Understanding Alberta's updated employment and labour law

By Yosie Saint-Cyr LL.B., Managing Editor, The Human Resources Advisor™

Alberta Bill 17, the **Fair and Family-friendly Workplaces Act** received royal assent on June 7, 2017. The new law makes the most substantial changes to Alberta's employment and labour relations requirements in 30 years and the majority of employers with workers in Alberta will be affected. In addition, new Employment Standards Code Regulations filed on December 30, 2017, make additional changes and clarify certain rules found in Bill 17.

Employers will have to comply with most of the new requirements as of January 1, 2018. However, for union employers, the new certification, revocation and judicial review changes came into force on September 1, 2017.

See the chart at the end of the report for details on coming-into-force dates.

In the following special report, we outline the essential new requirements under Alberta's **Employment Standards Code** and **Labour Relations Code**.

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Employment Standards Code

The amendments to the **Employment Standards Code** will require employers to make significant changes to HR and payroll policies and practices. The key amendments follow.

1. Minimum wage and payment of wages

Employers are no longer able to pay employees with disabilities less than minimum wage.

The Code has been clarified to indicate the deductions from wages that are allowed and to explicitly prohibit deductions for faulty work and cash shortages (e.g., dine-and-dash/gas-and-dash scenarios). In addition to the Act, the Regulations now make it clear that employers are prohibited from making deductions from an employee's pay for "faulty work," even with an authorization. "Faulty work" is defined in the Regulations to include any act or omission of an employee that results in a loss to the employer.

Previously, employers were entitled to deduct an employee's wages/earnings to cover the cost of providing, using, repairing or laundering clothing (which the employer required the employee to wear), so long as the deduction did not result in an employee receiving less than minimum wage. The government has altered this to make a blanket prohibition on employers deducting wages/earnings to cover the cost of providing, repairing, using or cleaning clothing which the employer requires the employee to wear. Employers seeking monies to cover these costs must receive payment directly from employees and not through deduction from pay.

2. Leaves of absence from work

The qualifying period for entitlement to a leave of absence under the Code—such as maternity, parental and compassionate care leaves—is reduced from 52 consecutive weeks of employment to 90 days.

For **maternity and parental leaves**, the new law will:

- Extend maternity leave from 15 to 16 weeks to account for the one-week waiting time for federal Employment Insurance (EI) benefits. The new Regulation adds that maternity leave may commence at any point during the 13 weeks immediately prior to the expected delivery date.
- Allow employers to terminate an employee during the notice/entitlement period of maternity/parental leave only where the business is closed or suspended.
- Restrict entitlement to maternity leave if the pregnancy terminates more than 16 weeks before the due date. An employee whose pregnancy terminates within 16 weeks of the due date will still be eligible for maternity leave, but the leave will end either 16 weeks after the leave began or six weeks after the pregnancy is terminated.
- Extend parental leave to 62 consecutive weeks (previously 37 weeks) within a 78-week period after the child's birth or the child is placed in the care of new adoptive parents. In the case of an employee entitled to maternity leave, a period of not more than 62 consecutive weeks (previously 35 weeks) immediately following the last day of maternity leave.

With regard to **compassionate care leave**, the new law will:

- Extend the period of leave to 27 weeks from the current 8 weeks, to better align with federal EI benefits.
- Expand caregiver status to include non-primary caregivers, thus allowing for persons other than parents to provide care to a seriously ill family member.
- Make the leave available for multiple weekly instalments within the period outlined in the medical certificate, rather than the current limit of two instalments.
- Retain the two weeks' notice to an employer, but changing the language to indicate that the leave can be taken as soon as reasonable.
- Reduce the return-to-work notice to one week from the current two weeks, unless the employer and the employee agree otherwise.
- Clarify the end date of the leave to be either the date of death of the family member or the end of the 27-week period (whichever is earlier). Otherwise, if the leave ends and the employee fails to return to work or provide proper notice, the employer will be allowed to postpone the employee's return for two weeks.

New leaves of absence available to employees

- The **death or disappearance of a child leave** provides for up to 52 weeks of unpaid leave for qualifying employees who are the parent of a child who has disappeared where it is probable that the disappearance is the result of a crime; or 104 weeks of unpaid leave for qualifying employees who are the parent of a child who has died where it is probable that the death is the result of a crime.

