to make sure that you are following company policies. It is up to you to read and understand any workplace policies, and to follow them while you are at work.

Pregnancy & Parental Leave

The *Alberta Human Rights, Citizenship and Multiculturalism Act* protects the rights of pregnant women both while they are working and while on maternity leave.



The *Employment Standards Code* entitles new parents to a period of leave without pay at the end of which they must be given back their old or equivalent job. This is called “parental leave”. Employees are entitled up to one-year of unpaid, job-protected leave when a child is born, and 37 weeks if a child is adopted.

Unfortunately, the *Employment Standards Code* does not require employers to guarantee the jobs for employees who have not worked for 1 year before going on parental leave. You may be able make an arrangement with your employer.

If you want to know more about this topic, you can have a look at the Information Fact Sheet found on the Alberta Employment Standards website.⁷

Working Conditions

Getting a job is not only about getting paid or knowing when you can take your lunch break. It is also about working safely and in a safe workplace.

The Good News & The Bad News

Did you know that: workers with less than six months experience are three times more likely to be injured than those with a year or more of experience, and that workers under the age of 25 are 33% more

⁷ Parental Leave Information Sheet is available online at: http://employment.alberta.ca/documents/WRR/WRR-ES-FI_esfs2.pdf.

likely to be injured on the job than older workers.⁸
In Canada, 1 out of every 4 injured workers is
between 15 and 29 years old.⁹

These statistics are worrisome. The good news is
that most workplace accidents are preventable.
Below are some ways you can be proactive in
making your workplace a safe one.

What Can I Do About Workplace Safety Before I Start My New Job?

It starts at the interview – You can, and should, ask
about workplace safety and training during your job
interview. If the potential employer does not want to
answer your questions, perhaps it would be best to
look for a job elsewhere.

The law requires your employer to tell you about any
hazards of the job that they know about. This can
include things such as exposure to chemicals,
having to work high up, or using potentially
dangerous equipment and machinery.

Some hazards are less obvious. For example, you
may lose your hearing from repeated exposure to
high noise levels. These are also hazards your
employer must tell you about if they know about
them.

⁸ Statistic from Employment Alberta, online:
<http://employment.alberta.ca/cps/rde/xchg/hre/hs.xml/352.html>

⁹ Statistic from Canadian Centre for Occupational Health & Safety,
online: <http://www.ccohs.ca/youngworkers/>

**** Remember, You don't have to take a job if you feel you will not be safe.****

How do I know what to do on the job?

Your employer must make sure that you have the skills to safely do your job. This means they will usually have to provide training.

Your employer may first explain your job duties and then show you what to do. If you are still learning those skills, the law requires that you be under the direct supervision of someone who has those skills.

If you don't understand instructions it's okay to ask questions, or to ask your supervisor to slow down and repeat the instructions. If you are unsure about how to do something, just ask.

Another part of proper training is being taught how to identify workplace hazards and knowing what to do when there is an accident.

I work at a garden centre. Do I need to wear steel-toe boots or any other safety gear?

Ask your employer – Your employer is legally obligated to make sure that you use the appropriate safety equipment for your job. Your employer must also make sure that you know how and when to use this equipment properly.

You may be asked to bring your own safety gear such as safety boots, hard hats, and fire-resistant clothing as a condition of getting the job. However,

your employer must make sure you are using them if needed.

There are two situations where your employer must *give* you the right safety equipment. These are: if there is a breathing hazard or there are noise levels exceeding legal limits.

What laws apply to keep me safe at work?

You are entitled to have a safe workplace under the *Occupational Health and Safety (OHS) Act*, its Regulations, and the Code. This means your employer must keep the workplace safe.



I noticed a frayed electrical cord in the workshop today. What should I do?

Report it – You should report any unsafe workplace practices or conditions that you see to your supervisor. Many workplaces also have committees devoted to health and safety, or one person who is responsible for overseeing safety at your workplace. Find out who these people are and talk to them.

Can I refuse to do a task if it is unsafe?

Yes – It is your legal right to refuse to do work that you think will threaten your health and safety, or the health and safety of a co-worker, if the risk is beyond what is normal for your job.

This is the procedure you should follow:

- Report to your supervisor that you are refusing to work and state why you believe that the situation is unsafe.
- You, your supervisor, and a worker representative will investigate.
- If the problem is solved, you can return to work. If not, a government health and safety inspector is called.
- Your supervisor may assign you to reasonable alternative work.

Can I be reprimanded for refusing to do a task for safety reasons?

No! – the *Occupational Health & Safety Act* protects you from disciplinary action by your employer.

I have a summer job as a painter. Where can I find out more about the safety hazards of this job?

Some good websites are:

Canadian Centre for Occupational Health & Safety

(<http://www.ccohs.ca/youngworkers/hazards.html>)

Alberta Employment

(<http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/3109.html>)

Worker's Compensation

If you are injured on the job, you may qualify for worker's compensation. Workers can receive compensation for wage loss, medical, and sometimes also vocational assistance, while healing from their injuries.



By law, both employers and employees have a duty to report these work related injuries to Workers Compensation Board (WCB).

Discrimination and Harassment at the Workplace

We briefly discussed the law surrounding discrimination and harassment on page 20. You may wish to review this section before reading ahead.

What is Harassment?

You may be a victim of harassment if someone does or says something that makes you feel uncomfortable or if you are at risk of being harmed.

If someone harasses you while you are doing your job, this is workplace harassment. The harassment could be done by your employer, supervisor, co-worker, customer, or client.

How do I know if I am being harassed?

If you feel uncomfortable about the situation, then chances are that it is harassment. If you are comfortable with the situation, then it is probably not harassment. What might be harassment for one person is not necessarily harassment for another.

Example:

A co-worker puts his/her arm around you. If it makes you uncomfortable, this is harassment for you. Another person may be comfortable with it, so for them it would not be harassment. If it makes YOU uncomfortable, then you have a right to do something about it.

What are some examples of workplace harassment?

Religious harassment

Being called insulting names because you have certain religious beliefs, teasing or jeering about rituals associated with your culture, derogatory comments about religious dress.

Racial harassment

Jokes, insults, or teasing about your race or skin colour.

Sexual harassment

Any unwelcome attention that is of a sexual nature and that negatively affects, directly or indirectly, your working environment. This can include insults, obscene pictures, physical contact or asking you to do sexual things.

The following is an example of indirect sexual harassment and is based on an actual case that went to an Alberta Human Rights Panel hearing.

Example:

Dayna was employed by a metal shop and was the only female working there. There were about 30 pictures of “pin-up Sunshine girls” from the Calgary Sun newspaper in the shop. There was also a large calendar poster of a female, near the time clock, which Dayna saw daily when she punched in and out for work. The poster showed a bikini-clad female in a very suggestive pose.

Dayna asked her supervisor to remove all the posters from the workplace because she found them offensive. The Sunshine posters were removed but the large one remained. When she asked again for the poster to be removed, her supervisor reduced her working hours from 40 to 4 per week.

The Human Rights Panel found that posters in the workplace constituted sexual harassment.

Other forms of harassment

Sometimes workplace bullies harass others by calling them names such as “ugly”, “fat” or “stupid”. This can also be harassment.

What is Discrimination?

Discrimination in the workplace occurs when you are treated unfairly or differently from other workers.

In order to find protection under the *Alberta Human Rights Act*, the discrimination must be connected in some way to your employment and must be related to one of the protected grounds of discrimination.

What are some examples of workplace discrimination?

Gender Discrimination

A female employee is being paid less than her male co-workers to do the same job even though she has the same experience and skill level.

Disability Discrimination

A physically disabled employee is fired because the disability makes it difficult for the employee to perform a few of their job-related duties.

Racial Discrimination

An employee of Métis heritage is not promoted at work while others, who are less qualified in all respects, are promoted.

Is harassment the same as discrimination?

Yes – harassment is a form of discrimination. This is because the harassment can make one employee's working conditions less good than another's.

But remember, it is only prohibited by the *Human Rights Act* if the harassment is based on any of the protected grounds in any of the protected areas (see the next question).

