



April 11, 2014

Employment Standards Review
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The Alberta Construction Association (ACA) appreciates the opportunity to participate in the review of the Employment Standards Code. The ACA represents over 3000 general contractors, trade contractors, and manufacturers and suppliers belonging to one of nine local construction associations. Alberta's construction industry employs over 270,000 Albertans. The following response also benefited from input from several affiliated associations representing additional construction industry employers.

Our responses to the discussion guide and survey are as follows:

1A. Rules for 12-14 year olds

Currently, young people between the ages of 12 and 14 can work under special rules, seen in the [Employment Standards Fact Sheet](#). These rules involve hours of work, adult supervision, types of jobs which are allowed, and consent of a parent. These rules help to protect the young person's health, safety, and ability to receive an education. Young people may work in the following jobs:

- Delivering small retail items;
- Office clerk or messenger;
- Retail store clerk;
- Delivering newspapers or flyers;
- A job approved by the Director of Employment Standards.

New jobs for this age group have been suggested, such as:

- Limited retail sales;
- Limited restaurant and food services;
- Light cleaning or janitorial;
- Movie theatre ushers and cleaners.

We welcome your comments on the rules for 12-14 year olds.

ACA RESPONSE: Anyone under 15 is too young to be employed in construction field work. Part-time office work may be acceptable for construction.

2A. Rules for 15-17 year olds

There are also special rules for young workers between the ages of 15 and 17 years old:

- They must be supervised by an adult during the hours of 9:00pm to midnight if they work in any business selling food, beverages, other goods, fuel, or in any hotel or lodging business.
- They cannot work in any business selling food, beverages, other goods, fuel, or in any hotel or lodging business between the hours of midnight and 6:00am.
- Consent of the parent and adult supervision is required to work in any other business between the hours of midnight and 6:00am.

Please share your views on the rules for 15-17 year olds.

ACA RESPONSE: No changes necessary. ACA public policy encourages employers to limit student hours of employment during the school year, excepting RAP students and other work experience programs.

B. Minimum wage for persons with disabilities

Currently, an employer can apply for a permit to employ a person with a disability for less than the minimum wage. See [section 67 of the Code](#). In the past, this program was used to give a person with a disability the chance to work. This provision has not been used in several years.

Should the government remove this section from the Code?

ACA RESPONSE: No opinion

C. Internships

Internships offer the chance for people entering the workforce to gain experience. The Code does not provide a definition for interns, and any issues about the employment status of an intern will be reviewed on a case-by-case basis. Currently, employees who are students in an approved course of study are not guaranteed minimum wage, but all other standards apply. All employment standards, including minimum wage, apply if the employee is not in an approved course of study.

Please provide us with your thoughts on internships and internship pay.

ACA RESPONSE: No opinion

1D. Overtime hours and pay

Currently, an employee can receive overtime pay after 8 hours of work per day or 44 hours of work per week, whichever is greater. Some industries like trucking, taxi driving, and oilwell servicing have different daily, weekly, and monthly overtime thresholds. Changes to overtime would affect these industries. For more information about overtime rules, please see [section 21 of the Code](#) and the [Fact Sheet on Overtime](#).

What are your thoughts on overtime?

ACA RESPONSE: Eliminate daily overtime but keep the weekly limit of 44 hours. The circumstances in construction require greater flexibility as per the example in the attached letter from Concept Electric.

2D. Overtime agreements

Employers and employees can set up an overtime agreement which gives employees paid time off instead of overtime pay for overtime hours worked. The agreement allows the overtime hours to be banked and later taken at one hour of time off for every hour of overtime worked. The time must be used within 3 months. If the employee chooses to have the overtime paid out, it is paid at 1.5 times the regular rate of pay. [See Section 23 of the Code](#).

What are your thoughts on overtime agreements?

ACA RESPONSE: Extend the overtime agreement to provide time off in lieu for overtime hours worked within six months, rather than three months.

