

Member's Quarterly

Winter 2021 Edition

Feature

Alberta Introduces New Labour and Employment Legislation

Positive changes finally give a lift to employers



Tom Ross
Q.C.
Partner,
McLennan Ross
LLP

Last year, Alberta's new Government introduced a number of positive changes to the *Labour Relations Code* and *Employment Standards Code*. It was part of an effort to undo changes by the previous government, reduce regulatory burden and expense, and make it easier to do business in Alberta at a time it was needed.

The Government announced there would be further changes. Now, as the focus turns to re-igniting the economy post-COVID, the additional changes we have been waiting for were introduced in July as Bill 32, *Restoring Balance in Alberta's Workplaces Act, 2020*. These positive changes are again intended to improve the *Labour Relations Code* and *Employment Standards Code*, reduce regulatory burden and give a lift to employers as they generate employment in the wake of COVID-19. On July 29, Bill 32 was passed and became law.

Here are some of the changes to the *Employment Standards Code* ("ESC"):

Averaging Arrangements

1. A significant modification to the *ESC* is the change of averaging agreements within the existing *ESC* to "averaging arrangements," with different and more flexible obligations. Averaging arrangements will be similar to the "compressed work weeks" that applied before the concept of averaging agreements was introduced in the 2017-18 *ESC* changes.

Employee agreement is no longer required to place employees on an averaging arrangement, though the arrangement must still be in writing. An employer can require work under an averaging arrangement prior to employment or on 2 weeks' notice. The arrangement must also specify the work schedule with daily and weekly hours. However, it will be much easier to make changes to schedules under an averaging arrangement. Employers simply must specify the manner of amending the schedule and give notice when required. The averaging arrangement can also specify the overtime entitlements. The new averaging period for averaging arrangements will be 52 weeks instead of 12 weeks.

There will also be a 6-month right of complaint for non-compliance with the averaging arrangement.

Averaging arrangements will also be addressed in the regulations.

Holiday Pay

2. The definition of "average daily wage," used for calculating holiday pay, has been removed. It will now be calculated by averaging the employee's total wages in one of two 4-week periods the employer chooses over the number of days worked:

- a. immediately preceding the holiday; or
- b. ending on the last day of the pay period immediately preceding the holiday.

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Payment of Earnings upon Termination

3. When an employee's employment ends, the employer will have more time to pay the employee's earnings. The existing time limits (3 or 10 days after employment ends) caused logistics issues in managing normal payroll and payments. Under the new legislation, the employer must pay the employee's earnings within one of the following periods:
- 10 consecutive days after the end of the pay period in which the termination of employment occurs; or
 - 31 consecutive days after the last day of employment.

Deductions from Earnings

4. Consistent with Employment Standards practice in Alberta, but not previously included in the *ESC*, the new legislation will allow employers to deduct the following from earnings, upon providing notice:
- a recovery of an overpayment of earnings paid to the employee resulting from a payroll calculation error, and
 - a recovery of vacation pay paid to the employee in advance of the employee being entitled to it, up to 6 months after the overpayment was paid to the employee.

Hours of Work and Rest Periods

5. The hours of work maximum (usually confined to 12 hours), shift change requirements and days of rest may now be overridden by a collective agreement.

Rest periods were slightly modified. For shifts between 5 and 10 hours (instead of 5 hours or more), at least one 30-minute rest period is required. For shifts more than 10 hours, two rest periods are required of at least 30 minutes. Rest periods of 30 minutes can be paid or unpaid and broken into two 15-minute breaks. The amendments also allow employers to define when breaks will be taken if there is no agreement.

Variations

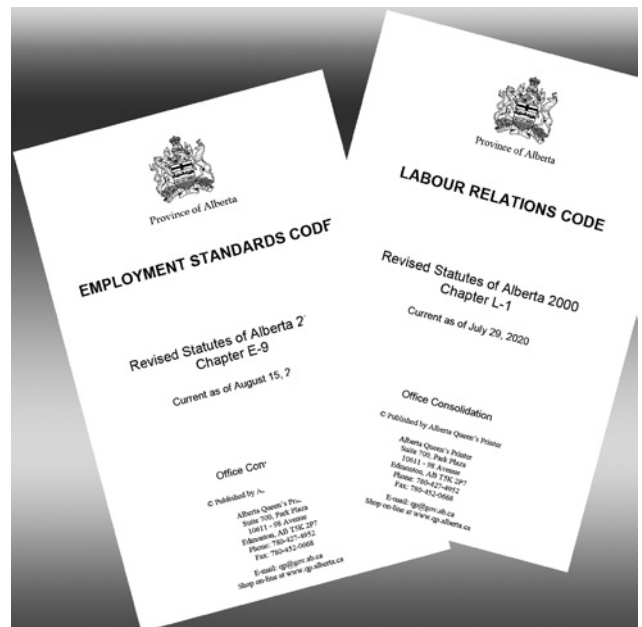
6. Changes have been made to streamline the variance provisions and make them more accessible.

Layoffs

7. The maximum period before layoffs become permanent is extended from 60 to 90 days within a 120-day period.

Layoffs related to COVID-19 remain at 180 consecutive days of layoff.

The termination requirements after layoff can be overridden by a collective agreement.



Feature continued**Group Terminations**

8. The group termination provisions will return to what they were before 2018: 4 weeks of notice, to the Minister of Labour only, when 50 or more employees are terminated at a single location with a 4-week period.

This notice is not required in respect to employees who are employed on a seasonal basis or for a definite term or task, or when excepted by regulation.

The group termination requirement has been removed from the individual termination notice or pay in lieu of notice requirements.

Coming into Force

9. Some parts of the new legislation came into effect on August 15, 2020, with others effective November 1, 2020.

Tom Ross is a partner with McLennan Ross LLP in Calgary and can be reached via email at tross@mross.com.