

Employment

This factsheet provides general information relevant to workers employed under the terms of the Alberta Employment Standards Code as of May 9, 2016. Rights and obligations may be altered by the terms of any relevant award, workplace agreement or policy.

The Employment Standards Code sets out the minimum standards that employers and employees must follow. Of course, an employer may offer, or an employee may have greater entitlements than provided for in the Code. Speak with your employer to see what options and benefits may be available to you. If you are a unionized worker, consult your collective agreement and contact your union.

This information is not necessarily relevant to contractors and their arrangements. Only specialist legal advice can provide information specific to your situation. This factsheet is to be used as information only and is not intended to substitute for or provide legal advice. Employees may have other rights and remedies at common law outside of what is provided for in the Employment Standards Code and should consult a lawyer. The information contained herein does not apply to unionized workers and can also be rendered inapplicable by the terms of any relevant workplace agreement or policy.

If business operations are badly affected and an employer has no work for some or all employees, does the employer have to pay them when they can't provide work for reasons beyond their control?

There is generally no requirement to pay an employee if no work is performed. If an employee is laid off or terminated the employer may not have to provide termination notice if the contract of employment is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes (i.e. natural disaster) beyond the control of the employer.

If there is a lot of cleaning up to do at a business premises before it can return to normal work, can an employer ask employees to help with that?

There is nothing in the *Employment Standards Code* that prevents an employer from asking an employee to help with the clean-up effort. However, there may be increased safety risks associated with clean-up after a natural disaster. All work must comply with the *Occupational Health and Safety Act*. A worker does not have to perform work if he/she reasonably believes there is an imminent danger to his/her health or safety that is not normal for his/her occupation.

Because of the fire, an employer can't provide an employee with their usual work, but they have other work the employee can do. Can the employer ask or direct the employee to do that work instead?

The employer can offer and an employee may accept new duties, but there should be a discussion between the employer and the employee about the nature and expected duration of the duties. These alternative duties should be acceptable to the employee and appropriate to the employee's capabilities, experience, training,

and qualification. In addition, there should be a discussion between the employer and employee about any additional safety risks. Some tasks may require specific safety requirements or training. Workplace health and safety obligations will continue to apply and breaches of health and safety laws can result in penalties. If an employee's duties are being changed without his/her agreement, the employee may wish to consult a lawyer.

Can an employer direct an employee to work at a location other than their normal place of work if, because of the fire, it can't be used?

Generally, yes, unless there is an existing agreement/ contract that says otherwise. If employees cannot access the new location easily or if they spend a significantly longer time reaching the location, an employee may refuse to work from the new location or an employer may but is not required to reimburse them for the additional costs incurred.

Can an employer allow or require an employee to work from their home while business premises are affected by fire?

Employers may allow employees to work from home. It is important that both the employer and the employee keep records of the hours that the employee works at home.

If an employee has concerns about their employer's request that they work from home, they should discuss these concerns with their employer. If the employee is handling confidential information, the employer and the employee should take steps to ensure that the work performed at home complies with privacy legislation. There may also be safety concerns and the occupational health and safety legislation may have some application.

Can an employer force an employee to take paid annual or personal leave/vacation if they can't usefully employ the employee for a period for reasons beyond their control?

Yes, an employer can force an employee to take vacation if they have vacation remaining for the year but they must provide 2 weeks' written notice.

While business operations are restored, an employer has nothing else for some or all of their employees to do. Can the employer 'suspend' their employment without pay while they are unable to provide work? If so, how would an employer go about that?

There is no right to "suspend" employment under the *Employment Standards Code*, however, if an employer wishes to maintain an employment relationship without terminating the employment of an employee, the employer may temporarily lay off the employee, under Section 62 of the *Alberta Employment Standards Code*.

However, on the 60th consecutive day of temporary layoff, an employee's employment terminates and the employer must pay the employee termination pay on that day, unless an agreement to the contrary has been signed or if Subsection 63(2) of the *Alberta Employment Standards Code* applies. The employee may apply for

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regular Employment Insurance benefits while they are laid off if they lost their job through no fault of their own.

