



Legal Education
Society of Alberta

62097.00

8th Annual Law & Practice Update

Calgary, Alberta

Chair

Todd Munday

Wood & Munday LLP

Bonnyville, Alberta

Faculty

Hon. Judge A.A. Fradsham

Provincial Court of Alberta

Calgary, Alberta

Roger S. Hofer QC

Neuman Thompson

Edmonton, Alberta

Elizabeth Aspinall

Law Society of Alberta

Calgary, Alberta

Pam L. Bell

Bell and Stock Family Law LLP

Calgary, Alberta

Jonathan F. Griffith

Dunphy Best Blocksom LLP

Calgary, Alberta

Nolan B. Johnson

Huckvale LLP

Lethbridge, Alberta

LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2018, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2018. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

ISBN-10: 1-55093-6972
ISBN-13: 978-1-55093-697-1

Making Your Practice Employment Standards Compliant

8th Annual Law & Practice Update

Prepared by:

Roger S. Hofer QC
Neuman Thompson
Edmonton, Alberta

For presentation in:

Calgary, Alberta – October 5, 2018

MAKING YOUR PRACTICE EMPLOYMENT STANDARDS COMPLIANT

| | |
|---|----|
| Introduction | 2 |
| Employment Standards Changes..... | 3 |
| General Comments..... | 3 |
| Minimum Wage..... | 4 |
| Youth Employment..... | 5 |
| Rest Periods | 6 |
| Overtime and Averaging Agreements | 6 |
| Holiday Pay..... | 8 |
| Vacations and Vacation Pay..... | 9 |
| Deductions from Earnings..... | 10 |
| Job Protected Leaves of Absence | 10 |
| Maternity and Parental Leave | 10 |
| Reservist Leave | 11 |
| Compassionate Care Leave..... | 11 |
| Death or Disappearance of a Child Leave..... | 12 |
| Critical Illness of a Child Leave | 12 |
| Long Term Illness and Injury Leave | 12 |
| Domestic Violence Leave..... | 12 |
| Personal and Family Responsibility Leave | 12 |
| Bereavement Leave | 13 |
| Citizenship Ceremony Leave | 13 |
| Terminations | 13 |
| Layoffs | 14 |
| Record Keeping | 14 |
| Family Farms..... | 14 |
| Administrative Changes and Penalties..... | 14 |
| Additional Available Resources..... | 15 |
| Occupational Health and Safety Changes..... | 15 |
| Workers' Compensation Changes..... | 17 |
| Labour Relations Changes | 18 |
| Human Rights..... | 19 |
| Practices That Help Minimize Employment Claims..... | 19 |
| PowerPoint – Employment Standards Code Changes | |

INTRODUCTION

Employment law is founded both in the common law and in legislation. The common law framework includes, but is not limited to, the law of contract. The legislative framework for employment in Alberta for businesses falling in provincial jurisdiction¹ includes as a key element, but is not limited to, the *Employment Standards Code* (the “Code”)² and the related *Employment Standards Regulation* (the “Regulation”)³. The Code and the Regulation set a host of minimum standards governing employment relationships and makes it clear that any attempt to avoid those standards is void as against public policy⁴. Apart from the Code and the Regulation, there are a number of other statutes in Alberta that have profound impact on rights of employees and obligations of employers. Key among those are:

- the *Alberta Human Rights Act*⁵
- the *Occupational Health and Safety Act* (the “OHS Act”)⁶ and the related *Occupational Health and Safety Regulation* (the “OHS Reg”)⁷ and the *Occupational Health and Safety Code*⁸
- the *Workers’ Compensation Act* (the “WC Act”)⁹ ;
- the *Labour Relations Code* (the “LRC”)¹⁰ , and
- privacy legislation¹¹.

Since 1988, employment law has been a key focus area of my practice. In little over the past year, I have seen more seen profound and far reaching changes in the key legislation directly impacting

¹ Recall that various enterprises including aeronautics, interprovincial transportation, banking grain elevators, flour or feed mills, feed warehouses and seed cleaning mills fall in federal jurisdiction and bring into play federal statutes, key among which for employment law purposes, is the Canada Labour Code, RSC 1985, c L-2

