

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

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# Meet our presenters



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# Amendments to Employment Standards Code

- Sarah Sobieraj, Associate, Calgary

# Payment of earnings upon termination

## Current Code:

- Earnings must be paid within 3, 10, 17 or 24 days depending on the situation.

## Proposed Amendment:

- Employers can choose whether employee's earnings paid following the termination of the employee's employment either within 10 consecutive days after the end of the pay period that the termination of employment occurred, or within 31 consecutive days.

# Deductions

## Current Code:

- Employer may deduct from an employee's earnings where:
  - required by law, such as federal and provincial tax, contributions to the Canada Pension Plan, EI premiums or a garnishee of the court,
  - authorized to be deducted by collective agreement, or
  - personally authorized by the employee in writing to be deducted.

## Proposed Amendment:

- Employers may now also, 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

## Current Code:

- Employees are entitled to at least 30 minutes of rest (break) during every 5-hour work period. If an employer and an employee agree, the break may be taken in 2 periods of at least 15 minutes.

## Proposed Amendment:

- 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.

# Collective agreements

## Proposed Amendments:

- Collective agreements 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.
- Averaging arrangements can be agreed upon as part of a collective agreement between an employer and a bargaining agent, subject to regulations.

# Averaging arrangements

## Current Code:

- Averaging agreements require employee consent.
- Number of weeks an employer can average employees' hours to determine overtime pay or time off with pay is 1-12 weeks.
- Term of averaging arrangement limited to 2 years.

## Proposed Amendment

- Referred to as “averaging arrangements.”
- Employer can require or permit employees or groups of employees to work an averaging arrangement, unless bound by a collective agreement.
- Employer can average employees' hours in an averaging arrangement, to determine overtime pay or time off with pay, over a period of between 1-52 weeks.
- Removes the provision limiting the term of the averaging arrangement to 2 years.

# Transitional provisions – Averaging agreements

- Existing averaging agreements remain valid until the earliest of the following (where not part of a collective agreement):
  - The day the averaging agreement terminates, as prescribed in the Code prior to the coming into force of Bill 32;
  - By a party to the averaging agreement by giving 30 days notice (as contemplated by Bill 32); or
  - Where it is cancelled by the Director.

# Amendments to Employment Standards Code continued

- Cristina Wendel, Partner, Edmonton

# Average daily wage

## Current Code:

- The average daily wage means 5% of an employee's wages, vacation pay and general holiday pay earned in the 4 weeks immediately preceding a general holiday.

## Proposed Amendment:

- The average daily wage is calculated by averaging the employee's total wages over one of the following periods, as chosen by the employer:
  - 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.

# Vacation entitlement during job protected leave

## Proposed Amendment:

- Clarifies that where an employee is on a job protected leave under the Code, the period of time they are on the leave is included when calculating the employee's years of employment for determining the employee's vacation entitlement.

# Temporary layoffs – Notice of layoff

## Current Code:

- Unless a collective agreement provides otherwise, employers must give employees notice of a temporary layoff as follows:
  - For employees with less than 2 years of service, at least 1 week's notice;
  - For employees with 2 years or more of service, at least 2 weeks' notice;
  - Where there are unforeseeable circumstances that prevent the employer from providing that notice, the employer must give notice as soon as is practicable in the circumstances.

## Proposed Amendment:

- No notice requirement.

# Temporary layoffs – Length of layoff

## Current Code:

- Employees who are laid off for a period exceeding 60 days within a 120 day period are deemed to be terminated.
- Subject to exceptions such as where benefits are continued by agreement.

## Proposed Amendment:

- Employees who are laid off for a period exceeding 90 days within a 120 day period are deemed to be terminated.
- Maintains the same exceptions.

# Temporary layoffs – Termination pay

## Proposed Amendment:

- Clarifies that where an employee who is laid off is deemed to be terminated, termination pay is payable in accordance with section 57(1) of the Code (termination pay equal to the wages the employee would have earned if the employee had worked regular hours for the applicable termination notice period).

# Temporary layoffs – COVID-19

## Current Code:

- Where a layoff is for reasons related to COVID-19, the layoff period can be up to 180 consecutive days.

## Proposed Amendment:

- Maintains the extended layoff period.

# Variances/exemptions (Director)

## Current Code:

- Employers can apply to the Director for a variance or exemption.
- Employer associations or a group of employers cannot apply.
- Director has to be satisfied that the criteria under the Regulations is met.
- The employer must notify employees affected of the variance or exemption (and of an amendment or revocation) by personally giving a copy to the employees, posting a copy in the workplace and online, and in any other manner than informs the employees.

## Proposed Amendment:

- Allows employer associations or a group of employers to apply to the Director for a variance or exemption.
- Repeals the requirement for the Director to be satisfied that the criteria under the Regulations is met.
- Employer must give a copy of the variance or exemption (and of an amendment or revocation) to each employee to whom it applies.

# Variances/exemptions (Minister)

## Current Code:

- Minister may order a variance or exemption on application by an employer association or a group of employers.
- The order may be for a maximum of 2 years and cannot be renewed.

## Proposed Amendment:

- The Minister may order a variance or exemption on application by an employer, a group of employers, or an employer association.
- There is no time limit for the Order.
- There is no prohibition on renewals.

