

2009 Bill 1

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 1

EMPLOYMENT STANDARDS (RESERVIST LEAVE) AMENDMENT ACT, 2009

THE PREMIER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 1

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2009

EMPLOYMENT STANDARDS (RESERVIST LEAVE) AMENDMENT ACT, 2009

(Assented to , 2009)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cE-9

1 The *Employment Standards Code* is amended by this Act.

2 Section 1(1) is amended by adding the following after clause (t):

- (t.1) “reservist” means a member of the reserve force of the Canadian Forces referred to in subsection 15(3) of the *National Defence Act* (Canada);
- (t.2) “reservist leave” means the rights and obligations described in Part 2, Division 7.1;

3 Section 2(2) is amended by adding “or reservist leave” after “parental leave”.

Explanatory Notes

1 Amends chapter E-9 of the Revised Statutes of Alberta 2000.

2 Adds definition.

3 Section 2(2) presently reads:

(2) Except for provisions relating to maternity and parental leave and other provisions of this Act necessary to give effect to those provisions, this Act does not apply to

(a) employees who are members of a municipal police service appointed pursuant to the Police Act and their employers with respect to the employment of those employees, or

4 Section 3 is amended

- (a) in subsection (1)(b)(i) by adding “, reservist leave” after “parental leave”;**
- (b) in subsection (2) by striking out “or maternity and parental leave” and substituting “, maternity and parental leave or reservist leave”.**

5 Section 14(4) is amended by adding the following after clause (f):

- (f.1) copies of documentation relating to reservist leave;

(b) employees and employers to the extent that another Act states that this Act or a provision of it does not apply to them.

4 Section 3 presently reads:

3(1) Nothing in this Act affects

- (a) any civil remedy of an employee or an employer;*
- (b) an agreement, a right at common law or a custom that
 - (i) provides to an employee earnings, maternity and parental leave or other benefits that are at least equal to those under this Act, or*
 - (ii) imposes on an employer an obligation or duty greater than that under this Act.**

(2) If under an agreement an employee is to receive greater earnings or maternity and parental leave than those for which this Act provides, the employer must give those greater benefits.

5 Section 14(4) presently reads:

(4) An employer must keep an up-to-date record of the following additional information for each employee:

- (a) name, address and date of birth;*
- (b) the date that the present period of employment started;*
- (c) the date on which a general holiday is taken;*
- (d) each annual vacation, showing the date it started and finished and the period of employment in which the annual vacation was earned;*
- (e) the wage rate and overtime rate when employment starts, the date of any change to wage rates or overtime rates, and particulars of every change to them;*
- (f) copies of documentation relating to maternity and parental leave;*

6 The following is added after section 53.1:

**Division 7.1
Reservist Leave**

Reservist leave

53.2(1) Subject to the regulations, an employee who has completed at least 26 consecutive weeks of employment with an employer and is a reservist is entitled to reservist leave without pay to take part in the following operations or activities:

- (a) deployment to a Canadian Forces operation outside Canada;
- (b) deployment to a Canadian Forces operation inside Canada that is or will be providing assistance in dealing with an emergency or with its aftermath;
- (c) subject to the regulations, annual training, including related travel time, for an amount of up to 20 days in a calendar year;
- (d) an operation or activity set out in the regulations made under subsection (7).

(2) Participation, whether inside or outside Canada, in pre-deployment or post-deployment operations or activities that are required by the Canadian Forces in connection with an operation described in subsection (1)(a) or (b) is considered deployment to the operation for the purposes of that subsection.

(3) An employee is entitled to reservist leave for the period of time prescribed by the regulations or, if no period is prescribed, for as long as subsection (1)(a), (b), (c) or (d) applies to the employee.

(4) An employee who intends to take reservist leave must give the employer at least 4 weeks' written notice of the date the reservist leave is to start and the notice must also include

(g) copies of any termination notice and of written requests to employees to return to work after a temporary layoff.

6 Adds Division 7.1 Reservist Leave.

- (a) in the case of leave in respect of an operation or activity referred to in subsection (1)(a), (b) or (d), the estimated date on which the employee intends to resume work, or
- (b) in the case of leave for annual training referred to in subsection (1)(c), the actual date on which the employee intends to resume work.

(5) If an employee cannot comply with the notice requirement under subsection (4)(a) because of deployment in urgent circumstances, the employee must advise the employer in writing of the reservist leave as soon as is reasonable and practicable in the circumstances.

(6) Unless there is a valid reason for not doing so, an employee who takes reservist leave must advise the employer in writing of any change in the length of the leave as soon as is reasonable and practicable in the circumstances.

(7) The Minister may make regulations

- (a) setting out operations or activities for the purpose of subsection (1)(d);
- (b) respecting the circumstances in which annual training may be taken and the maximum amount of time that may be taken for training;
- (c) respecting conditions that must be met before a 2nd or subsequent reservist leave may be taken;
- (d) prescribing the period of time for the purposes of subsection (3).