² Employment Standards Code, RSA 2000, c E-9, as amended

³ Employment Standards Regulation, Alta Reg 14/1997, as amended

⁴ Code, supra, s. 4

⁵ Alberta Human Rights Act, RSA 2000, c A-25.5, as amended

⁶ Occupational Health and Safety Act, SA 2017, c O-2.1, as amended

⁷ Occupational Health and Safety Regulation, Alta Reg 62/2003, as amended

⁸ Occupational Health and Safety Code official online version available at: <https://www.alberta.ca/ohs-act-regulation-code.aspx>

⁹ Workers’ Compensation Act, RSA 2000, c W-15, as amended

¹⁰ Labour Relations Code, RSA 2000, c L-1, as amended

¹¹ For most employers this is the Personal Information Protection Act, SA 2003, c P-6.5, as amended, but for some it in the public sector may be the Freedom of Information and Protection of Privacy Act, RSA 2000, c F-25, as amended, and for a few who deal with health information it may be the Health Information Act, RSA 2000, c H-5 as amended.

employer obligations and employee rights in Alberta than I saw cumulatively in the previous 30 years. It will come as no surprise that those changes arose after the demise of the longstanding conservative political dynasty and its replacement with Alberta's first NDP government.

A detailed review of all the statutory changes and their implications is far beyond the scope of this paper. Indeed, in the fall of 2017, LESA took a full day to present a "Labour and Employment Law Update" which did little more than cover the changes to the *Code* and the *LRC*. Instead, the intent of this paper is to make you aware of the changes, to highlight the key changes that are most likely to directly impact you and your clients, and to point you towards available resources that provide some greater depth. In addition, I will attempt to identify a few relatively simple practices that, while not directly impacted by the legislative changes, can be very helpful in reducing employment related claims, and minimizing their risk.

In respect to other available resources, while I will be referencing a number of those later in this paper, LESA has been kind enough to include, as part of the materials with respect to this program, those portions of the PowerPoint presentation at the LESA's 2017 Labour and Employment Update dealing with changes to the *Code*. Note though, that the PowerPoint presentation does not address details that are included in the *Regulation*. The amendments to the *Regulation* operationalizing a and supplementing the changes to the *Code* had not yet been released when the 2017 Labour and Employment Update was presented.

EMPLOYMENT STANDARDS CHANGES

General Comments

There have been a host of changes to the *Code* in a number of areas. This came with the enactment of the Bill 17 - *Fair and Family Friendly Workplaces Act*, which set out many changes to both the *Code* and to the *LRC*. The only provisions of Bill 17 which have not yet been enacted are those which amend the *Code* provisions for employment of persons under the age of 18. We anticipate those changes will be implemented soon.

Generally speaking, when considering the *Code*, it is important not to overlook the *Regulation*. The *Code* expressly permits a great deal to be done by regulation¹². The *Regulation* sets out a number of exemptions to the *Code* which are not apparent on the face of the *Code*. Chief among those

¹² *Code*, supra s 138

is categories of employees to whom provisions regarding hours of work and overtime do not apply¹³. Also important are the special provisions applicable to specific industries and occupations. Those specific industries and occupations include, but are not limited to, geophysical exploration, surveying, logging, road maintenance, highway construction, oilwell servicing, the trucking industry, caregivers, farming and ranching operations, and the construction industry¹⁴. The *Regulation* also contains detailed provisions addressing a number of other issues, often in ways that would not be readily apparent if only looking at the *Code*¹⁵.

One common set of amendments is that time limits that in the past were expressed as being 3 months are now all uniformly expressed as being 90 days instead.

Minimum Wage

Minimum wage rates are addressed in the *Regulation*. By way of a brief history the following reflects the history of increases in the general minimum wages in recent years:

| | |
|--------------|----------|
| October 2013 | \$9.95 |
| October 2014 | \$10.20 |
| October 2015 | \$11.20 |
| October 2016 | \$12.20 |
| October 2017 | \$13.60 |
| October 2018 | \$15.00* |

*at the point this paper was written that increase was pending.

¹³ Which categories include many professionals employed in their profession, such as lawyers, and students-at-law, and which includes persons employed in supervisory or managerial capacity or a capacity concerning matters of a confidential nature, whose duties do not other than in an incidental way consist of work similar to that of other employees.

¹⁴ See the *Regulation* for the full list of industries and occupations for who not all the provisions of the *Code* apply, or who have special provisions of their own.

¹⁵ The power to set regulations is very expansive. See the *Code*, supra at s. 138. The *Regulation*, as amended in late 2017 does such things as establishing not just one but two different kinds of hours of work averaging agreements, and changing the rules for maternity leave and parental leave to coordinate with federal changes to the EI program.