# Complaints – Limitation period

## Proposed Amendment

- Specifies that the time limit for a filing a complaint regarding the failure to pay wages or overtime by employees who are subject to an averaging arrangement is 6 months after the averaging arrangement ceases to apply to the employee, or, if it does not cease, 6 months after the end of the averaging period to which the complaint relates.
- Clarifies that where an averaging arrangement applies, the assessment period for an order is the period from the beginning of the earliest averaging period to which the claim relates and ending on a date before the date of the order, as determined by the officer.

# Group terminations – Amount of notice

## Current Code:

- Where an employer intends to terminate 50 or more employees at a single location within a 4-week period, the employer must give written notice to the Minister on a rising scale of 8-16 weeks, depending on the number of employees who are terminated.

## Proposed Amendment:

- Where an employer intends to terminate the employment of 50 or more employees at a single location within a 4-week period, the employer must give written notice to the Minister of at least 4 weeks.
- If the employer is unable to give 4 weeks notice, it must give notice as soon as is reasonable and practicable in the circumstances.

# Group terminations - Notice requirements

## Current Code:

- The notice must include the number of employees, the effective termination dates and any other information required by the Regulations.
- Notice must also be given to the bargaining agent or, if there is no bargaining agent, to the affected employees.

## Proposed Amendment:

- The Notice must include the number of employees and the effective dates.
- Dispenses with the requirement to give notice to the bargaining agent or employees.

# Coming into force

- Most of the proposed changes to the *Employment Standards Code* will come into force on November 1, 2020.
- The proposed changes to the requirements around temporary layoffs, variances and exemptions, and group terminations will come into effect on August 15, 2020.

# Amendments to Labour Relations Code

- Roxana Jangi, Senior Associate, Calgary

# Amendments to Labour Relations Board powers

- Expands the Board's powers to reject an application in situations where a Board is of the view that a matter is filed with "improper motive" or where the matter is an "abuse of power".
- Allows the Chair and Vice Chair to hear and decide on the following cases:
  - Reviews of grievance arbitration awards.
  - Compelling witness attendance and production of documents.
  - Issues relating to strike or lock out votes.
  - Certain determination applications.
  - Where there is an emergency to hear the matter.

# Remedial certification

## Current Code:

- Allows the Board to certify or refuse to certify a trade union as the bargaining agent for a unit of employees where the Board is satisfied that an employer or union or other person has failed to comply with the *Labour Relations Code* (Alberta).

## Proposed Amendments:

- Limits the instances where a Board can certify or refuse to certify a trade union to circumstances where 1) the representation vote does not reflect the true wishes of employees because of a prohibited practice, and 2) only if no other remedy or remedies would be sufficient to counteract the effects of the prohibited practice.
- Allows the Board to order another representation vote 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.

# Financial transparency and union dues

- Introduces new requirements on unions to provide a annual financial statement to their members and remedies for failing to meet these requirements.
- Introduces new requirements on unions to provide information relating to the amount or percentage of union dues, assessment or initiation fees are allocated to activities under the Labour Relations Code (i.e. representation), political campaigns, and social causes.
- Introduces consent requirements that must be met before unions are able to collect portion of dues allocated to political campaigns and social causes.

# Certification and revocations

## Current Code:

- Currently, an application for board certification must be completed within 20 or 25 working days of receipt of application for certification.

## Proposed Code:

- 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 of collective agreements

- 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.

# Amendments to Labour Relations code continued

- Adrian Elmslie, Partner, Edmonton

# Picketing and secondary picketing

## Current Code:

- No Specific restrictions on obstructing or impeding a person who wishes to cross a picket line from crossing a picket line.

## Proposed Amendment:

- Obstructing or impeding a person who wishes to cross a picket line from crossing the picket line is now prohibited as a “wrongful act”.

# Picketing and secondary picketing

## Current Code:

- Automatically permits secondary picketing at a premises:
  - where work that is normally done by striking or locked-out employees is done during a strike or lockout,
  - the employer uses to further a lockout or resist a strike, or
  - at which a third party assists the employer in furthering a lockout or in resisting a strike by performing services for the employer that it does not normally provide.

## Proposed Amendment:

- Requires a person or trade union to apply to the Board for an order allowing secondary picketing before engaging in secondary picketing.

# 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.
- 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.

# First contract arbitration

## Current Code:

- Board may order first contract arbitration if the Board “is satisfied that arbitration is otherwise appropriate”.

## Proposed Amendment:

- Board may only order first contract arbitration if the Board is satisfied that:
  - arbitration is necessary;
  - the employer or trade union has failed to comply with the Act (e.g. refusal to meet to bargain collectively); and
  - no other remedy or remedies would be sufficient to counteract the effects of the failure to comply with the Act.

# Changes to power of arbitrators

## Current Code:

- Arbitrators expressly permitted to extend the time for taking any step in a grievance process or arbitration procedure set out in a collective agreement.

## Proposed Amendment:

- Power to extend the time for taking any step in a grievance process or arbitration procedure set out in a collective agreement removed in its entirety.

# 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

## Current Code:

- Places a reverse onus (presumption of guilt) on employers accused of certain prohibited practices (discrimination based on union involvement / activities).

## Proposed Amendment:

- Restricts reverse onus to cases involving prohibited practices involving discharge or discipline due to union involvement / activities.

# Duty of fair representation complaints

- 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.
- Changes to major project agreement approval process and rules.

# Questions?

# Thank you



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