

Bill 32 – Restoring Balance in Alberta’s Workplaces Act, 2020

July 17, 2020

On July 7, 2020, the Alberta Government introduced Bill 32, *Restoring Balance in Alberta’s Workplaces Act, 2020* (Bill 32) which, when passed, will introduce some significant changes to Alberta’s *Employment Standards Code* (ESC) and Alberta’s *Labour Relations Code* (LRC).

Amendments to *Employment Standards Code*

Payment of earnings and deductions

- Simplifies when an employee’s earnings must be paid following the termination of the employees employment: either within 10 consecutive days after the end of the pay period that the termination of employment occurred, or within 31 consecutive days after the last day of employment, whichever the employer chooses.
- Employers may, upon providing notice to the employee, deduct overpayment of earnings paid from payroll calculation errors (for up to 6 months following the error) and vacation pay paid in advance of an employee being entitled to it.

Rest periods

- Removes the requirement for 30-minute rest periods after every 5 consecutive hours and instead requires one 30-minute rest period for a shift between 5 hours and 10 hours in length and a second 30-minute rest period where the shift exceeds 10 hours.
- Allows employers and employees to agree to divide breaks into two 15-minute periods.

Collective agreements

- Allows for collective agreements to take priority over requirements established in the ESC pertaining to hours of work, notice of work times, rest periods, number of days of rest required per consecutive weeks worked, and temporary layoffs.
- Allows averaging arrangements to be agreed upon as part of a collective agreement between an employer and a bargaining agent, subject to regulations.

Averaging arrangements

- Significantly amends the concept of “averaging agreements,” which will now be referred to as “averaging arrangements.”

- Removes the requirement for employee agreement and allows an employer to require or permit employees or groups of employees to work an averaging arrangement, unless bound by a collective agreement.
- Increases the number of weeks an employer can average employees' hours in an averaging arrangement, to determine overtime pay or time off with pay, from 1-12 weeks to 1-52 weeks.
- Removes the provision limiting the term of the averaging arrangement to 2 years.

Average daily wage

- Changes the formula to calculate an employee's average daily wage for the purposes of calculating general holiday pay. The employer can choose to calculate the average daily wage rate based on the 4-week period immediately preceding the general holiday; or the 4-week period ending on the last day of the pay period immediately preceding the general holiday.

Basic vacation entitlement

- Clarifies that employees continue to accumulate vacation time while on a job-protected leave.

Temporary layoff

- Increases the period of time before employees are deemed to have been terminated when on a layoff to 90 days within a 120-day period, and maintains the exception for COVID-19 related layoffs, which may last for up to 180 consecutive days.
- Clarifies the amount of termination pay payable when an employee is deemed terminated.

Group terminations

- Standardizes the requirement around when written notice of group terminations is to be provided to the Minister to 4 weeks when 50 or more employees, at a single location, are terminated, or if this is not possible, then as soon as is reasonable.
- Written notice of a termination provided to the Minister must include the number of employees being terminated and the effective dates of the termination.
- The group termination provision does not apply to seasonal employees or employees employed for a definite term or task.
- Eliminates requirement to give notice to affected employees and/or the affected employees' bargaining agent.

Coming into force

- The proposed changes to the ESC are to take effect on November 1, 2020, with the exception of changes to the requirements around the maximum length of temporary layoffs and group termination notice, which will come into effect on August 15, 2020.

Amendments to *Labour Relations Code*

Bill 32 will also make various amendments to the LRC. These changes include but are not limited to:

Hearings by the Labour Board

- The Chair and a Vice-Chair of the Labour Relations Board (Board) will have the authority to sit alone to hear and decide issues in relation to the following matters:
 - Reviews of grievance arbitration awards;
 - Compelling witness attendance and production of documents;
 - Issues relating to strike or lock out votes;
 - Determination applications dealing with the following issues:
 - whether someone is an employee;
 - whether an organization of employees is a trade union;
 - whether a group of employees is a unit appropriate for collective bargaining;
 - whether a person has applied for membership or has terminated the person's membership in a trade union;
 - whether a person is a member in good standing of a trade union; and
 - whether a person is included in or excluded from a unit.

The Chair and Vice-Chair of the Board will also have the authority to sit alone to hear and decide issues where the Chair of the Board is of the opinion that it is necessary due to an emergency.

Expands power to summarily dismiss complaints

- Expands the Board's power to reject a matter summarily where the Board is of the opinion that the matter is without merit, frivolous, trivial, vexatious, filed with improper motives, or an abuse of process.

Remedial certification altered

- Restricts the instances where remedial certification may be awarded by the Board. To circumstances where: 1) the Board determines that a representation vote does not reflect the true wishes of the employees in the unit because of an unfair labour practice, and 2) there is no other remedy that would be sufficient to counteract the effects of the prohibited practice. The new amendments will also allow the Board to refuse to certify a union on the same conditions in cases of prohibited practices by a union.
- Further, where the Board finds that a prohibited practice results in a representation vote that does not reflect the true wishes of the employees in a unit, the Board will have the power, under the new amendments, to order another representation vote be conducted and to do anything to ensure that the representation vote reflects the true wishes of the employees in the unit.