Does the Human Rights, Citizenship, and Multiculturalism Act protect me against all types of harassment or discrimination at work?

No – The Act says that you have a right to work in a workplace that is free from harassment of certain kinds. The Act strictly prohibits harassment on the basis of the listed prohibited grounds such as race, colour, gender, religion, age (if over 18), etc. It does not protect you from other types of harassment.

Example:

A co-worker calls you names such as “stupid”, “fat” or “idiot” on the job. The *Human Rights Act* does not really provide you with legal remedies for dealing with this type of harassment.

However, these forms of harassment can be just as painful and damaging. Just because the *Human Rights Act* does not address them, doesn't mean that there is nothing you can do. The next section will discuss your options.

See Learning Exercise L in the Appendix

Can an employer ever have a good reason for discriminating against someone on the job?

Yes, in some limited situations – If a job requires certain skills or abilities to be able to perform the job, an employer may have a good reason not to hire someone who does not have the skill or ability. This is considered a *bona fide* (genuine) *occupational requirement*.

Example:

A courier for a company must often lift heavy boxes weighing up to 50lbs. A woman applies for a job as a courier but is unable to lift 50lbs. The courier company does not hire her.

Because the ability to lift at least 50lbs is necessary for the job (it is a *bona fide* occupational requirement), the company did not discriminate against her by not hiring her.

Consider the next example. Is this discrimination?

Example:

The same courier company figures that they would only hire people who could lift 100lbs repeatedly. The company rarely has to deliver any packages weighing more than 50lbs. A woman applies for a job as a courier. She is easily able to lift up to 70lbs. The company does not hire her.

The ability to lift 100lbs is probably not a *bona fide* occupational requirement in this case; to be able to do the job really only need to be able to lift 50lbs.

I work at a “women’s only” medical clinic. Is it against the law for us to hire only women?

Not necessarily – The law allows for “women only” policies in certain situations where it is *reasonable* to exclude others from applying.

The logical reason behind having only women work in a women’s-only clinic is because some women might feel safe or more comfortable in an environment with other women who understand their medical needs.

I am 16 years old. Does the Human Rights, Citizenship, and Multiculturalism Act protect me from discrimination at work?

Yes, in most cases – “age” is defined in the *Act* as 18 years or older. This means that if you are under the age of 18 you can make a complaint on all grounds (e.g. race, gender, physical disability, etc) but not on the ground of age.

Example:

Kyle is 16 years old and works as a cashier during his summer holidays. His employer pays him less than his co-workers who are over 18 years old simply because he is younger, not because he has less experience.

Unfortunately Kyle is not able to make a human rights complaint under the Alberta *Human Rights, Citizenship, and Multiculturalism Act* based on his age.

If Kyle were being paid less because he had a disability, for example, then he could make a complaint based on disability regardless of his age.

Perhaps the government will remove the limit on the definition of “age” one day, but for now the definition will stay.

Dress Codes & Religious Dress

Employers do have a right to ask for certain dress and appearance standards that are necessary for *the safe and effective conduct of business*. These standards have to apply to everyone equally, and cannot be used to discriminate on one of the protected grounds.

What is a reasonable dress code?

An employer can require a certain appearance and level of grooming for the purpose of aesthetics and health and safety. But, if the dress code interferes with an employee’s religious practice or physical well-being then it is probably not reasonable.

What if my employer's dress code conflicts with my religious belief to wear certain clothes?

Generally, your employer has a duty to accommodate your requirements to the point of undue hardship if the requirement to wear a particular item of clothing is based on one of the protected grounds.

Disability

What is a disability?

The law defines disability very broadly. It includes physical and mental disability and even includes situations where others might think you have a disability. If you have a handicap that makes it difficult for you to perform your job, you may qualify as having a disability.



If I have a disability will I be able to work?

Yes – Alberta's *Human Rights Citizenship and Multiculturalism Act* states that it is against the law for employers to discriminate against employees on the basis of their disabilities.

Example:

An employer who does not hire a person in a wheelchair because they are in a wheelchair may be discriminating against them. This is not allowed.

What if my disability interferes with my ability to work?

Your employer has a duty to try to make the workplace more accessible to you unless it would be excessively difficult for them to do so. This requirement to do their best to accommodate the “special” or unique needs of employees is called the *duty to accommodate*.

Remember, the duty to accommodate exists only if an employee’s needs are based on one of the protected grounds. (Recall the discussion about Alberta’s *Human Rights Act* on p. 21)

Accommodation might include any of the following:

- Building a wheelchair ramp or installing an elevator so that a disabled employee can access the workplace.
- Re-designing the office layout to make it easier for a disabled person to get around the office.
- Making changes to an employee’s work schedule to take into account religious holidays.
- Changing the job description of a pregnant woman so that she no longer has to do too much heavy lifting.

What if it is going to cost an employer a lot of money in order to accommodate the needs of a disabled employee?

An employer must accommodate an employee’s needs to the point of *undue hardship*. This means that if it is going to cost the employer an excessive amount of money or time to accommodate the needs of an employee, then they do not have to do so.

The law does not really say how much is too much.

Example:

Joe has a physical disability which prevents him from climbing stairs. Part of his job is to sometimes carry boxes up to the second floor of the store. The store does not have an elevator. In this case it would be an undue hardship to expect the employer to install one to accommodate Joe. The employer does not have to install an elevator.

However, Joe's employer should try to find some other ways to accommodate Joe's disability. For example, one of Joe's co-workers could carry the boxes upstairs when needed. In exchange, Joe could take on some of his co-worker's regular tasks.

Is the duty to accommodate the same for every employer?

Yes and No – every employer, whether large or small, must make real efforts to accommodate, but what they must do in order to fulfill the duty will be different for different employers. Accommodation that is reasonable in one case may not be reasonable in another. Every situation must be handled and assessed on an individual basis and the employees consulted.

See Learning Exercise M in the Appendix

Some Options to Resolve Workplace Harassment Issues

See a Lawyer or go to Court. If you feel that your rights were violated, you could pursue a civil remedy in court. This may be a good way to go if you were forced to leave your workplace as a result of the discrimination or harassment.

Usually you will need a lawyer to assist you in this process. Going to court can be very expensive and can take a long time.



Seek out support. No matter what form the harassment or discrimination takes, you should tell someone such as a family member or friend.

Report it to your employer. Your employer has a duty to ensure that the work environment is safe and free of discrimination. If you are being harassed or have experienced discrimination, usually your employer or supervisor will be the person most able to assist you.

If your boss is the one harassing or discriminating against you, you might want to talk to their supervisor or to human resources.

It is usually a good idea to put your complaint in writing as proof that you reported the situation to your employer.

Your employer may also have a policy on workplace harassment. Check the policy manual to see that you are making the complaint to the right person.

Confront your harasser. In some situations you may choose to deal with your harasser directly before letting a supervisor know. In some situations, the harasser may not realize that his or her behaviour makes you uncomfortable.

Make a complaint to the Alberta Human Rights Commission. If the harassment relates to any of the prohibited grounds (e.g. race, colour, gender, religion, physical disability, etc) then you can make a complaint to the Human Rights and Citizenship Commission. Review p.22 for the complaint process.

Complain to your union. If you belong to a union talk to your union representative if your employer has not dealt with the problem. Your union representative can take action on your behalf to solve the problem.

Remove yourself from the situation. You may want to ask for a transfer to another department or quit your job. Even if you leave, you can still take action against the perpetrator.

SUMMARY OF PART III

- Employees have a number of rights on the job. If they are not written in the employment contract, the law “fills in the blanks”.
- Certain types of employees are not subject to certain rules. For example, car sales people, real estate agents, and farm workers.
- Always keep a record of the hours you worked. This can be as simple as a calendar on the fridge door.

Money Matters

- There are different categories of work. No matter which one applies, workers are entitled to make minimum wage (in Alberta, \$8.40/hr)
- Benefits are something “extra” which your employer may give you.
- Workers are entitled to be paid overtime pay if they work more than a certain number of hours per day or per week.
- Employers are required by law to make certain deductions from your wage. Other deductions are not allowed without your written consent. Even then, deductions for faulty workmanship, broken items, or cash shortages are not allowed.

