Bill 30: British Columbia Proposes Labour Friendly Changes to the Labour Relations Code

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Gary T. Clarke, Kris R. Noonan, Maja Zdravkovic

Significant revisions to the Labour Relations Code came into force on May 30, 2019.

The British Columbia Government acted on the recommendations of the Labour Relations Code Review Panel concerning proposed changes to the *Labour Relations Code* (the "Code"). Bill 30, the *Labour Relations Code Amendment Act, 2019* ("Bill 30") came into force on May 30, 2019. Not surprisingly, most of the changes are labour friendly. The following is a summary of the salient changes.

Enhanced Ability to Order Remedial Certification

Unions often seek remedial certification as a remedy for unfair labour practices. The remedy is rarely granted. The British Columbia Labour Relations Board (the "Board") will now have the express ability to order remedial certification if:

- an employer is doing or has done an act prohibited by section 5 [prohibition against dismissals, etc., for exercising employee rights], section 6 [unfair labour practices], section 7 [limitations on activities of trade unions], or section 9 [coercion and intimidation] of the Code;
- the employees affected by the prohibited act are seeking trade union representation; and
- the Board believes that automatic certification is just and equitable to remedy the consequences of the prohibited act.

This change eliminates the requirement for unions to establish that requisite support for certification would have been obtained had the unfair labour practice not occurred. It is anticipated that this change will result in an increase in the number of remedial certifications granted by the Board.

More Restrictions on Employer Speech

Employer free speech is now limited to statements of fact or opinion that are reasonably held by the employer regarding their business. This is a significant departure from the previous right of employers to express their views on any matter (provided that it does not use intimidation or coercion). As a result, employers will need to be more cautious when communicating with employees to ensure that such communication does not result in an unfair labour practice complaint.

Extension of Freeze Period and Changes to the First Collective Agreement Process

The period during which an employer is prohibited from altering pay or other terms of employment following certification is now extended from 4 months to 12 months.

Additionally, if an application is made to the Board under section 55 [seeking assistance from a mediator], and the mediation process does not conclude before the end of the 12 month freeze, the employer will not be allowed to alter pay or other terms of employment until the section 55 process has been concluded.

Further, Bill 30 removed the requirement that a strike vote be taken before applying for the appointment of a mediator in connection with a first collective agreement. Additionally, if a union has been automatically certified, the mediator or associate chair will now consider the parties' conduct before and after certification when recommending a process or directing a method to resolve a dispute relating to the conclusion of a first collective agreement.

Time Period for Representation Votes is Reduced

There has been no change to the secret ballot voting system, despite some discussion of a card check system in the recommendations. However, Bill 30 sped up the representation vote process, providing employers with less time in which to communicate with their employees prior to a representation vote. A representation vote would now need to be held within 5 business days, instead of 10, unless the vote is conducted by mail in which case it must be conducted as expeditiously as possible. A representation vote will only be allowed to be conducted by mail if the union and employer agree or the Board is satisfied that exceptional circumstances.

Changes to the Adjustment Plan Process

Bill 30 allows the union or employer to apply for mediation when the parties cannot agree to an adjustment plan. Previously, under section 54, if an employer intended to alter the terms, conditions or security of employment of a significant number of employees, it was required to give at least 60 days' notice to the union and then meet in good faith with the union to develop an adjustment plan (without any obligation to develop one). Bill 30 allowed for the involvement of a mediator to assist the parties in developing an adjustment plan. If the parties cannot agree to an adjustment plan after mediation, the mediator may make recommendations. While there is still no requirement to agree to the terms of an adjustment plan, Bill 30 has expanded the process and will likely result in administrative delays and increased costs associated with the introduction of certain changes in the workplace.

Successor Rights and Obligations of Contractors

Bill 30 significantly amended the Code's successorship provisions. Previously, successor rights and obligations were triggered when a business, or a part of it, was sold, leased, transferred or otherwise disposed of. Successor rights and obligations were rarely triggered in contracting out or contract re-tendering situations.

Pursuant to Bill 30, successor rights and obligations apply to contractors if one of the contracts outlined below is re-tendered and substantially similar services continue under the direction of another contractor. This change will have a significant impact on the ability of employers to re-tender the following contracts:

- building cleaning services;
- security services;

- bus transportation services;
- food services;
- non-clinical service provided in the health sector; and
- other services prescribed by regulations pursuant to section 159(2)(f) of the Code.

Penalty Increases

Bill 30 increased the penalty for refusing or neglecting to observe or carry out an order made under the Code from $1,000 to $5,000 for an individual and from $10,000 to $50,000 for a corporation, union or employers' organization.

Other Notable Changes

Other notable changes include:

- amending the definition of picketing to expressly exclude lawful consumer leafletting that does not unduly restrict access to, or prevent employees from working at, the place of business;
- requiring the Minister to appoint a committee of special advisors to undertake a review of the Code and make recommendations;
- limiting union raiding to the seventh and eighth month in the third year of a collective agreement, or the last year in the term if the collective agreement is for a term of 3 years or less, and to once every 22 months if a previous application resulted in a decision by the Board on the merits of the application;
- extending the time period to make an application for the revocation of bargaining rights from 10 months to 12 months following certain events specified in section 33 of the Code;
- removing public education as a designated essential service;
- allowing the Board to decline to consider a collective agreement in any proceeding if it is not filed in accordance with section 51;
- removing the Minister's authority to establish industry advisory councils but instead allowing the Minister to direct the Board to assist parties with establishing an industry council; and
- revising the expedited arbitration process.

Final Thoughts

Bill 30 represents a significant, and largely labour friendly, amendment to the Code. All amendments are currently in force, as of May 30, 2019. Employers should carefully consider the changes and the likely impact on their businesses.

This blog was updated on June 3, 2019.