Request for proof

53.3 If an employer requests proof that an employee is entitled to reservist leave, the employee must provide the employer with a document from the employee's commanding officer specifying

- (a) that the employee is taking or has taken part in an operation or activity referred to in section 53.2(1),
- (b) the day on which the leave is to start or started, and

- (c) the estimated or actual length of the leave.

Termination of employment

53.4(1) No employer may terminate the employment of, or lay off, an employee who has started reservist leave.

(2) Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53.6 continues to apply.

Resumption of employment

53.5(1) If an employee has been on reservist leave for more than 4 weeks, the employee must give at least 4 weeks' written notice of the day on which the employee intends to resume work.

(2) If an employee has been on reservist leave for 4 weeks or less, the employee must, as soon as possible before resuming work, give the employer written notice of the date on which the employee intends to resume work.

(3) If an employee who has been on reservist leave in respect of annual training referred to in section 53.2(1)(c) intends to resume work on the date set out in the notice referred to in section 53.2(4)(b), the employee is not required to give written notice under subsection (1) or (2).

(4) If an employee fails to comply with subsection (1), the employer may postpone the employee's return to work for a period of up to 4 weeks after the day on which the employee notifies the employer of the employee's intention to resume work.

(5) If the employer informs the employee in writing that the employee's return to work is postponed, the employee is not entitled to return to work until the day that is indicated by the employer.

(6) During the period of postponement, the employee is deemed to continue to be on reservist leave.

(7) Where an employee is entitled to resume work under this section, the employer must

- (a) reinstate the employee in the position occupied when the reservist leave started, or
- (b) provide the employee with alternative work of a comparable nature

at not less than the earnings and other benefits that had accrued to the employee when the reservist leave started.

(8) An employee who does not wish to resume employment after reservist leave must give the employer at least 4 weeks' written notice of intention to terminate employment.

Suspension of operations

53.6 If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's reservist leave and the employer has not resumed operations when the leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the leave started, at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's leave started, with no loss of seniority or other benefits accrued to the employee.

Leave and vacation conflict

53.7 Notwithstanding section 37(1), if an employee is on reservist leave on the day by which his or her vacation must be used, any unused part of the vacation must be used immediately after the leave expires or, if the employer and employee agree to a later date, by that later date.

Application

53.8 This Division applies only if

- (a) the employee's participation in an operation or activity referred to in section 53.2(1) begins on or after the day that subsection comes into force, and
- (b) notice under section 53.2(4) or (5) is given on or after the day described in clause (a).

7 Section 82(1)(b) is amended by adding the following after subclause (i.1):

- (i.2) contrary to section 53.4 after the employee started reservist leave;

8 Section 90(5) is amended by adding "or Part 2, Division 7.1, Reservist Leave" after "Parental Leave".

7 Section 82(1) presently reads:

82(1) An employee may make a written complaint to an officer that

- (a) the employee is entitled to earnings;*
- (b) the employment of the employee was suspended or terminated or the employee was laid off*
 - (i) contrary to section 52(1) after the employee started maternity leave or because the employee was entitled to or had started parental leave,*
 - (i.1) contrary to section 52.91 of the Public Health Act,*
 - (ii) for the sole reason that garnishment proceedings are being or might be taken against the employee,*
 - (iii) because the employee gave evidence or may give evidence at any inquiry or in any proceeding or prosecution under this Act,*
 - (iv) because the employee requested or demanded anything to which the employee is entitled under this Act, or*
 - (v) because the employee made or is about to make any statement or disclosure that may be required of the employee under this Act.*

8 Section 90(5) presently reads:

(5) An order of the Director for compensation under section 89(3)(b) may direct payment for a period not exceeding 6 months from the date that the employment of the employee was suspended or terminated, that the employee was laid off or that the employer failed to reinstate the employee or to provide the employee with

9 Section 128(c) is amended by striking out “or 53.1” and substituting “, 53.1, 53.5 or 53.6”.

10 Section 129 is amended by adding “53.4,” after “52,”.

11 This Act comes into force on Proclamation.

alternative work, in accordance with Part 2, Division 7, Maternity Leave and Parental Leave.

9 Section 128 presently reads:

128 No employer may

- (a) fail to pay earnings to an employee or to provide anything to which an employee is entitled under this Act;*
- (b) require an employee to work hours in excess of the hours of work permitted under this Act;*
- (c) fail to reinstate an employee or provide an employee with alternative work in accordance with section 53 or 53.1;*
- (d) fail to keep employment records as required by this Act.*

10 Section 129 presently reads:

129 A person who contravenes section 52, 65, 124, 125, 126, 127 or 128 or a regulation made under section 138(1)(e) is guilty of an offence.

11 Coming into force.