Working Hours

- Workers are entitled to at least one 1/2 hour break in the first 5 hours of work.
- Rules about hours of work vary depending on your age.
- You may not work while you are supposed to be at school, even if you want to!

Days Off, Vacation, & General Holidays

- Workers are entitled to a minimum number of days off per workweek.
- All workers earn vacation pay as they earn wages. Vacation time accumulates during the work year, but is usually not taken until after a full year of employment has been completed.
- On General Holidays, workers are entitled to the day off with pay. If they have to work and it is a day they normally would work, they are entitled to receive regular wage plus 1.5x their wage.

Workplace Safety

- Statistics show that young people are more likely to be injured at work than older, more experienced workers.
- Every worker, regardless of age, has the right to a safe workplace.
- Be proactive in ensuring that you are working safely and in a safe workplace.
- It is your legal right to refuse to do a job if it would endanger your health or safety, or that of a co-worker.

Harassment & Discrimination

- Certain types of harassment and discrimination in the workplace are prohibited by human rights law.
- There are several options, both legal and non-legal, for addressing workplace harassment.
- Employers can enforce dress codes as long as they don't discriminate on any of the prohibited grounds.
- Workers with disabilities have a right to be accommodated by their employer to the point of "undue hardship"

PART IV: Ending Your Employment

THINGS YOU WILL LEARN

- There are basically 3 ways for your employment to end:
 - the contract of employment expires on its own at a certain date,
 - you are fired, or
 - you quit.
- The Employment Standards Code sets out minimum responsibilities of employers and employees when employment is terminated.
- Generally, the main responsibility of both employees and employers is to provide notice of their intention to terminate the employment.
- It is never ok for your employer to wrongfully dismiss you; this includes constructive dismissal.

Your Employer Ends Your Employment

When can my employer fire me? Are there situations where I cannot be fired?

Your employer can generally terminate your employment at any time as long as they meet certain requirements.

However, you cannot be fired for going on maternity or parental leave, because you have requested something that you are entitled to under the *Employment Standards Code* or made a complaint under the *Code*, or because you have made a complaint under the *Human Rights, Citizenship, and Multiculturalism Act*.

What am I entitled to if I am fired?

Reasonable notice or \$\$\$ in lieu – In most cases, your employer must either:

- tell you ahead of time (give “notice”) that they are firing you, or
- give you termination pay for the required notice period instead of notice (your employment would then end right away).



The amount of termination pay will be equal to how much you would have made during the notice period had you worked during that notice period.

A combination of notice and termination pay is also possible.

When can I expect my last paycheque if I have been fired?

Your employer must pay all your wages, overtime, general holiday pay and vacation pay due within 3 days after the termination of your employment.

My boss gave me a letter today which said that I am being fired and that tomorrow will be my last day. Doesn't she have to give me more notice?

It depends – The amount of notice your employer must give you depends on how long you have worked for your employer. The following table sets out the required notice periods.

How Long Were You Employed?	Notice That Employer Must Give You
Less than 3 months	None
More than 3 months, less than 2 years	1 week
More than 2 years, less than 4 years	2 weeks
More than 4 years, less than 6 years	4 weeks
More than 6 years, less than 8 years	5 weeks
More than 8 years, less than 10 years	6 weeks
10+ years	at least 8 weeks

My boss called me this evening after work and said that Friday will be my last day because he is laying me off. Can he do this?

No – Your employer must give you a *written* termination notice.

Are students and part-time employees entitled to termination notice?

Yes – the notice table above applies to students and part-time employees.

I was offered a job on the condition that I agree to waive my right to notice or pay in lieu if I were to be fired. Should I do this?

No – You should never sign anything that waives your entitlement to notice or pay in lieu. These are things that you are entitled to under the law!

I worked for 6 months before being told my position was being terminated. I am entitled to notice, right?

It depends – there are some situations where you are not entitled to notice *even if* you have worked for more than 3 months for your employer. These other situations are:

- You are being fired for “just cause”. This means you have done something pretty serious which justifies the termination.



Examples of “just cause:

you are wilfully disobedient, you are often late or do not show up at work, you steal from the employer, you come to work drunk, you sexually harass other co-workers.

- You were hired for a definite time or task which lasted 12 months or less and the time/task is up.

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- You refused to accept an offer of reasonable alternative work. This can cause problems if you and your employer disagree about what “reasonable” means.

Example: You work in a garage and hurt your back lifting something heavy while fixing a car. Because of your injury you can't do your regular job for a time. Your boss offers you “light duties” such as diagnosing engine problems but you refuse. Your employer could terminate you without notice.

- You refused a job assigned to you that became available through a seniority system. If your employer assigns work through a seniority system, you have to accept any work that is assigned this way.
- You are a casual worker whose employment contract says that you can decide whether to work or not when asked.

Example: You often fill in for the book-keeper at a not-for-profit organization when she is sick or on holidays. You have the option of refusing to fill in for her. Your employer does not have to give you notice if they want to terminate your employment.



- Your employer does not have a job to give you because of a strike. In this case you would likely be temporarily laid off. Note that if you don't come

back to work when the employer asks you to, you can be fired without notice.

- Something unforeseeable or unpreventable happens which makes it impossible for your employer to continue your employment. For example, the building burns down.
- You are employed on a seasonal basis and the season has come to an end. For example, jobs at a golf course, construction work, or camp counsellor at a summer camp.

See Learning Exercises N & O in the Appendix

Wrongful Dismissal

What is wrongful dismissal?

Very generally, it means having been fired in a way that is considered wrong.

If you have been fired without the right amount of notice or pay in lieu of notice, *plus* there was no “just cause” (good reason) for your dismissal, then you may have been wrongfully dismissed.

Wrongful dismissal includes constructive dismissal which is discussed below.



*Note: Wrongful Dismissal is a very complex area of the law. If you think you may have been wrongfully

dismissed, you should contact a counsellor at Alberta Labour Standards, or contact a lawyer.

My boss cut my wage in half. There does not seem to be any reason for it, and I don't want to keep working here for that wage. If I quit, do I have a remedy?

Possibly, yes – You may have been constructively dismissed from your job. Constructive dismissal occurs when your employment is terminated without you being formally fired.

This happens if your employer changes your job so drastically, without your permission or without giving you reasonable notice of the change (or pay in lieu) that it is now very different from the job you were originally hired to do. If you decide to quit instead of taking the “new” job, you have been constructively dismissed.

What are some examples of constructive dismissal?

The following may lead to constructive dismissal:

- Your job title is changed to something more junior;
- Your wage is reduced;
- You lose some of your job perks such as an office or a gym membership;
- Your boss changes most of your job duties or responsibilities;
- You are forced to change work location or hours;
- You are asked to resign or are subjected to abusive language.

Is any change to my job considered constructive dismissal?

No – Sometimes there are valid reasons that an employer might try to change your employment contract.



The following reasons for changes to your job may not be constructive dismissal:

- temporary lack of business,
- your skills have become redundant (no longer needed by the employer),
- your company merges with another company and your job is phased out.

Even if there is a valid reason for a change in your job, you are still entitled to reasonable notice of the change or money in place of notice.

What if I decide to continue working in my “new” changed job?

For you to be able to argue constructive dismissal, you must have quit your job as a result of the change. If you accept the change by continuing to work under the “new” arrangement you will probably not be able to argue wrongful dismissal.

What do I do if my boss substantially changes my job?

It depends on if you are happy with the change or not:

- If you are happy with the change, or if you have agreed to the change, then there is no problem. You and your employer can always agree to change your job description.
- If you are not happy with the change, talk to your supervisor or boss and explain that the change may not be allowed without your permission. You can use the Self-Help Kit provided by Employment Standards to help you resolve the problem
- If your employer refuses to listen, you can file a complaint with Employment Standards. If you are successful, you could get your original job back or be paid money as compensation.
- You could sue your employer in Court for wrongful dismissal. This will likely mean that you must hire a lawyer and may take a lot of time and money. If the court finds evidence that your employer made the changes to your job in an attempt to get you to quit, the court may award you an additional amount of money for damages.