- The **critical illness of a child leave** provides for up to 36 weeks of unpaid leave for the purpose of providing care or support to a critically ill child. The new Regulation has substituted critical illness of child leave with the critical illness leave. Effective January 1, 2018, an employee who has been employed by the same employer for at least 90 days and is a family member of a critically ill child or a critically ill adult is entitled to an unpaid leave of:
  - Up to 36 weeks for the purpose of providing care or support to the critically ill child; and
  - Up to 16 weeks for the purpose of providing care or support to the critically ill adult.
- The **long-term illness and injury leave** provides for up to 16 weeks of unpaid leave in a calendar year due to illness, injury or quarantine. Medical certificate and reasonable notice will be required.
- The **domestic violence leave** provides for up to 10 days of unpaid leave in a calendar year to seek medical attention, obtain services from a victim services organization, obtain psychological or professional counselling, relocate temporarily or permanently, seek legal or law enforcement assistance and any other purpose provided for in the regulations.
- The **personal and family responsibility leave** provides for up to five days of unpaid leave in a calendar year for the health of the employee or for the employee to meet his or her family responsibilities in relation to a family member. This includes attending to personal emergencies and caregiving responsibilities related to education of a child. The Regulations define family member in relation to the employee taking personal and family responsibility leave. The Regulations provide a lengthy list of "family members" for the purposes of the personal and family responsibility leave provisions.
- The **bereavement leave** provides for up to three days of unpaid leave in a calendar year due to the death of a family member. The Regulations clarify that for the purpose of bereavement leave, "family member" means a family member for the purpose of compassionate care leave.
- The **leave for citizenship ceremony** provides for up to a half-day of unpaid leave to attend a citizenship ceremony to receive a certificate of citizenship.

3. Hours of work and overtime

Compressed workweeks are replaced with **hours-of-work averaging agreements**:

- An employee or group of employees may enter into a written hours-of-work averaging agreement that provides that the employer will average an employee's hours of work over a period of one to 12 weeks for the purpose of determining the employee's entitlement to overtime pay or time off with pay.
- An hours-of-work averaging agreement may be part of a collective agreement.
- Scheduled hours of work must still remain at or below 12 daily and an average of 44 weekly.
- The agreement must include a start date and end date, and must not exceed two years.

- Averaging agreements will generally need to be renewed every two years, except that in the case of an agreement that is part of a collective agreement, the agreement terminates the day a subsequent collective agreement is entered into.
- Overtime agreements will require employers to provide 1.5 hours' time off with pay for each hour of overtime banked (presently one hour for one hour basis).
- Time off with pay must be provided, taken and paid to employees within six months of the end of the pay period (currently three months).

The Regulations provide some important clarifications as to how these hours-of-work averaging agreements will operate. For example:

- An employee under an averaging agreement is entitled to daily overtime in two scenarios.
- An employee is entitled to weekly overtime when the average number of hours worked per week (averaged across the period of the averaging agreement) exceeds 44 hours per week.
- An averaging agreement must specify a single work schedule (whether it is for a group of employees or an individual employee). This means that an averaging agreement must identify all workdays and the number of hours to be worked on each of those workdays for each week in the schedule.
- How employers must post the averaging agreement.
- Making up for missing work hours under an averaging agreement.

The Regulations also create the "flexible averaging agreement" option. These agreements are only available for full-time employees who work 35 hours or more per week and must be requested by the employee. The agreements can only be for one or two weeks. They allow employees to bank flex time to be used on a one-hour-off-for-one-hour-worked basis.

Employees must be given at least a 30-minute break (paid or unpaid) for every five hours of consecutive work (previously consecutive employment in excess of five hours). If agreed to by the employer and employees, breaks may be taken in two 15-minute instalments.

The Regulations allow employers to submit a request to the Director of Employment Standards for variances from certain legislated requirements. These include:

- Extending hours of work beyond the 12-hour daily maximum
- Extending the maximum number of consecutive work days
- Extending "hours-of-work averaging agreements" beyond the 12-week maximum
- Reducing the minimum amount payable to an employee who is called in to work for two or three consecutive hours (depending on the type of employee)

Before granting a variance, the Director will consider the employer's compliance with employment standards and occupational health and safety legislation, the reasons for the request, whether there is union/employee support and the impact the variance could have. In addition, the Minister of Labour has the power to grant a variance or exemption from any part of the **Employment Standards Code** and the Regulations. The Minister of Labour will consider the same factors as the Director.

4. Public holiday and vacation pay

The amended law:

- Removes the requirement that an employee work for 30 work days or more to be eligible for holiday pay. Therefore, all employees will be eligible for general holiday pay.
- Makes employees eligible for holiday pay even when a holiday falls on a day they are not normally scheduled to work.
- Changes how holiday pay is calculated to simply five percent of wages from the previous four weeks worked.
- Deems breaks of employment of less than 90 days to be periods of continuous employment for the purpose of calculating minimum vacation entitlements.
- Clarifies that employees must be paid four percent or two weeks of their total wages as vacation pay until they have been employed for five years, after which they must receive at least six percent.
- Permits employees to take vacation in half-day periods.

