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Alberta *Fair and Family-Friendly Workplaces Act*

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On June 7, 2017, Bill 17, the *Fair and Family-Friendly Workplaces Act*, received Royal Assent. The Act makes significant amendments to the Alberta *Employment Standards Code* (the "*ESC*") and *Labour Relations Code* (the "*LRC*"). The changes will affect all provincially-regulated employers in the Province of Alberta, both unionized and non-unionized. A summary of the changes is set out below.

Employment Standards Code

Most of the changes to the *ESC* will come into force on January 1, 2018.

- Deductions from earnings
    - An employer may not deduct from earnings a sum for faulty work or damage caused by an employee, cash shortages or loss of property where an individual other than the employee had access to the cash or property, or cash shortages resulting from a failure to collect payment from a purchaser.
- Hours of work and overtime
    - Employee to be provided with at least 30 minutes of rest, paid or unpaid, within each 5 consecutive hours of work. If the employee and employer agree, the rest period may be taken in 2 periods of at least 15 minutes.
    - Employees may take time off in lieu of receiving overtime pay at a rate of 1.5 hours for each hour of overtime worked, as opposed to the previous rate of 1 hour per hour of overtime worked.
    - Employees may take banked time off for overtime worked within six months, as opposed to the current period of three months.
    - Averaging agreements (previously called compressed work week arrangements) must have the support of the majority of employees subject to the agreement, or be permitted under a collective agreement.
- General holidays
    - Employees are not required to be employed 30 days in the 12 months preceding the holiday to be eligible for general holiday pay. All employees will be eligible.

- Leaves of absence
    - Eligibility for unpaid job-protected leaves is reduced from 52 weeks of employment to 90 days.
    - Employees returning from these statutory unpaid leaves must receive the same earnings and benefits as before they took the leave.
    - Maternity leave increased from 15 weeks to 16 weeks.
    - Employees are entitled to maternity leave if the pregnancy does not end as a result of a live birth within 16 weeks of the estimated due date.
    - Compassionate care leave increased from 8 weeks to up to 27 weeks.
    - Employees returning to work early from statutory leaves (other than maternity or parental leave) must provide only 48 hours' notice of their return.
    - New unpaid leaves introduced:
        - For disappearance of a child due to crime – up to 52 weeks and on death of a child due to crime – up to 104 weeks;
        - For providing care to a critically ill child – up to 36 weeks;
        - For long term illness, injury, or quarantine – up to 16 weeks;
        - For addressing domestic violence – up to 10 days;
        - For personal and family responsibilities – up to 5 days;
        - For bereavement leave – up to 3 days; and
        - For attendance at the employee's citizenship ceremony – up to one-half day.
- Minimum wage
    - Employers must pay at least minimum wage to persons with disabilities.
- Youth employment
    - No employment of individuals under age of 18 except as permitted by the ESC or its regulations.
    - Individuals 12 years of age or younger may be employed only in an artistic endeavour as defined by the *ESC*, and only with a permit.
    - Individuals aged 13-15 may be employed only, with consent of a parent or guardian, in an artistic endeavour or in a type of employment that is light work, or as authorized by a permit.
    - Individuals aged 16-17 may be employed in any type of employment, but may only be employed in hazardous work if authorized by permit, under supervision of a responsible adult, and the health, safety and well-being of the individual are protected.
    - Note: these provisions will come into force on proclamation.

- Termination and layoff
    - Employers may not require employees to use banked overtime, vacation, or days in lieu of a general holiday during the employee's notice period.
    - The employer must provide group termination notice to the government and bargaining agent (or affected employees if no bargaining agent) when terminating a specified number of employees at a single location within a 4-week period: 8 weeks for 50 – 99 affected employees; 12 weeks for 100 – 299 affected employees; or 16 weeks for 300 or more affected employees.
    - Employers must provide employees with notice of a temporary layoff.
    - Temporary layoffs that exceed 60 days in total in a 120-day period may be deemed a termination of employment, with some exceptions.
- Farm and ranch workers
    - Certain provisions of the ESC will apply to farm and ranch workers excluding family members.
- Administration
    - Administrative penalties may be served on employers for non-compliance.
    - The period for the government to prosecute an employer for an offence under the *ESC* is extended from one to two years.

Labour Relations Code

Most of the changes to the *LRC*, with some exceptions, came into force on Royal Assent on June 7, 2017.

- Labour Relations Board
    - The Board has expanded powers to:
        - order pre-hearing production of documents;
        - prevent disclosure of confidential information to anyone other than the parties if the Board considers the information is likely to harm labour relations;
        - make an order to marshal any outstanding or anticipated proceedings based on common circumstances in other forums;
        - review an arbitrator's decision in the first instance if the application is filed no later than 30 days after the date of the decision;
        - order first contract arbitration; and
        - on request of a trade union, require a collective agreement clause mandating the deduction of union dues from all employees in a bargaining unit, regardless of whether all employees are a member of the union.

- Arbitrators
    - Arbitrators have expanded powers to:
        - extend timelines for taking any step in a grievance process established in a collective agreement, even if out of time;
        - order a party to provide particulars before or during a hearing;
        - require pre-hearing production of documents;
        - make interim orders;
        - mediate; and
        - expedite hearings and prevent abuse of the arbitration process.
- Certification
    - A "hybrid" certification process will apply to union organizing campaigns. If the Board is satisfied that, at the time the application for certification is made, the union has the support of more than 65% of employees in the bargaining unit that is determined to be appropriate for collective bargaining, the Board may certify without a representation vote.
    - A representation vote will be required where an application for certification is supported by 40% to 65% of the employees in the bargaining unit.
    - Evidence of support of the applicant union is generally in the form of proof of membership in good standing in the union or application for membership (a card check system). At least 40% support of the employees in the bargaining unit applied for is required.
    - The period for an organizing campaign is increased from 90 days to 6 months.
    - Certification provisions will come into force on September 1, 2017.
- Farm and ranch workers, excluding family members, may unionize. This provision will come into force on January 1, 2018.
- Dependent contractors are defined and permitted to be part of an existing bargaining unit or a bargaining unit consisting of dependent contractors. This provision will come into force on January 1, 2018.
- Secondary picketing, which includes picketing of secondary premises of the employer and locations of third parties assisting the employer to resist a strike, is permitted.
- The burden of proof is on employers to show that the employer did not engage in an unfair labour practice where the union brings a complaint involving discipline, dismissal, discrimination, or intimidation of an employee. This provision will come into force on September 1, 2017.

With special thanks to articling student Jim Boyle for his assistance in drafting this post.

Please contact a member of the Labour and Employment Group if you have questions as to how these changes may affect your workplace.

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