See *Learning Exercise P* in the Appendix

You End Your Employment

Generally speaking, most employees have the right to end their employment (quit).

There are a few limited circumstances when an employee might be obligated to keep working. For example, if you made a contract that says you will work until a certain date but you quit earlier, your employer may be able to sue you for breach of contract.



How do I terminate my employment?

Give written notice – In the same way that your employer has to give you notice of termination, you have to give written notice to your employer that you are quitting.

How much notice do I have to give when I quit?

It depends on how long you have worked for your employer. The following table shows the required notice period if you are quitting.

How Long Were You Employed?	Notice That You Must Give Your Employer
Less than 3 months	None
More than 3 months, Less than 2 years	1 week
2+ years	2 weeks

What happens if I don't give the required notice?

The consequences of failing to give required notice are different for employers and employees.

If employers don't give notice, they must give pay in lieu of notice. On the other hand, if you don't give notice, you don't have to pay anything back.

Instead, you will have to wait a bit longer to get paid any wages, overtime, holiday and vacation pay that you are still owed.

How soon after I've given notice does my employer have to pay me?

If you have given proper notice, your employer must pay you all money owing within 3 days of your last day of work.

Example:

You give your two weeks notice on January 1st, stating that your employment will end on January 15th. Your employer must pay you all of your wages (up to & including January 15th), overtime, and vacation pay by January 18th.

If you have not given proper notice, your employer will have 10 days to pay you after the date on which you *would have* quit your job had you given proper notice.

Example:

You just stop showing up for work after January 1st. You won't be paid for the days between January 2nd and 15th plus your employer does not have to pay what you are still owed until January 25th!

If I have worked for more than 3 months, are there any situations where I don't have to give notice?

Yes – You do not have to give notice if:

- Your personal health or safety is at risk by continuing to work;
- There are unpreventable circumstances beyond your control that make it impossible for you to give notice;
- You don't have work to go to because there is a strike or lockout;
- Your employment contract says that you don't have to give notice;
- There is an established custom in the industry about what proper notice is and you follow that custom;
- The employer reduces your pay rate. (See discussion on Constructive Dismissal on p. 88)

See Learning Exercise Q in the Appendix

SUMMARY OF PART IV

- Employees have a right quit and employers have the right to terminate the employment of their employees.
- Generally, the main responsibility of both employees and employers when terminating the employment is to provide notice of their intention to terminate.
- The length of notice normally depends on how long the employee worked for the employer.
- If an employer fails to give the required notice, they must give pay in lieu for the period of notice that should have been given.
- There are some situations in which your employer does not have to give you notice that you are being fired. One of the most common situations is if you are fired for “just cause”.
- If you have not been given the required notice and have not been fired for just cause, you may have been wrongfully dismissed.
- Constructive dismissal is a kind of wrongful dismissal where you are “forced” to quit because of significant changes to your job without your permission.
- Some options if you have been wrongfully dismissed are: speaking to your employer, contacting Alberta Employment Standards, or suing your employer in Court.

Conclusion

There are a number of laws in place in Canada and Alberta to protect the rights of workers in the workplace. The laws often include a variety of self-help solutions for workers so that they do not always require a lawyer in order to get help.

As a worker, it is very important to know your rights and responsibilities in the workplace. You should always try to get your employment contract in writing from your employer, and you should keep this document in a safe place. You should read over your employment contract, and any workplace policies that your job may have – many times, your employer may have processes in place for dealing with problems, but it is up to you to bring those processes to your supervisor's attention.

It is not always easy deciding what to do in a problem situation – many of the answers in this handbook provide you with options if you decide to take action, but the answer to your problem may not always be to file a complaint.

While it is usually a good idea to speak with your employer first, to see if your problem can be resolved in a way that makes both of you happy, sometimes there are non-legal issues that might prevent you from doing so, such as bullying and intimidation. If you feel bullied or intimidated by your employer, you might need some

help speaking with your employer, or you may need to think of other ways to resolve your problem.

You will have to decide for yourself if you feel comfortable speaking with your supervisor, or if there are other resources that you would like to try before formally complaining. Filing a formal complaint can be a stressful and long process.

We hope this handbook has provided you with the tools and resources to determine what your rights are in the workplace, solve some of your employment-related problems, and find help when you need it.

There is also a list of resources at the end of this booklet for you, in case the answer to your problem is not in this handbook.

Part V: Resources

Useful Tips

- ☑ Ask for a written employment contract outlining the terms of employment. You and your employer should both sign it.
- ☑ Keep track of the hours you worked, and jobsite if it changes. This record will be invaluable if you have to make a claim for unpaid wages.
- ☑ Keep copies of any documents that your employer gives you or that you give to your employer.
- ☑ It is usually best to try to speak with your employer first if you have a problem on the job. Give them the benefit of the doubt if you think they have broken the law. A simple conversation may clear up your concerns.
- ☑ If a conversation with your employer doesn't work, make sure you put your complaint in writing and give it to your employer. It is important that you have proof that you brought your complaint to your employer's attention.
- ☑ If you aren't sure what to do, the best place to call is probably the Employment Standards Office. They will listen to your concerns and can probably tell you what you need to do to solve your problem.
- ☑ Always do your best to fulfill your obligations under the law and your employment contract.

Finding Laws Online

Canadian Legal Information Institute: www.canlii.org

Alberta Queen's Printer: www.qp.gov.ab.ca

Federal Laws: <http://laws.justice.gc.ca/en/>

Getting Legal Assistance

How do I know if I need a lawyer?

When an individual has been terminated from their employment many questions arise. There can be some complex issues, particularly if you might be dealing with wrongful dismissal.

You can use some of the free resources listed below to determine if you need a lawyer, and to see if it is worth going to court.

<i>Free Legal Resources</i>		
Children's Legal & Educational Resource Centre (CLERC)	<i>Provides children and youth with free legal advice, information, and representation in different areas including employment issues.</i>	1010 14 Avenue SW Calgary, AB T2R 0P1 Tel: (403) 207-9029
Alberta Law Line (Legal Aid Alberta)	<i>A free legal information and lawyer referral service. You can get general information on the law and legal</i>	Toll-free Tel: 1-800-845-3425 In Edmonton, Tel: (780) 644-7777

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	<i>process. The information will help a caller identify their problem and the choices available to address the legal issue.</i>	Website: www.lawline.legalaid.ab.ca/Home.htm
Dial-a-Law (Calgary Legal Guidance)	<i>Free, pre-recorded information on over 170-topics about the law and legal system, accessible 24hrs a day.</i>	Toll-free Tel: 1-800-332-1091 Website: www.clg.ab.ca/dial.htm
Calgary Legal Guidance	<i>Legal clinic providing free legal advice and help with preparing for court for people with low incomes.</i>	100, 840-7th Ave S.W. Calgary, AB T2P 3G2 Tel: (403) 234-9266 Fax: (403) 234-9299 Website: www.clg.ab.ca
Edmonton Community Legal Centre (ECLC)	<i>Legal clinic providing free legal information, advice, and representation for people with low incomes in the Edmonton area.</i>	900, 10025 - 106 St. Baker Centre Edmonton, AB T5J 1G4 Tel: (780) 702-1725 Fax: (780) 702-1726 Website: www.eclc.ca/
Central Alberta Community Legal Clinic	<i>Legal clinic providing free legal advice for people in the Red Deer area.</i>	#301, 5008 Ross St. Red Deer, AB T4N 1Y3 Toll-free: 1-877-314-9129 Tel: (403) 314-9129 Fax: (403) 314-9194 Website: www.communitylegalcl