Financial transparency

- Introduces new requirements on unions to provide members with an annual financial statement, free of charge, within a reasonable time following the fiscal year end. The financial statements must contain information in sufficient detail to accurately disclose the financial condition and operation of the union for its preceding fiscal year, and must meet any requirements outlined in the regulations.

- Union members will also have the right to file a complaint with the Board where a union has failed to comply with the requirements relating to financial disclosure.
- If a union member makes a complaint to the Board, the Board may order the union to provide to the member a financial statement or information prescribed in the regulations, or make the union prepare another financial statement or to provide the prescribed information in a form and containing particulars that the Board considers appropriate, depending on the nature of the complaint.

Union dues

- Introduces new requirements relating to union dues that requires unions to provide information relating to the amount or percentage of union dues, assessments or initiation fees that relate to political activities, activities under the LRC, and other social causes such as charities or non-government organizations, organizations or groups affiliated with or supportive of a political party to each person required to pay the union dues, assessments or initiation fees.
- Unions will be required to obtain consent before they are able to collect the portion of the union dues, assessments, or initiation fees that are allocated to political activities and other causes such as general social causes or issues, charities, or non-government organizations.

Certification and revocations

- Removes mandatory timelines for certification applications and extends the timeline for the Board making its final decision in certification and revocation application to “as soon as possible,” and no later than 6 months after the date of application.

Early renewal as a bar to certification

- Allows for the early renewal of collective agreements of 2 years or less duration, subject to bargaining unit employees being informed of the consequences of early renewal and a vote by such employees in favour of such early renewal.

Strikes and lockouts – Mediation

- Clarifies that no strikes or lockout votes shall be conducted under supervision until a mediator is appointed and the cooling-off period has expired.

Picketing and secondary picketing

- Introduces new restrictions on picketing that prohibit obstructing or impeding a person who wishes to cross a picket line from crossing a picket line.
- Prohibits secondary picketing, unless permitted by Board order.

First contract arbitration

- Limits circumstances where the Board may order first contract arbitrations. The Board will may only order first contract arbitration where the Board is satisfied that: 1) arbitration is necessary; 2) the employer or union has failed to comply with the LRC by refusing to meet to bargain, refusing to recognize the authority of the other party to bargain collectively, or failing to make reasonable effort to conclude bargaining; and 3) there are no other remedies

that would be sufficient to counteract the effects of the employer or union's conduct.

Measures during illegal strike or lockout

- Expands the Board's powers to suspend the deduction and remittance of union dues for up to 6 months in the event of an illegal strike and allows the Board to order an employer to pay the union dues, assessments, and other fees payable by employees to the union in the event of an illegal lockout.

Changes to power of arbitrators

- Removes the power for an arbitrator, arbitration board, or other body to extend grievance time limits.
- Removes the requirements for arbitrators to make decisions in accordance with the principles of Canadian labour arbitration.

Review of arbitration awards

- Simplifies how the Board may respond to an application to review or question a decision, order, directive, declaration, ruling or proceeding of an arbitrator, arbitration board or other body.
- Empowers the Board to award any costs it deems appropriate in response to an application to review or question a decision, order, directive, declaration, ruling or proceeding of an arbitrator, arbitration board or other body.

Reverse onus

- Restricts the reverse onus rules, which places the onus of disproving certain unfair labour practice complaints on the employer to cases where the employee was discharged or disciplined.

Fair representation

- Expands the Board's powers to summarily dismiss a duty of fair representation application where the complainant has refused to accept a settlement that is fair and reasonable.

Construction industry

- Allows non-registration trade unions to organize all-employee bargaining units in construction and maintenance industries.
- Allows the Building Trades of Alberta the ability to negotiate project agreements (separate from Division 8 major project agreements) on a multi-trade basis outside of construction registration agreements.
- Permits existing collective agreements to remain in force after a successful union raid.
- Allows the Minister of Labour, instead of the Provincial Cabinet, to have the power to approve major project agreements. These amendments to the major project rules will also allow: a) project owners to serve as principal contractors for negotiating major project agreements; b) more than one project agreement per project; c) project owners to delegate authority for bargaining; c) inclusion of maintenance workers in major project designations, without the ability to strike or lockout; d) replacement of voluntary collective bargaining with arbitration to resolve disputes; and e) renegotiation of major project agreements, with disputes to be settled by arbitration.

Please note that this article only highlights some selection of the many changes proposed under *Bill 32*. A full list of

the proposed changes can be reviewed here.

Your Key Contacts



Adrian C. Elmslie
Partner, Edmonton
D +1 780 423 7364
adrian.elmslie@dentons.com



Roxana Jangi
Senior Associate, Calgary
D +1 403 263 3098
roxana.jangi@dentons.com