

Important proposed changes to Alberta's Employment and Labour Legislation

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Alberta's government recently announced Bill 32, the *Restoring Balance in Alberta's Workplaces Act*, which, if passed, will result in a number of amendments to Alberta's *Employment Standards Code* (the ESC) and *Labour Relations Code* (the LRC). Many of these amendments will assist employers to better manage their workforces and address many of the issues that have arisen over the past few years due to prior amendments to the ESC and the LRC.

Amendments to the ESC

If Bill 32 is passed, three key changes to the ESC will take effect on August 15, 2020, with others to take effect on November 1, 2020.^[1]

Effective August 15, 2020

Group termination notice requirements

- When employers terminate 50 or more employees at a single location within a four-week period, they would need to give the Minister of Labour (the Minister) a written group termination notice.
 - This notice must be provided at least four weeks before the date on which the first termination is to take effect (or as soon as reasonable in the circumstances).
 - Employers are not required to give such notice in respect of employees who are employed on a seasonal basis or for a definite term or task.
 - The notice is to provide the Minister time to organize support for affected employees.

Temporary layoffs

- For non-COVID-19-related temporary layoffs, employees can be laid off for a longer period: extended from 60 days to 90 days in total within a 120-day period.
- For COVID-19-related layoffs, layoffs can still be up to 180 consecutive days.^[2]

Variances and exemptions

- More flexible rules for employers to get approval for and renew a variance or exemption to

the ESC's requirements. The new flexibility includes providing for applications to the Director by employer associations or groups of employers.

Effective November 1, 2020

Holiday pay

- The rules for calculating general holiday pay are simplified to better align with pay cycles.
 - "Average daily wage" will not include vacation pay and general holiday pay. Instead, it will be the employees' total wages averaged over the number of days they worked in the:
 - (a) four weeks immediately before the general holiday; or
 - (b) four weeks ending on the last day of the pay period immediately before the general holiday.

An employer may elect to use either (a) or (b) above, whichever aligns best with pay cycles.

Payroll rules

- If an employee is overpaid wages, employers are not required to have an employee's written authorization to deduct an amount equal to the overpayment. This includes recovery of overpayments due to a payroll error and recovery of vacation pay to an employee who took vacation prior to earning it.

Payment of earnings upon termination

- Employers will be required to pay an employee their final wages within one of the following periods:
 - (a) 10 consecutive days after the end of the pay period in which termination of employment occurs; or
 - (b) 31 consecutive days after the last day of employment.

An employer may elect (a) or (b), whichever allows termination payments to align better with pay cycles.

Hours of work averaging arrangements

- More flexible rules for employers to establish hours of work averaging arrangements.
- Employers are not required to obtain employee consent and can start or change an hours of working averaging arrangement on provision of two weeks' notice.
- Averaging arrangements:
 - must still be in writing
 - need to specify the work schedule with daily and weekly hours

- can have an averaging period of up to 52 weeks;^[3] and
- do not need to have an end date.
- Employers can negotiate with employees on how to handle schedule changes or missed shifts. However, employees must receive eight hours of rest between shifts.
- Overtime pay for employees who work an hours of work averaging arrangement is calculated on the greater of weekly or daily overtime hours when daily overtime is included.
 - Unless daily overtime is included as part of the arrangement, employers do not need to provide daily overtime.
 - Weekly overtime threshold applies, regardless of whether daily overtime is included in the arrangement or not.
 - Employers must pay averaging period overtime to an employee no later than 10 days after the pay period that the averaging period ends.

Rest periods

- Rest periods are restructured such that employers are required to provide, whether paid or unpaid:
 - (a) at least one 30-minute rest period for shifts between five and 10 hours; and
 - (b) two rest periods of at least 30 minutes for shifts more than 10 hours.
- The rest period can be within or immediately after the five hours of work, or at any time mutually agreed upon by the employer and employee.
- If an employer and an employee agree, then a rest period of 30 minutes may be taken in two periods of 15 minutes each.

Amendments to the LRC

If Bill 32 is passed, several key changes to the LRC will take effect.

Preamble

- Expedient resolution of matters relating to labour employment is now a specific goal of the *Code*.

Labour Relations Board hearings

- A single Chair or Vice-Chair of the Labour Relations Board (the Board) may sit alone, instead of a three-person panel, to decide any issue in an emergency situation.
- A single Chair or Vice-Chair can also sit alone to decide:
 - a review of a grievance arbitration award;
 - specific determinations under the LRC, including whether a person is an employee, whether a specific organization of employees is a trade union, whether an organization is appropriate for collective bargaining, whether a person is a member of a trade union

- or a person's standing within a trade union; and
- to compel production of documents, or to compel a witness to give oral or written evidence

Expansion of summary dismissal grounds

- The Board may grant summary dismissal if the matter was brought under improper motives or is generally an abuse of process. These considerations are in addition to the existing summary dismissal grounds: lack of merit, frivolous, trivial, or vexatious matters.