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		inic.net/
Lethbridge Legal Guidance	<i>Legal clinic providing free legal advice, information, and education for people with low incomes. Representation in court is <u>not</u> available.</i>	423 5 Street South Lethbridge, AB T1J 2B6 Tel: (403) 380-6338 Fax: (403) 380-3661 Website: /www.lethbridgelegalguidance.com/
Legal Aid	<i>Provides legal assistance to people who would not otherwise be able to afford a lawyer. Any services requiring full legal representation by a lawyer are not free. Clients are expected to repay the costs of their legal representation, but it will be less than if they had hired the lawyer privately.</i>	<u>Calgary</u> #1800, 639-5 Ave SW Calgary, AB T2P 0M9 Tel:(403) 297-2260 Fax:(403) 297-2232 <u>Edmonton</u> 300 Revillon Bldg. 10320-102 Ave. Edmonton, AB T5J 4A1 Tel: (780) 427-7575 Fax: (780) 427-5909 For Other Offices See: www.legalaid.ab.ca/Getting+Legal+Aid/Regional+Offices.htm Website: www.legalaid.ab.ca

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<p>Student Legal Assistance (Calgary)</p>	<p><i>Provides free or low-cost legal advice and representation by law students at the University of Calgary for people with low incomes. A nominal disbursement charge applies to non-University of Calgary students.</i></p>	<p>3390 Murray Fraser Hall University of Calgary Calgary, Alberta T2N 1N4 Tel: (403) 220-6637 Fax: (403) 282-0473</p> <p>Website: www.sla.ucalgary.ca/</p>
<p>Student Legal Services (Edmonton)</p>	<p><i>Provides free or low-cost legal advice and representation by law students at the University of Alberta for people with low incomes.</i></p>	<p><u>Campus Office</u> Emily Murphy House 11011-88 Ave. Edmonton, AB T6G 0Z3 Tel: (780) 492-2226</p> <p><u>Downtown Office</u> #203 - 9924 106 St. Edmonton, AB T5K 1C7 Tel: (780) 425-3356</p> <p>Website: www.slsedmonton.com/home.html</p>
<p>Lawyer Referral Service (Law Society of Alberta)</p>	<p><i>Provides you with the names & contact information of 3 lawyers who may be able to help you. The lawyers will provide 30 minutes of free advice over the phone. Payment for additional time may be required.</i></p>	<p>Province-wide toll-free Tel: 1-800-661-1095</p> <p>Calgary Office Tel: (403) 228-1722</p> <p>Website: www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm</p>

Community Agencies

<i>Employment Standards Offices</i>		
General:		Province-wide toll-free Tel: 1-877-427-3731 Website: http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/1224.html
	<u>Calgary</u> Hours of Operation: 8:15am - 4:30pm, Mon to Fri	150, Elveden Centre 717 - 7 Ave. SW Calgary, AB T2P 0Z3 Tel: 1-877-427-3731 Fax: (403) 297 5843 E-mail: employment.standards@gov.ab.ca
	<u>Edmonton</u> Hours of Operation: 8:15am - 4:30pm, Mon to Fri	Main Floor Sterling Place 9940 - 106 Street Edmonton, AB T5K 2N2 Tel: (780) 427 3731 or Toll-Free 1-877-427-3731 Fax: (780) 422 4349 E-mail: employment.standards@gov.ab.ca

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<i>Human Rights</i>		
Alberta Human Rights & Citizenship Commission Offices:		Province-wide toll-free Tel: 310-0000, or From a cell phone, #310 (for Telus-Bell) / *310 (for Rogers), [once connected, dial regional office number]. Website: www.albertahumanrights.ab.ca
	<u>Southern Regional Office</u>	Suite 310, 525 – 11th Ave. SW Calgary, AB T2R 0C9 Tel: (403) 297-6571 Fax (403) 297-6567
	<u>Northern Regional Office</u>	800 Standard Life Centre 10405 Jasper Ave. Edmonton, AB T5J 4R7 Tel: (780) 427-7661 Fax (780) 427-6013
Alberta Civil Liberties Research Centre	<i>Provides information & publications on human rights. Does not provide legal advice or representation.</i>	University of Calgary, Faculty of Law 2500 University Drive N.W. Calgary, AB T2N 1N4 Tel: (403) 220-2505 Fax: (403) 284-0945 Website: www.acrlrc.com

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<i>Employment Resources</i>		
Alberta Learning Information Service	<i>Provides information for career planning, education and training.</i>	Website www.alis.gov.ab.ca
Alberta Employment & Immigration	<i>List of program and service offices across Alberta (e.g. career information hotline, employment standards)</i>	Website: http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/430.html
Calgary Workers' Resource Centre	<i>Provides support and assistance to workers so they get the employment rights and benefits they are entitled to. (e.g. help filing applications, complaints, or claims, talks with employers)</i>	2002-1 st Ave. NW Calgary, AB T2N 0B3 Tel: (403) 264-8100 Fax: (403) 264-8117 Website: www.calgaryworkers.org
Citizenship & Immigration Canada	<i>Call Centre agents can help you with questions about Citizenship and Immigration services and programs.</i> <i>If you are outside of Canada contact the Canadian embassy or</i>	Toll-free: 1 888 242-2100 (in Canada only) Website: http://www.cic.gc.ca/ (For a list of Canadian Visa Offices see: http://www.cic.gc.ca/english/information/offices/missions.asp)

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	<i>consulate responsible for your region</i>	
Human Resources and Social Development Canada – Federal Labour Program	<i>Links to information about various work-related topics affecting primarily federal employees (e.g. collective bargaining, labour law and standards)</i>	Website: http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/labour.shtm

<i>Workplace Safety</i>		
CanadaOne – Job Safety		Website: http://job-one.ccohs.ca/en/default.html
Canadian Centre for Occupational Health & Safety (CCOHS) – Inquiries and Services Team	<i>Call Centre staff can answer questions about health or safety concerns that you may have about your work.</i>	135 Hunter St. East Hamilton, ON L8N 1M5 Toll-Free: 1-800-668-4284 Tel: (905) 570-8094 Fax: (905) 572-2206
	<i>Send a question about workplace health & safety to the CCHOS</i>	Web Site: www.ccohs.ca Website: www.ccohs.ca/ccohs/inquiries/inquiries_fm.html
	<i>The Young Workers Zone</i>	Website: www.ccohs.ca/youngworkers

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	<i>FAQ about certain diseases, disorders, and injuries</i>	Website: www.ccohs.ca/oshan swers/diseases/
	<i>Information on conditions at the workplace and the way equipment & machinery are used.</i>	Website: www.ccohs.ca/oshan swers/safety_haz/
	<i>How to identify & control workplace hazards and how to work safely with hazardous materials</i>	Website: www.ccohs.ca/oshan swers/prevention/
Alberta Employment (Workplace Health & Safety Contact Centre)	<i>Contact staff at the Centre if you have a workplace health or safety question or concern, or want to report an incident or dangerous situation.</i>	Province-wide toll-free for all offices: 1-866-415-8690 Fax: (780) 422-3730 Calgary 600 Guinness House, Elveden Centre 727 - 7 Avenue SW Calgary AB T2P 0Z5 Edmonton 10th Flr, South Tower Seventh Street Plaza 10030 - 107 Street Edmonton AB T5J 3E4 Website: http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/2874.html (Contact information

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		for other offices: http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/2569.html)
	<i>A neat web-based, quiz on workplace safety in Alberta</i>	Website: http://employment.alberta.ca/whsquiz/wsa_quiz.asp
	<i>Booklets on how to work safely</i>	Website: http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/136.html
	<i>Information on different types of injuries & accidents and how to prevent them.</i>	Website: http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/136.html#dont
		Website: http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/268.html
	<i>Information about specific workplace hazards</i>	Website: http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/3109.html

Glossary

Benefits – something “extra” that your employer can choose to give you in addition to wages. Benefits can take the form of reimbursement for medical, dental or other health-related expenses.

Bona fide (genuine) occupational requirement – a requirement that may be or may seem discriminatory, but that is allowed because it is genuinely needed for the job.

Casual Labour – an employment arrangement where the employee works on an irregular basis, usually when needed. This is not full or part time employment.

Closed Work Permit – a work permit that names a specific Employer, and which is the only Employer that the person can work for.

