

Member's Quarterly

Summer 2019 Edition

Feature

The House is Greener on the Other Side

No overtime exemptions for cannabis greenhouses in Alberta

In October 2018, Alberta became the province with the highest minimum wage in Canada. This change caps off a list of additional labour costs for the farming industry. With the rapid growth of the cannabis industry, the legalization of cannabis and concerns over labour shortages, it will be interesting to monitor the impact the additional costs will have on farming in general, and more specifically, cannabis production.

2018 Changes to Exemptions for Farmers

In general, farm workers in British Columbia are entitled to minimum wage and vacation pay, but are not entitled to general holiday pay or overtime. In Ontario, farm workers are not entitled to minimum wage, general holiday pay, vacation pay or overtime. The three major changes in 2018 for Alberta's farm workers are entitlements to minimum wage, general holiday pay and vacation pay, which farm workers were not entitled to before January 1, 2018.

Changes to Greenhouses and the Cannabis Industry

An important implication of these changes is whether the fledgling cannabis industry in Alberta even qualifies for Alberta's more limited exemptions. Currently, cannabis production is unlikely to qualify for the exemptions because it arguably does not engage in the primary production of grain, seeds, fruit or vegetables. However, even if it did, cannabis production in greenhouses would be excluded, because the Government of Alberta (the "Government") has explicitly stated that greenhouses are not considered "farms" under the *Employment Standards Code*, RSA 2000, c E-9 (the "Code").

The Government's declaration creates some confusion. The *Code* does not seem to state the exclusion of greenhouse operations from exemptions. In fact, the Employment Standards Technical Working Group's Recommendations Report to the Government recommended that greenhouses should have all the same standards and exemptions as the rest of agriculture. Although the recommendation may suggest greenhouses were previously excluded, the Alberta Labour Relations Board's Procedure Guide on Farm and Ranch Employee Exclusions continues to give the example that tomatoes grown in a hothouse fall within the exemption. Nonetheless, it would appear farm workers working in greenhouses in Alberta will not be considered farm workers under the *Code*.

If greenhouses are not considered "farms", overtime becomes an important consideration in addition to the expenses mentioned above (minimum wage, general holiday pay and vacation pay). Overtime is also an important consideration amid reports that the agricultural industry already faces a labour shortage due to processing delays with the Temporary Foreign Workers program. With fewer workers, existing workers would likely need to work more hours and employers will have to carry overtime expenses for the same amount of work that was done pre-labour shortage.

This is a major difference compared to British Columbia and Ontario. Not only are employees working in agricultural operations in greenhouses in those provinces considered farm workers, cannabis growers are also considered farm workers.



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In Ontario, *MedReleaf Corp. v. UFCW*, 272 C.L.R.B.R. (2d) 1, dealt with different legislation and issues, but it did consider cannabis to be an agricultural commodity, and that the employees at the medical marijuana operation were "in agriculture", thus falling under the protection of the *Agricultural Employees Protection Act*, 2002.

In British Columbia, *MedReleaf* was argued as support that employees at a medical marijuana facility should be considered "farm workers". The British Columbia Employment Standards Tribunal in *Suncoast Health Corp., Re*, found the employee to be a farm worker. The decision was later varied because the employee's duties, construction work and security, did not consist of agricultural duties. However, the Director did continue to suggest that the facility could be an agricultural operation.

Ultimately, not only do Alberta's farm employers shoulder more entitlements than their counterparts in British Columbia and Ontario, cannabis growers in Alberta shoulder even more, because they are not considered a farm operation. With the change in minimum wage in Alberta, the legalization of cannabis in October 2018 and several major cannabis production facilities being built in Alberta, it will be interesting to see whether any legislative changes will be made in response. The Government did leave the door open by stating it will continue to consult with the industry to determine if special rules are required.

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