**The exception to termination notice may also apply at this time. See Question 1.*

If a business has been so badly affected that it will not be reopening at all or won't be able to operate for some time, can an employer dismiss employees on the grounds that their services are not going to be required for the foreseeable future? What are the implications of that?

Yes, under the *Employment Standards Code*, an employee's employment may be terminated on these grounds. Termination notice and/or termination pay are not required if the contract of employment is or has become impossible for the employee to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer.

An employee's home was badly affected by the fire. Are they entitled to paid or unpaid leave to sort out the personal problems caused by the fire?

Employees are not entitled to paid or unpaid personal leave, but some employers do offer such leaves as part of their benefit plans or will offer them if asked. The decision to grant time off, with or without pay, is left to the employer's discretion. An employee may also apply for Employment Insurance Sickness benefits if they are ill or injured due to the fire.

**Employees may also have other benefits available to them through private insurance plans and should review with their insurance companies.*

An employee is not directly affected by the fire but has taken time off to assist family members who are directly affected. What is their entitlement to do that?

Employees are entitled under Section 53.9 of the *Alberta Employment Standards Code* to be granted unpaid compassionate care leave to support a seriously ill family member for whom they are the primary caregiver if they meet the criteria in the *Code*. While the Employer is not required to grant other types of leave to assist family members affected by the fire, some employers will if asked and may offer them as part of their benefit plans. An employee may also apply for Employment Insurance Compassionate Care benefits if they must be temporarily away from work to provide care to a family member who is gravely ill with a significant risk of death.

Employees are not entitled to compassionate leave that does not meet these criteria; in that case, the decision is up to the employer. However, some employers do offer such leaves as part of their benefit plans.

An employee was not directly affected by the fire but wants to take time off work to perform volunteer community work. Does an employer have to allow that?

Generally, no, but paid/unpaid volunteer leave is up to the employer's discretion to grant.

Resources

Lawyer Referral Service may be able to help you find a lawyer. Call the number below and describe your problem to the operator. The operator will give you the names and contact information for up to three lawyers that practice in the area of law that would best suit your needs. To reach an operator, call:

- In Calgary: 403-228-1722
- Toll free anywhere in Alberta, Saskatchewan, Lower Mainland British Columbia, Yukon, Northwest Territories and Nunavut: 1-800-661-1095

Dial-A-Law provides general information on a wide variety of legal issues in Alberta. To listen to a pre-recorded Dial-A-Law topic, call:

- In Calgary: 403-234-9022
- Toll free anywhere in Alberta: 1-800-332-1091

Employment Standards Frequently Asked Questions:

- <https://work.alberta.ca/employment-standards/13715.html>
- Phone: 1-877-427-3731

Worksafe Alberta

http://work.alberta.ca/documents/WHS-PUB_lio28.pdf

This information and other resources are available online at www.pbla.ca/gethelp/fortmcmurrayfire

Pro Bono Legal Clinics that may also be able to assist:

- Calgary Legal Guidance: 403-234-9266 (www.clg.ab.ca)
- Edmonton Community Legal Centre: 780-702-1725 (www.eclc.ca)
- Student Legal Assistance (University of Calgary): 403-220-6637 (www.slacalgary.ca)
- Student Legal Services of Edmonton: 780-492-2226 (www.slsedmonton.com)
- Central Alberta Community Legal Clinic - Red Deer & Area: 403-314-9129 (www.communitylegalclinic.net)
- Lethbridge Legal Guidance: 403-314-9129 (www.lethbridgelegalguidance.ca)
- Medicine Hat Legal Help Centre: 403-712-1021 (facebook.com/Medicine-Hat-Legal-Help-Centre-416282775178600)
- Grande Prairie Legal Guidance: 780-880-0036 (www.gplg.ca)

*Please note that pro bono clinics may not offer legal services in all areas of law.