Collective agreement – one agreement, usually negotiated by a union, that applies to all employees working in the same type of job.

Commission – a type of payment arrangement where an employee is paid a percentage or fixed amount according to how much they sell, or how much profit they bring in to the company.

Contract work/Contractor – a person who works under an agreement that has a definite start and end date, and usually clearly defined roles and duties. Often a contractor will have his or her own company

Duty to Accommodate – the duty of an employer to change the workplace to accommodate the needs of employees. Employers have a duty to accommodate to the point of undue hardship. [See also Undue Hardship]

Employment contract - is an agreement between you and your employer which states what you are entitled to on the job, including what you will be paid and when you will work. Some employment contracts are written down and signed by both employee and employer. You can have an employment contract even if it is not written down, as long as you both agree to those terms.

The Employment Standards Code – a law that sets out the rules that govern most workplaces in Alberta. The rules are made by the government to protect employees and to ensure that employees are not taken advantage of in the workplace. The laws provide *the minimum standards* that employers must maintain in the workplace.

Full Time Employee – an employment arrangement where the employee works a minimum number of hours every week, usually 35 to 40 hours or more every week.

Harassment - a form of discrimination in which an individual is subjected to unwelcome or unwanted physical or verbal conduct. [See also Sexual Harassment].

Minimum wage – the minimum hourly pay that an employer must pay an employee. In Alberta this is \$8.40 an hour.

Open Work Permit - a work permit that does not restrict the person in choosing an employer.

Pay period – the time period between paycheques, on which your pay is based – usually people are paid weekly, bi-weekly (every two weeks), or semi-monthly (twice per month).

Piece work – a type of work in which a person is paid for each item or unit that they produce or process, in addition to, or instead of, being paid hourly or with a salary.

Permanent Resident – a classification for persons who have been accepted to permanently live in Canada, and who can work for any employer without requiring a work permit.

Self Help Kit – this is a kit provided by the Employment Standards office that will provide you and your employer with information about the basic rights and responsibilities of employers and employees in Alberta. It includes forms that can help you to

outline your complaint to your employer and information about the law that will help you to make your case.

Sexual harassment - refers specifically to harassment of a sexual nature.

Split Shift – occurs when an employee works two shifts in one day, with a longer unpaid break between shifts.

Statement of Earnings – a statement that must accompany a paycheque, showing the employee's hours of work, overtime work, wage rate/overtime rate, pay period, wages, and all deductions.

Undue Hardship – a term used when talking about an employer's duty to accommodate an employee's unique needs. This is the point at which it would be too difficult or too expensive for the employer to change the workplace to accommodate an employee. [see also Duty to Accommodate]

Union – an organization that represents employees and acts as a spokesperson for employee complaints and rights in the workplace.

Work permit – a document that allows someone to legally work in Canada. See *Open work Permit and Closed Work Permit*.

Workplace - is any place that you do work or perform a job for money. Workplaces include offices, stores,

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schools, factories, industrial warehouses, construction sites, in someone else's home, in a bus or train, to name a few examples. Anytime you are doing work for an employer you have protection under the law.

Learning Exercises

This material is meant to be used with *Know Your Rights in the Workplace: A Youth Employment Law Handbook*, which is designed to help you understand your rights in the workplace and what to do if you feel you are being treated unfairly, are working in unsafe conditions, or your employer is not following the law.

This section contains the following information:

Learning Exercises. These exercises will test your understanding of the information provided in the various parts of the *Handbook*.

Possible Solutions. Some of the exercises include possible solutions while some do not and are meant to be used in discussions.

We hope this section helps you to practice and test what you learned from the handbook about addressing employment-related problems and finding help when you need it.

For more information or assistance, please do not

hesitate to contact or use any of the resources listed in the handbook.

Part I: Introduction to Labour and Employment Law

Learning Exercise A

Amal was recently hired to work as a housekeeper. Her employers, Stanley and Anne, are the owners of the house. When she was hired, Stanley told Amal that she would be required to work at their home from 9:00AM until 5:00PM from Monday to Friday. She would be required to clean the house every day and to do the laundry. Stan told her that she would be required to wear a uniform, which they would provide. Stan said that they would pay her \$10 per hour and that she would be paid every week.

Amal thought that this sounded pretty good so she accepted the job. She arrived at work on Monday morning and worked all week. Usually she was alone in the house, however, occasionally Anne, Stanley's wife, was also

there. Sometimes Anne showed Amal the way she wanted things done. Amal did her best to do the cleaning and laundry the way that Anne suggested.

After work on Friday, Anne gave Amal her first pay cheque. Amal was surprised to find out that it was much less than she expected. When she read the pay stub, she realized that she had only been paid \$5 per hour, instead of the \$10 per hour that Stanley had said she'd be paid. Anne had written a note saying that she was unhappy with the way that Amal had done the cleaning and the laundry, and this was the reason that her pay was reduced.

Amal really needed the money so she accepted the cheque and didn't say anything to Anne. She went home for the weekend to think about what she should do next. Amal thought this was really unfair since she had done her best to do things the way that Anne had suggested.

What advice would you give Amal?

Answer

What are the terms of Amal's employment "contract?"

This should always be your starting point to determine what an employee is entitled to at the workplace.

- Employers: Stanley and Anne
- Workplace: Stanley and Anne's home
- Days/Hours: Monday - Friday; 9AM - 5PM
- Job Description: Cleaning and Laundry
- Other Details: wear uniform
- Pay: \$10 per hour; paid weekly.

What employment laws apply to Amal?

The Alberta *Employment Standards Code* applies to most employees in Alberta. Since her job as a housekeeper doesn't fall under any of the exceptions, the *Employment Standards Code* applies to her.

What minimum standards (if any) does the law say apply to Amal's employment contract?

There are a number of minimum standards that the *Employment Standards Code* say applies to Amal's contract. These are discussed in more detail in the handbook. One minimum standard that was mentioned in the handbook is minimum wage. Minimum wage in Alberta is \$8.40 per hour. It is against the law for an employer to pay an employee less than \$8.40 per hour.

Have Stanley and Anne broken the law?

Yes! They have broken the law under the *Employment Standards Code* by paying Amal less than minimum wage. Stanley and Anne have also breached the contract by paying Amal less than the amount they agreed to in the contract. Even if Amal didn't perform the job exactly the way that Anne wanted her to, Amal is still entitled to be paid, as she showed up for work every day and performed the tasks she was supposed to under the agreement.

What can Amal do?

There a number of things that Amal can do to solve her problem.

1) She can speak to Stanley and Anne, or write them a letter that states that she has been paid less than she was supposed to be under their employment contract. Amal could provide Stanley and Anne with information from the Employment Standards Office (or website) that states that employee cannot be paid less than the minimum wage.

2) If this does not work, Amal can call the Employment Standards Office for help. The counsellors will likely tell Amal to try the "Self Help Kit". The kit has a form that will help Amal make a claim for her unpaid wages.

3) If the "Self Help Kit" doesn't work, Amal can file a formal complaint with the Employment Standards Office against Stanley and Anne. She can contact the counsellors who will assist her in the process. If she is successful, the Employment Standards Office can force Stanley and Anne to pay Amal the amount she is owed.

4) Amal can decide that she would like to do nothing because the stress of handling the

problem is too much for her. She can find a different job or simply quit. This is a non-legal remedy.

Learning Exercise B

What laws apply to the following employees?