E. General Holidays and pay

Alberta has rules about general holiday pay. To receive general holiday pay, an employee must follow these rules:

- An employee must have worked 30 days for their employer in the 12 months before the general holiday.
- An employee must work on the last day they were scheduled to work before the general holiday and the first day they are scheduled to work after the general holiday, unless the employer agrees that the employee can be away.
- An employee must work on the general holiday if the employer asks.

To calculate how much general holiday pay an employee should receive, the employer must calculate the employee's average daily wage. This is done by averaging the employee's wage over the 9 weeks prior to the general holiday.

If an employee works on the general holiday, the employee will be paid general holiday pay. There are different rules when an employee does not work on a general holiday. When an employee does not work on a general holiday, the employee will receive general holiday pay if that day is a regular work day for the employee. If it is not a regular work day for the employee, the employee will not receive general holiday pay. For example, an employee who usually works from Monday to Friday will not receive general holiday pay for a general holiday that is on a Saturday. For more information on how general holiday pay is calculated, see [sections 25-33 of the Code](#) and the [Fact Sheet on General Holidays](#).

What are your thoughts on the general holiday rules?

ACA RESPONSE: General holiday pay provisions do not need change for the construction industry.

F. Vacations and vacation pay

After the first year of employment, an employee earns 2 weeks of vacation each year. After 5 years of employment, an employee earns 3 weeks of vacation each year. Employees also receive vacation pay paid by their employer. Employees who do not finish one year of service are still entitled to vacation pay of 4 per cent of their wages. An employer may also establish a common anniversary date for a group of employees to calculate vacation time. For more information on vacations, see [sections 34-44 of the Code](#) and the [Fact Sheet on Vacations](#).

Please share your views on Alberta's vacation rules.

ACA RESPONSE: Vacation and vacation pay provisions do not need to change.

1G. Work hours

Currently, an employee's work hours must be limited to 12 hours in a day. These hours can be extended if there has been an accident or an urgent or unexpected situation. Some employers may have a permit which allows longer hours of work subject to health and safety requirements. Some industries also have special rules in place to reflect industry needs. For more information, see the [Fact Sheet on Hours of Work](#).

Should the current standard (12 hour limit) still be maintained?

ACA RESPONSE: The current 12 hour per day limit should be maintained. Special rules should apply for concrete pouring which can extend beyond 12 hours.

2G. Daily Breaks

Each employer must allow employees to take a daily break. For every shift that is longer than 5 hours, an employee is entitled to one 30-minute paid or unpaid break. There are exceptions for urgent work, accidents, unforeseeable circumstances, and if it is not reasonable for an employee to take a break. Employees may also negotiate other rest periods in a collective agreement.

What are your thoughts on daily breaks?

ACA RESPONSE: The rest and break provisions do not need to change

3G. Compressed work weeks

Compressed work week rules provide flexibility for employers and employees. A compressed work week means that employees will work longer hours of work on each day for fewer days per week. All of the hours worked are paid at straight time. A compressed work week can also be scheduled as a cycle over a longer period of time. Compressed work weeks must be consistent and repetitive. For more information, see our [Fact Sheet on Compressed Work Weeks](#).

ACA RESPONSE: ACA supports increased flexibility for employers and employees to negotiate the structure of the work week. For example, blended rate work cycles tailored for remote work and for workers from afar can average 40 hours or less of straight time per week, but may have some weeks with more than 40 hours straight time. Such frameworks must be equally available to both unionized and non-union employers.

4G. Domestic employees

Currently, domestic employees such as nannies are not covered by the following standards: maximum hours of work, notice of work times, and overtime. These exemptions reflect the fact that domestic employees have unique work arrangements. For more information, see our [Fact Sheet on Domestic Employees](#).

Please share your views on the rules for domestic employees.

ACA RESPONSE: No opinion

H. Termination notice and pay

The Code provides rules when an employee or employer wants to end the employment relationship. An employee must provide notice before ending the relationship. An employer can provide either termination notice or pay. The amount of notice or pay required increases with the length of employment.

Currently, an employee must provide 1 week of written notice if the employee has been employed between 3 months and up to 2 years, or 2 weeks' written notice if the employee has been employed for 2 years or more.

