

December 13, 2017

## More New Obligations for Alberta Employers Starting January 1, 2018

The [New Regulations](#) to the *Employment Standards Code* (the “Code”) were issued by the Government of Alberta on December 6, 2017. These Regulations put the “meat on the bones” of the changes that were made to the *Code* earlier this year, which will apply starting on January 1, 2018.

The Regulations represent further significant changes. They layer on further employer obligations to those made to the *Code* by the *Fair and Family-Friendly Workplaces Act*, which was passed on June 7, 2017. The Regulations introduce new employment standards (e.g. extending parental leave to 62 weeks, introducing critical illness leave for adult family members, and introducing Flexible Averaging Agreements) that will affect how employers organize their workforces to ensure they are employing enough workers to meet business needs.

Some of the key points of the new Regulations are:

### Job-protected leaves

- Parental leave has been increased to 62 consecutive weeks within the 78-week period after the child’s birth or, in the case of an adoptive parent, after the child is placed with the parent – to align with the extended federal parental Employment Insurance program (i.e. up to 18 months of leave for a birth mother)
- Maternity leave can now start at any time during the 13-week period before the estimated due date
- Broad definitions are provided for “family member” for the purpose of bereavement leave, personal and family responsibility leave, and critical illness leave
- The new critical illness of child leave has been further expanded (now called “critical illness leave”) giving employees unpaid job-protected leave to provide care or support to a critically ill family member:
  - Critically ill child – up to 36 weeks
  - Critically ill adult – up to 16 weeks

### Hours of Work Averaging Agreements (HWAA)

- How to calculate banked time and time off with pay instead of paying overtime
- How to manage changes to an employee’s work schedule or missed shifts
- How and when to provide every affected employee with a copy of the HWAA

- In addition to providing a copy to each employee, group averaging agreements must be posted on the employer's website and posted in a conspicuous place in the workplace
- When and how the HWAA can be cancelled

### **Flexible Averaging Agreements (FAA) Introduced**

- Under a FAA, an employee can earn "flexible time" when the employee works more than their scheduled hours in a day but not long enough to exceed the daily overtime threshold agreed on under the FAA
- The daily overtime threshold cannot be more than 10 hours and the averaging period can be 1 or 2 weeks
- Flexible time must be taken as time off with pay at the employee's wage rate before the end of the next averaging period – or paid out at the employee's wage rate (as 'straight time' whether paid or taken)
- Overtime must still be paid out, or taken as time off with pay (banked under an overtime agreement), at a rate of at least 1.5 times the employee's wage rate
- FAAs are only available at the request of an employee and where the employee works at least 35 hours per week

### **Variations and Exemptions**

- Director's variations and exemptions can be requested for the following:
  - Extending the maximum hours of work from 12 hours per day to up to 16 hours per day
  - Extending the maximum period of 24 consecutive work days
  - Extending the averaging period for a HWAA from 12 weeks to up to 26 weeks
  - Reducing the minimum hours of pay from 3 hours to anywhere between 30 minutes and 2.5 hours
- Criteria to be considered by the **Director** in deciding to grant the request or deny it include:
  - The employer's compliance history (both employment standards and occupational health and safety),
  - The reasons for it,
  - Support by the bargaining agent or the employees, and
  - The effect on safety, health or welfare of the public or the employees
- A Director's variance or exemption can only be granted to the extent necessary to avoid serious interference with the ordinary working of the employer's business
- The **Minister** may, by order, issue a variance or exemption to any section of the *Code* with consideration of the following criteria:
  - The employer's compliance history (both employment standards and occupational health and safety),
  - The reasons for it, and
  - Support by the bargaining agent or the employees

- In both instances, the request will be evaluated on a case by case basis

### **Administrative Penalties**

- Rules have been added for what needs to be in a notice of administrative penalty, the timing for payment of a penalty (21 days after being served with notice, unless otherwise specified), and fees for the appeal of an administrative penalty (10% of the penalty or \$100, whichever is greater – and this amount can be adjusted based on whether you win or lose)
- A Table has been provided setting out the minimum amounts for administrative penalties imposed for a contravention or failure to comply with the *Code* or its Regulations
  - The amount depends on the type of contravention or failure to comply and whether or not it is a repeat contravention or failure to comply – second, third (or more) contraventions or repeat failures to comply count if they happen within a 3-year period
  - The penalty can be increased by the Director, based on the circumstances (including the number of affected employees), but it cannot exceed the maximum set out in the *Code* (\$10,000 for each contravention or failure to comply or for each day or part of a day on which the contravention or failure to comply occurs or continues)
  - A one-time penalty amount issued to address economic benefit cannot be higher than the amount of the economic benefit itself as a result of the contravention or failure to comply

### **Farming and Ranching Operations**

- Industry-specific regulations introduced for minimum days of rest and general holiday pay (no other industry-specific regulations were introduced or changed)

### **Youth Employment**

- Minimum standards for the employment of people under 18
- These standards do not come into force on January 1, 2018 – they will apply with the coming into force of section 44 of the *Fair and Family-friendly Workplaces Act* (on a date to be determined by Government)

### **Service of Documents**

- Rules have been added about how to serve a notice or other document that is required to be served under the *Code* (including notices of termination)

### **Publication of Documents by Government**

- Details the requirement to post information related to permits, variances, exemptions, and orders issued under the *Code* (including the name of the employer or employer's association, the provision of the *Code* or Regulation varied or exempted, and the effective date and duration of the variance or exemption)
- Details the requirement to post information regarding enforcement actions filed as a judgment with the Court of Queen's Bench until the judgment is satisfied ("enforcement actions" include officer's and Director's orders, decisions of an appeal body or court, notices of administrative penalties, certificate of directors' liability for wages, and convictions)
  - The publication has to include the name of the employer, the provision that was contravened, the unpaid earnings, the amount of any fine or penalty imposed, and the date the order, decision notice or certificate was filed in the court

## Transitional Provisions – application of the new *Code*

- The new rules around job-protected leaves apply if the leave is requested **on or after** January 1, 2018
- Time off with pay **earned before** January 1, 2018 (banked under an overtime agreement) that has not been provided, taken or paid before January 1, 2018 can still be provided in accordance with the former *Code* (i.e. as 'straight time') unless the overtime agreement sets out a higher rate
- New officers' powers related to an inspection, investigation or inquiry apply even where the event happened **before** January 1, 2018
- New provisions dealing with complaints under the new *Code* apply on January 1, 2018, except:
  - If a complaint was **filed** or an investigation, inspection or inquiry **started before** January 1, 2018, the **former limitation periods** for orders apply (former section 90 of the *Code*)
  - If a complaint is **filed** or an investigation, inspection or inquiry **starts after** January 1, 2018 but it relates only to earnings or compensation **owing before** January 1, 2018, the **former limitation periods** for orders apply (former sections 90(4) and (5) of the *Code*)
- The new administrative penalty, offences and fine provisions of the *Code* apply to contraventions and failures to comply that occur **on or after** January 1, 2018
- Publication requirements apply only to permits, exemptions and variances issued, and enforcement actions taken, **on or after** January 1, 2018

Again, these are further significant changes for employers that can have negative business implications if not effectively prepared for and managed. As such, employers should consider how they will modify their existing policies and procedures to ensure they are in compliance with their new obligations under the *Code* and the updated Regulations as soon as possible.

*If you have questions regarding the impact of these changes, or steps you can take to reduce their impact, please do not hesitate to contact a Mathews Dinsdale lawyer in our [Alberta office](#).*

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