- 1. An employee who works as a radio broadcaster?**
- 2. An employee who works as a translator at a non-profit organization?**
- 3. An employee who works on an airline?**
- 4. An employee who works for the Government of Canada?**
- 5. An employee who works for the Government of Alberta?**
- 6. An employee who works as a teller in the bank?**
- 7. A Grade 2 teacher in a school in Alberta?**
- 8. An employee who works in a retail store?**
- 9. An employee who works as a nurse?**
- 10. An employee who works as an educator in a non-profit organization?**

Answers:

1. *Canada Labour Code and Canada Human Rights Act* - Radio broadcasting is a federal industry
2. *Alberta Employment Standards Code and Alberta Human Rights, Citizenship and Multiculturalism Act*
3. *Canada Labour Code and Canada Human Rights Act* - Airlines are federally regulated
4. *Canada Labour Code and Canada Human Rights Act* - federal government
5. *Alberta Employment Standards Code and Alberta Human Rights, Citizenship and Multiculturalism Act* - provincial government
6. *Canada Labour Code and Canada Human Rights Act* - banks are federally regulated
7. *Alberta Labour Relations Code and Alberta Human Rights, Citizenship and Multiculturalism Act* - teachers are members of unions

8. *Alberta Employment Standards Code and Alberta Human Rights, Citizenship and Multiculturalism Act*

9. *Alberta Labour Relations Code and Alberta Human Rights, Citizenship and Multiculturalism Act*

10. *Alberta Employment Standards Code and Alberta Human Rights, Citizenship and Multiculturalism Act*

Learning Exercise C

Abena recently started a new job as a secretary in a busy not for profit organization in downtown Calgary. Her employer told her when she was hired that she would be required to work from 8:30 AM - 5:30 PM and that she would get one hour of unpaid lunch. She would be paid \$12 per hour, and after 3 months, she would be eligible for

benefits, including short-term disability insurance, dental benefits and health benefits. When she started working, she was asked to provide a voided cheque, so that her pay could be deposited into her bank account every two weeks. Abena did not sign anything when she started working.

- 1. Does Abena have an employment contract?**
- 2. What laws apply to Abena's new job?**
- 3. What are the terms of her employment contract? What are the terms imposed by her employer? What isn't covered in her contract that the law provides?**

Answers:

- 1) Yes. Abena has an employment contract. The employment contract does not have to be written down or signed, and sometimes it might be a combination of what was written down and what was said between the employer and employee.**

- 2) ***Employment Standards Code*** - It is likely that the Employment Standards Code applies to Abena because she works in Alberta and does not work for the federal government or any of the other excluded groups of employees. This means that her employment contract is probably subject to the *Employment Standards Code*, which means that her employment contract must follow the minimum standards implied by the law.
- ***Alberta Human Rights, Citizenship and Multiculturalism Act*** - This Act applies to all employers and employees in Alberta.
 - ***Canada Labour Code*** - Since Abena is not a federal employee, the Canada Labour Code does not apply to her.
 - ***Alberta Labour Relations Code*** - Since Abena is not a member of a union, the Labour Relations Code does not apply to her.
- 3) The terms of Abena's contract are as follows:
- Hours of work 8:30AM - 5:30PM
 - One hour unpaid lunch break
 - Pay \$12 per hour

- Benefits (disability insurance, health insurance and dental insurance) - After 3 months she would be eligible to receive them
- Paid every two weeks

However, because the *Employment Standards Code* applies to Abena's employment, there are also a number of minimum standards that are also considered to be included in her employment contract. These include minimum standards regarding vacations, overtime, breaks and more. These are discussed in the handbook. The ***Alberta Human Rights, Citizenship and Multiculturalism Act*** also applies to all employers and employees in Alberta. This means that employers cannot discriminate against Abena in her employment on the basis of her race, colour, gender (including pregnancy), religion, ancestry, where she was born, age (if over 18), physical disability, mental disability, family status, marital status, and source of income.

Learning Exercise D

After Abena had been working at the organization for a few months, she noticed that her boss often asked her to work through her lunch break. She didn't really mind doing this occasionally, but pretty soon she was being required to work through the day without a break. She really enjoyed her job and was afraid of losing it if she complained. She tried to speak to her boss and he brushed her off by saying, "This is a fast-paced work environment. I need you to be here whenever I need you because you never know when something will come up." What should she do?

Solution:

Abena could try to write a letter to her employer, requesting that she be permitted to take the breaks to which the *Employment Standards Code* says she is entitled. If she is afraid of confronting her employer, she can file a confidential complaint with the Employment Standards Office. The Employment Standards

Office investigators will speak to her employer and advise him or her of the law regarding breaks. They will let her employer know that someone at the workplace filed a complaint, but will not release her name. If her employer still doesn't permit her to take breaks, she can call the Employment Standards Office and they will follow up with her boss to ensure that he follows the law.

Learning Exercise E

Abena has now been working for five years as a secretary at the same organization. Another co-worker makes a lot of jokes about Abena's cultural heritage. It makes Abena very uncomfortable but she doesn't want to cause problems with her co-workers. What can she do?

Answer:

The jokes about Abena's cultural heritage are discrimination under the *Alberta Human Rights, Citizenship and Multiculturalism Act*. Abena could confront her co-workers and let them know

that the jokes make her feel uncomfortable. If this doesn't work, she can make a complaint to her employer. If her employer ignores her complaint or if the jokes continue, Abena can make a complaint to the Alberta Human Rights and Citizenship Commission against both her employer and the employees that are making the jokes. The law says that employers are responsible for ensuring that Abena works in a safe work environment. Once she files the complaint, investigators will contact her employer to advise of the complaint and will work with her employer to solve the problem.

Part II: Know Your Rights Before You are Hired

Learning Exercise F

Anastasia is in an interview for a retail position. The manager says she notices Anastasia has an accent, and wants to know if her “papers” are in order. What should she do?

Solution

An employer cannot directly ask you where you are from so you do not have to tell them where you are from if they comment on your accent. If an employer asks if your "papers" are in order, you may wish to ask what they mean by that. If they are trying to find out if you are eligible to work in Canada, then an employer is permitted to ask you this question. If you are a Canadian citizen, permanent resident or if you hold a valid work permit, you are eligible to work in Canada.

Learning Exercise 6

Take a look at your local newspaper's employment section. Do all the advertisements follow the law? Can you find any advertisements that do not? Why are they against the law?

Part III: Know Your Rights After You Are Hired

Learning Exercise H

Yolanda works as a live in nanny. She receives room and board, and a salary of \$8.40 per hour. She works Monday through Friday for 7 hours every day.

What is Yolanda's weekly pay?

Answer:

Yolanda's weekly pay would be \$294 (before tax deductions).

The employer can deduct \$18.25 from Yolanda's weekly total to pay for the room (\$3.65 per day for 5 days), and up to \$41.25 (which is \$2.75 per meal, if Yolanda ate 3 meals per day for 5 days). Her gross pay (before taxes and deductions) would then be \$234.50.

Learning Exercise I

**Review the following Statement of Earnings
and answer the following questions:**

Employee Name:	Chinwe Iheme
Employer Name:	Immigrant Services Association
Position:	English as a Second Language Counsellor
Social Insurance No:	222-222-222
Pay Period:	March 16 - March 31, 2007
Province of Employment:	Alberta
Hour worked:	60 hours
Rate of Pay:	\$12/hr
Gross Pay:	\$720.00
Total EI insurable earnings for the pay period	\$720.00
Taxable salary	\$720.00
Federal Tax deduction	\$100.00
Provincial Tax deductions	<u>\$ 50.00</u>
Total Tax on Salary	\$150.00
Canada Pension Plan deduction	\$ 40.00
Employment Insurance deduction	\$ 30.00
Requested additional tax deduction	\$ 0.00
Benefits Premium	<u>\$ 50.00</u>
Total deductions on salary	\$270.00
Net Pay:	\$450.00

Immigrant Services Association 123 Bond Street Calgary, Alberta T2K 3K3	March 31, 2007
Pay to the Order of: Chinwe Iheme	\$450.00
<u>Four Hundred & Fifty</u> <u>Dollars</u>	<u>XX/100</u>

Questions

1. How much is Chinwe's gross pay?
2. What is the pay period?
3. How many hours did she work?
4. What is her hourly pay?
5. How much was deducted for:
 - a) federal and provincial taxes?
 - b) Canada Pension

- c) **Employment Insurance**
- d) **Her benefits premium?**

6. While doing a presentation, Chinwe accidentally broke the Association's laptop computer. Her boss was not pleased and told her that was going to cost \$300 to fix it. When she received her next pay cheque, she noticed that her boss had deducted the \$300 from her cheque and had attached a copy of the bill for fixing the computer. Chinwe was very upset as this only left her with \$150. Would this deduction be allowed under the law? What could Chinwe do if her employer deducted the repair cost for the laptop computer from her pay cheque?

