



Bill 17: Alberta's Family Friendly Employment Reforms and Curious Labour Changes

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On May 24, 2017, Alberta's NDP government introduced Bill 17, the *Fair and Family-friendly Workplaces Act* (the "**Bill**"), after weeks of speculation that it would make changes to the *Employment Standards Code* and *Labour Relations Code* prior to the end of the legislative session.

The Bill's proposed key changes to the Employment Standards Code are as follows:

1. Employers will be required to recognize new categories of job protected leave, and employees will now have some of the longest periods of unpaid, job-protected leave in the country. Specifically:
 - o maternity (16 weeks, up from 15 weeks);
 - o parental (52 weeks, up from 37 weeks);
 - o compassionate care (27 weeks, up from 8 weeks);
 - o long-term illness and injury (16 weeks, up from 0);
 - o personal and family responsibility (5 days, up from 0);
 - o bereavement (5 days, up from 0);
 - o domestic violence (10 days, up from 0);
 - o citizenship ceremony (1/2 day, up from 0);
 - o child's critical illness (36 weeks, up from 0);
 - o child's death (104 weeks, up from 0); and
 - o child's disappearance (52 weeks, up from 0).

Additionally, employees will be eligible for leaves after 90 days of employment, down significantly from the current requirement of 52 weeks of continuous employment.

2. Employment standards officers will be given new enforcement powers, including compliance audit powers. Administrative penalties of up to \$10,000 for each contravention of the Employment Standards Code have been added.
3. Agreements to give time off in lieu of overtime pay will now require employees to be compensated at time-and-a-half, rather than ordinary time.
4. Employers will no longer have the ability to require or permit employees to work a compressed work week. Currently, employees are permitted to work fewer days in the week and more hours of work in a day, up to a maximum 12 hour day and 44 hours in a compressed work week, while not earning overtime.
5. Youth employment will be subject to various new restrictions. Currently, youths under age 15 must have the written consent of a parent or guardian along with director approval, and cannot be employed during normal school hours unless enrolled in an off-campus education program. The specific restrictions now proposed are as follows:

- youth aged 12 or younger may be employed only in work classified as an artistic endeavour and only if authorized by permit;
 - youth aged 13 to 15 may be employed in an artistic endeavour, in employment that is classified as light work, or for any other type of work if authorized by permit, with the exception of work that is identified as hazardous; and
 - youth aged 16 to 17 that are employed in work classified as hazardous are required to have a permit, be adequately trained, and such work must be supervised by a responsible adult. Employers are further required to ensure that the youth's health, safety and well-being are protected.
6. Group termination requirements have been increased from 4-weeks' notice for terminations of 50 or more employees to 8 weeks for 50-99 employees, 12 weeks for 100-299 employees and 16 weeks for 300 or more employees. Notice of the termination must now be given to the bargaining agent or the affected employees. This significantly alters employers' obligations with respect to employees who are terminated as a group because 8 weeks is the current maximum statutory period of termination notice an employer is required to give an employee.

On the Labour Relations Code front, the Bill's key proposed changes are as follows:

1. Union drives may now be completed over a 180 day period, rather than over 90 days. In addition, if 65% of the employees in a bargaining unit sign union cards, the workforce will be unionized automatically without a secret ballot vote. However, if more than 40% but less than 65% of the employees sign union cards, the Labour Relations Board must call a secret ballot vote to determine whether the employees want to unionize. This matches Manitoba's previous Labour Relations Act, which was amended last year to fall into line with Alberta, Ontario, Nova Scotia and federal requirements of a secret ballot for any certification drive with at least 40% support.
2. The onus for establishing that an employer has committed a prohibited practice is reversed in some circumstances, such that if an allegation is made against an employer they will be presumed to be in breach of the Labour Relations Code unless they demonstrate the contrary.
3. Dependent contractors, now defined under the Labour Relations Code, will be covered by an existing collective agreement in certain situations; specifically, if the Labour Relations Board determines that the position is covered by the collective agreement or if the parties have amended the agreement to address whether the position is a dependent contractor covered under the agreement.
4. Anti-salting provisions are repealed. Salting is the practice by a union of planting an employee at a construction worksite with the goal of having the planted employee organize.
5. Provisions limiting the use of market enhancement recovery funds, funds which are used by unionized construction contractors to submit more competitive project bids, are repealed.
6. First contract arbitration provisions have been added to force unions and employers into dispute resolution if negotiations for an initial collective bargaining agreement are unresolved after 90 days.
7. Essential services have been expanded to include continuing healthcare operations.
8. A compulsory dues check-off regime has now been codified. This responds to the Court of Appeal's decision in *Alberta Union of Provincial Employees v provincial Health Authorities of Alberta*, which was that there was no constitutional right to the most favourable procedural mechanism to collect dues.

It is anticipated that most of the changes will be effective as early as January 1, 2018. However, the changes to union certification are expected to be effective September 1, 2017, while most of the other labour provisions will come into effect upon royal assent. The changes to youth employment are effective on proclamation of Bill 17, and the changes to essential services are effective now.

While some of the changes proposed under Bill 17 are uncontroversial, the introduction and pace of implementation of the automatic union certification provisions have stirred resistance among business groups and Alberta's two conservative opposition parties. Data indicates that employees who sign union cards will not necessarily vote to become unionized, which militates against the repeal of a secret ballot. In addition, the reverse onus provision for employers to rebut allegations of prohibited practices appears to be particularly draconian. It is uncertain what the impact of these proposed labour changes will be on employers. A further criticism of Bill 17 has been that the government has had just 36 days of consultation on the labour changes.

We will keep readers apprised of further developments respecting Bill 17.

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