Changes to certification

- Where the Board finds that a representation vote was affected by a prohibited practice, giving rise to a result which fails to reflect the true wishes of the employees, the Board may:
 - order another vote and take any action to ensure that the vote reflects the employees' true wishes;
 - certify the trade union as the bargaining agent if the Board considers it appropriate, where no other remedy or remedies would be sufficient to address the effects of the prohibited practice; and/or
 - refuse to certify the trade union where no other remedy or remedies would be sufficient to address the prohibited practice.

Changes to certification application inquiry

- After an application, the Board must complete its inquiries and decide whether to grant the application for certification within six months. The Chair retains the discretion to extend the Board's consideration past six months in exceptional circumstances.

Raid of bargaining rights

- Where a construction trade union takes over another union's rights, the collective agreement cannot be terminated early in favour of a new agreement.

Limitation of repeat certification applications

- Where an application for certification is rejected, the applicant cannot re-submit the same or a substantially similar application for six months.

First contact arbitration

- Access to first contact arbitration is restricted. The Board must be satisfied that arbitration is necessary, one of the parties must have committed an unfair labour practice, and no other remedy would be sufficient to counteract the unfair labour practice.

Changes to enhanced mediation

- The enhanced mediation process is now specifically established as an alternative to

mediation. The enhanced mediation process is sufficient to establish the mediation requirement prior to holding a lockout or strike vote.

Changes to illegal strike or lockout

- The Board may interrupt deduction and payment of union dues in the case of an illegal strike. The Board may interrupt union dues for up to six months. In the case of an illegal lockout, the Board may order an employer to pay the employees' dues to the union.

Changes to reverse onus

- Employers will now only have a reverse onus in unfair labour practices in cases involving employee terminations. Unions will now bear a reverse onus in response to applications alleging coercion, intimidation, threats, promises or undue influence regarding encouraging or discouraging membership or activity in or for a trade union.

Union discipline for members working “non-union” jobs

- An employee cannot be punished by a trade union for working a significantly different non-union job unless the employment threatens the legitimate interests of the union. A union must provide reasonable alternate employment for employees prior to punishing them for working non-union employment. The Board will consider new factors in determining whether the alternative employment is reasonable:
 - whether the alternative employment is substantially similar to the original employment, using the surrounding characteristics of each;
 - whether the alternative employment is a management position within the bargaining unit, which is unreasonable on its face;
 - whether the alternative employment is in the same industry as the original employment; and
 - any other factors that the Board considers relevant.

Powers of an arbitrator

- A labour arbitrator cannot extend grievance time limits. As well, the explicit requirement for arbitrators to make decisions in accordance with Canadian labour arbitration principles is removed.

Duty of fair representation – settlement of complaints

- The Board is empowered to order summary dismissal where an employee has rejected a reasonable and fair settlement regarding a duty of fair representation complaint.

Changes due to COVID-19

- A regulatory authority will be instituted to address COVID-19 issues.

The following key changes only take effect upon proclamation

Financial statements of trade unions

- At the end of each trade union's fiscal year, every union must provide each member with a financial statement of the union's affairs for the preceding fiscal year. The statement must accurately disclose the financial standing and operation of the union. Where a union fails to provide a statement or provides an insufficient statement, the Board may order the production of a sufficient statement. The regulations are to further clarify what these statements are required to contain, and different requirements for various classes of trade unions.

Deduction of union dues

- Deduction or payment of union dues unrelated to central union activities requires opt-in by an employee. Employees are not required to pay dues for political or charitable causes without choosing to opt in. Where the reason behind a specific union due is in question, a party may apply to the Board for a determination of the due's character.

Early renewal of a collective agreement

- Parties to a collective agreement may enter into a new agreement prior to the expiry date of the original agreement. The employees must be informed by their trade union that no new applications for certification or revocation are allowed if the employees vote to enter the new collective agreement.

Secondary picketing

- Secondary picketing is prohibited unless the Board has allowed an application for picketing at a specific secondary location.

Review of arbitration award

- The standard for an unreasonable arbitration decision has been removed, allowing the Board to determine for themselves what the standard for an unreasonable decision is. The Board can also award costs in reviewing an arbitration decision.

Construction and building

- Several of the new amendments only impact the construction industry:
 - non-registration trade unions can now organize all-employee bargaining units in construction and maintenance;
 - labour disputes are now limited relating to maintenance work on a major project;
 - more than one collective agreement can apply to a major project, and trade unions can only be bound by a collective agreement they have entered into;
 - disputes arising from major projects are now arbitrable; and

- the Building Trades of Alberta now can negotiate project agreements on a multi-trade basis outside of construction registration agreements.

Conclusion

These amendments proposed to the ESC and the LRC will help provide Alberta employers with helpful tools to more effectively and responsively manage their workforces. If you have any questions about these amendments or any other employment or labour law matters, Osler's Employment & Labour Group is available to assist.

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[1] Government of Alberta, *Restoring balance in Alberta's workplaces* (July 2020), online: <<https://www.alberta.ca/restoring-balance-in-albertas-workplaces.aspx>>.

[2] Separate set of rules from *Bill 24, COVID-19 Pandemic Response Statutes Amendment Act, 2020*

[3] The Director of Employment Standards will be able to approve extensions past 52 weeks. This differs from the current rules, where averaging periods can be up to 12 weeks.