An employer must provide pay or written notice as follows:

Years of Employment	Length of Notice/Amount of Pay
3 months to less than 2 years	1 week
2 years to less than 4 years	2 weeks
4 years to less than 6 years	4 weeks
6 years to less than 8 years	5 weeks
8 years to less than 10 years	6 weeks
10 years or more	8 weeks

For more information about termination notice, termination pay, and temporary layoffs, please see [sections 54-64 of the Code](#) and the [Fact Sheet on Termination](#).

Please provide your thoughts on termination notice and pay for employers and employees.

ACA RESPONSE: Notice of termination by employer requirements are appropriate.

Should remove the following exceptions to employee notice under 58(2) of the Code

- (d) the employee has been employed by the employer for 3 months or less,
- (e) the employee is temporarily laid off,
- (f) the employee is laid off after refusing an offer by the employer of reasonable alternative work,
- (g) the employee is not provided with work by the employer by reason of a strike or lockout occurring at the employee's place of employment,
- (i) an employee terminates the employment because of a reduction in wage rate, overtime rate, vacation pay, general holiday pay or termination pay.

Exceptions (a), (b), (c), and (h) under 58(2) should remain.

1I. Current leaves

Under the Code, eligible employees are entitled to maternity, parental, reservist, and compassionate care leave.

An employee's job is protected while on leave unless the business is suspended, and even then the employee retains some rights of reinstatement. For more information on leaves, see [sections 45-53.94 of the Code](#) and the [Fact Sheets on Maternity and Parental Leave](#), [Reservist Leave](#), and [Compassionate Care Leave](#).

Please share your thoughts on the current leaves.

ACA RESPONSE: Not satisfied with maternity and parental leave provisions. Termination under 52(2) should include an exemption to 52(1) if an employee is subject to termination with cause. Further, exemptions should be granted so that the employer not hold a position where the employer can demonstrate that the scope of the position has changed significantly after a period of 52 weeks.

2I. Other types of leaves

An employer can provide leave to employees for many different reasons including illness and a death in the family. Other provinces and territories have added other unpaid, job-protected leaves to their legislation. Some examples are:

- Personal emergency leave for family illness or other urgent matters;
- Bereavement leave when a close family member dies;
- Sick leave when the employee has to miss work due to a minor illness;
- Jury duty leave when the employee is on jury duty;
- Critically ill child leave when the employee's child is critically ill;
- Death or disappearance of a child as a result of crime leave;
- Citizenship leave to attend the employee's citizenship ceremony;
- Organ donor leave when the employee donates an organ.

Should the government look at adding some of these leaves to the Employment Standards Code?

ACA RESPONSE: There should not be additional unpaid leaves; mutually satisfactory arrangements on leaves should be negotiated by the employer and employee.

J. Permits

Currently, employers can apply to the Director of Employment Standards for a permit exempting them from certain standards. Permit requests are investigated and permits issued on a case-by-case basis. While permits provide flexibility for unique work situations, they also create an exemption from the minimum standards. Permits have been issued to extend the hours of work in a day, to extend the days worked before a rest day, to allow overtime to be banked for six months instead of three, and to allow youths to work.

Please provide us with your thoughts on permits.

ACA RESPONSE: The Director should have a broad permitting authority with no restrictions. Industry compliance with safety legislation is not compromised by providing this permitting authority to the Director.

K. Enforcement

Currently, the Code prescribes a maximum fine for individuals or corporations who are guilty of an offence under the Code. There have been suggestions that the penalties for Employment Standards violations should be progressive, meaning that second or subsequent convictions should result in more serious penalties.

Please provide your thoughts on progressive penalties.

ACA RESPONSE: Support a system of progressive fines, in the case of chronic repeat violations as determined by successful prosecutions. Current fines maximums are appropriate as they are substantial enough to act as a deterrent. Do not support the creation of minimum fines. Current discretionary approach is preferred. Do not support the creation of administrative penalties as employers may choose to pay an unwarranted penalty as the cost to defend outweighs the cost of the penalty, penalties may be used to "set examples" as industry is currently hearing about OHS administrative penalties.

Sincerely,

Ken Gibson
Executive Director

Attachment