Learning Exercise J

Suppose you normally work from Friday to Wednesday with Thursdays off. You really need the extra hours so you try to pick up as many extra shifts as you can. Your boss asks you to work this Thursday on your day off so you take the extra shift, without a day off to replace it.

The following Tuesday, your co-worker asks you to cover her shift on Thursday. You know you aren't allowed to work for more than 12 days in a row without two days off. Can you cover her shift on Thursday? Fill in the grid below to help you answer the question.

*****This is the day your boss asks you to cover the extra shift***

Sun.	Monday	Tuesday	Wed.	Thurs.	Friday	Sat.
Work	Work	Work	Work	OFF	Work	Work
Work	Work	Work	Work	Work **		

Answer:

No. You can't pick up your co-worker's shift because you are entitled to days off on Wednesday and Thursday because you've worked for twelve days in a row.

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
Work	Work	Work	Work	OFF	Work	Work
Work	Work	Work	Work	Work <i>(boss asks you to cover a shift)</i>	Work	Work
Work	Work	Work	OFF	OFF		

Learning Exercise K

You started work as a settlement counsellor in July of 2008. Your cousin is getting married in May of 2009 and you are trying to figure out if you will be eligible to take a vacation then to attend the wedding. Your employment contract says that vacation days accrue at 1.5 days per month and that you may take them as soon as they are earned. Your

employment policy manual tells you that you will receive paid vacation.

When does the law say that you are automatically entitled to a vacation and how much vacation does the law say that are you entitled to receive?

The Alberta *Employment Standards Code* says that you will be automatically entitled to receive a vacation after working for one year. In July of 2009, the law says that you will be entitled to two weeks of vacation.

When does your employment contract say you are entitled to a vacation and how much vacation does your employment contract say you are entitled to receive?

Your employment contract says that vacation days accrue at 1.5 days per month and that you can take the days as soon as they are earned. This means that every month you work, you are entitled to 1.5 days of vacation. You can take 1.5 days off in the month after you earn them. For

example, in August, you would be entitled to take the 1.5 days off that you earned by working in July.

Does her employment contract apply to her vacation or does the law?

The law provides only the absolute minimum standard. Since your employment contract, provides you with more vacation and more flexibility to take your vacation, then the employment contract applies.

In May of 2009, how many days off will you be entitled to take?

In May of 2009, you will have worked for 10 months. This means that you would have earned 15 days of vacation. Generally speaking, you can take these 15 days at any time, with your employer's permission. You should check your employment manual or with your employer to find out how much notice you need to provide your employer before taking vacation.

How much vacation pay are you entitled to receive and when will you receive it?

Your employment contract says that you are entitled to paid vacation. This means that you will receive your normal pay cheque while you are on vacation.

Learning Exercise L

Margarita's co-worker is often rude to her and insults her by calling her "fat", "ugly" or "stupid". What can she do?

Answer:

These types of insults do not constitute discrimination under the *Alberta Human Rights and Citizenship Act*. They are connected with her employment but they are not based on any of protected grounds of discrimination. This does not mean that there is nothing that she can do to solve the problem. She can speak to the co-worker making the insults directly and ask them to stop. If that is too intimidating, she can make

a complaint to her employer and have him or her address the problem.

Learning Exercise M

Questions for Discussion

An employee believes that she was given an unfair performance appraisal and passed over for skills upgrade training because she is a woman. After she launches an internal complaint, she is demoted and transferred to another department.

- 1. Is this discrimination?**
- 2. If so, what can she do?**

Maria works as a waitress and she recently found out that she was pregnant. When she told her boss, he told her that he planned to replace her since she was pregnant. Is he allowed to do this?

My job description requires me to perform data entry at a computer for 2 hours every

day and to stock boxes for the rest of the day. I was recently diagnosed with carpal tunnel syndrome, which means that my wrists are very painful from straining them from typing and lifting heavy items. My boss told me that he could buy me a new computer keyboard and mouse pad but that I still have to lift the boxes. What should I do?

Faizah works for a retail-clothing store. She normally works Monday to Friday and has weekends off. Her employer has asked that all employees come to work on Saturday to take inventory. Saturday is normally the day she spends with her family as her religious day of rest. What can she do?

PART IV: Ending Your Employment

Learning Exercise N

Agata did not have enough money to pay her rent. She borrowed \$200.00 from the till of the clothing store where she works, and planned to return it on payday. She left a note saying that she would put it back and signed it.

Can the Employer terminate her employment for taking the money?

If your employer did not consent, they can consider this theft. If you are caught stealing from your employer, this is likely just cause to terminate your employment without notice.

Cecilia is late for work three times in a row - is this just cause?

No - the error or act has to be very serious in order to be just cause for terminating your employment without notice.

Learning Exercise O

Oriela worked as a receptionist for a not for profit agency for 10 years. Her employer has decided that they want to hire two part-time workers to replace her.

Is Oriela entitled to notice? If so, how much notice is she entitled to?

The employer does not have to have a reason to fire you, as long as they give you proper notice. Since Oriela has been working for the employer for longer than 3 months, she is entitled to notice. Since she has worked for longer than 8 years, she is entitled to *at least* 8 weeks notice.

Cristina just started a waitressing job 2 and 1/2 months ago. She was recently told by her manager that it is "not working out", and that her last shift will be on Friday.

Is Cristina entitled to notice?

No! She has been working for less than 3 months, so under the Employment Standards, she is not entitled to any notice.

Learning Exercise P

Maria worked as an assistant manager in a retail store that sells jewellery and accessories. Last year, Maria took some time off work after having a baby. She decided to take a full year of maternity leave. When she returned to work, she was told that someone was hired to do her old job temporarily until Maria “felt comfortable” going back to work, but that she would have lots of work to do around the store until she was “back on her feet again”. Since she has been back to work, she has not been given only small tasks to do, like re-organizing displays and tidying the stock room. Since she used to work on commission, she is making a little bit less money because a lot the things she does are in the stock room. She also found out that the girl that was hired to replace her during

her maternity leave accepted a full time position as assistant manager, but Maria is not sure if she wants to confront her boss.

What steps can Maria take?

Maria can talk to her boss about the problem, but this would mean that there could be a confrontation. However, since she is making less money and her duties have been reduced, the employer may be trying to get her to quit - this would be Constructive Dismissal. If she does not feel comfortable approaching her boss, she can file a complaint with Employment Standards to either get her original job back, or get money to compensate her for losing the job that she had previously as assistant manager.

Learning Exercise Q

Tamara has been working at the Super-Mart for the last 10 years. She was just offered a job that pays a lot more and has a better benefits package. They've asked her to start in three days. What should she do?

The *Employment Standards Code* says that you are supposed to give at least one-week notice. However, given your situation, you may be able to speak to your employer and agree on a shorter notice period. You should contact your new employer and let them know that you are entitled to give your boss at Super-Mart one week's notice before you can start.

EVALUATION

Please fill out this survey and return it to the Alberta Civil Liberties Research Centre so that we can evaluate how useful this handbook has been to you. Circle the best answer and provide details where required. You can send it by mail, fax, email, or even by dropping a copy off at the office.

1. Did you find this handbook useful? Circle choice.

Very Much Yes, somewhat No, not at all.

2. Did you find the materials easy to understand?

Very Much Yes, somewhat No, not at all.

3. Are there any areas discussed that you didn't understand?

4. Do you think you would refer to this handbook in the future?

Very Much 2. Yes, somewhat No, not at all.

5. What issues should we have addressed that we missed?

6. Would you or your friend like another copy? Please provide contact information (please see reverse).

Name:

Address:

Occupation

Phone:

Return the completed form to the ACLRC

Alberta Civil Liberties Research Centre (ACLRC)

Office 2350 Murray Fraser Hall

c/o Faculty of Law

University of Calgary

Calgary, Alberta T2N 1N4

Tel: (403) 220-2505

Website: www.aclrc.com