5. Terminations and temporary layoffs

Probationary periods and breaks in employment: If the period of employment is 90 days or less, no notice is required from either party. This in turn means that the probationary period used by employers is clarified to mean 90 days instead of using the term "three months." Termination notice is not required for seasonal or task-specific employment.

Breaks of employment of less than 90 days will be deemed to be a period of continuous employment for the purpose of calculating length of service for the purpose of termination pay or notice.

Varying wages: Termination pay must equal at least the wages the employee would have earned if the employee had worked regular hours for the termination period. When the employee's wages vary from one pay period to another, the weekly average of the employee's regular wages for the 13 weeks in which the employee worked preceding the date of termination, not simply the 13 calendar weeks immediately preceding the date of termination is used to determine the employee's termination pay.

When employees provide more notice of termination than required by the Code: Employers will be able to pay out an employee tendering their resignation by providing the employee with wages the employee would have earned if the employee had worked until the earlier end of the termination notice period the employee provided or the end of the termination notice period that the employer would have been required to give the employee.

Previously, where an employee provided more notice than required and the employer wanted to pay out the employee, the employer had to provide pay in lieu to the end of the termination notice period that the employer would have been required to give the employee.

Vacation/overtime during notice period: Employers are prohibited from forcing employees to use entitlements such as vacation or overtime during a termination notice period. However, the parties may agree to such an arrangement.

Notice of group termination: Depending on the number of employees being terminated at a single location, employers will need to provide the Minister of Labour the following notice:

- 50–100 employees: 8 weeks
- 101–300 employees: 12 weeks
- 301+ employees: 16 weeks

Employers will need to provide the notice to either the bargaining agent or the employees, as applicable.

The Regulations confirm that an employer does not need to give a notice of group termination if the employees are being dismissed as part of a seasonal business or where the employees are being let go at the end of a fixed-term or fixed-task contract.

Temporary layoffs: Employers are no longer permitted to temporarily lay off employees for an indefinite period. Layoffs are now limited to 60 days within a 120-day period. Layoffs may be extended if wages and/or benefits are paid and the employee agrees. Moreover:

- The seldom used layoff provisions of the **Employment Standards Code** will generally require employers to provide advance written notice of one to two weeks and will codify certain existing requirements, such as including a copy of the applicable provisions of the Code in the notice.
- Layoffs will generally end after 60 days in any 120-day period rather than after 60 consecutive days.
- Employers will be allowed to waive the notice requirement for unforeseen circumstances beyond their control.

- Termination pay will be calculated based on the previous 13 weeks of employment when the employee actually worked, not simply the calendar weeks preceding the termination.
- Recall notices from temporary layoffs will be required to be written.

6. Employment of minors

New provisions regarding the employment of minors impose restrictions on employers based on the type of work being performed by the employee and the employee's age, with particular emphasis on the health and safety of the employee.

With the exception of artistic endeavours, youth under the age of 13 are not allowed to work. Youth under 13 are allowed to work in artistic endeavours, such as a theatre production, with a permit.

As stated in the Regulation, the restrictions on youth employment come into force on May 1, 2018. Employers are now subject to the following restrictions on when and for how long young persons may be employed:

- 13- and 14-year-olds may not be employed for more than two hours on a school day, for more than eight hours on any other day, or at any time from 9 p.m. through to 6 a.m. the following day.
- 15-year-olds may not be employed from 12 a.m. through to 6 a.m.
- 15-, 16- and 17-year-olds may not be employed from 9 p.m. through to 12 a.m. at retail businesses (including places where food and drink are sold), gas stations and hotel/motels unless they are accompanied by another employee who is at least 18 years old.
- After 12 a.m. (through to 6 a.m.), 16- and 17-year-olds may not be employed at retail businesses at all. However, they may be employed at other businesses during this time if the parent or guardian provides the employer with written consent and the 16- or 17-year-old is accompanied by another employee who is at least 18 years old.

7. Enforcement and administration

New administrative penalties require employers to pay an administrative penalty for a contravention or failure to comply with the **Employment Standards Code** or regulations. Administrative penalties will not exceed $10,000 for each contravention or failure to comply or for each day or part of a day on which the contravention or failure to comply occurs or continues.

- The time period to commence prosecution is increased from one to two years.
- The permit process will be streamlined by setting clear and enforceable criteria and setting time limits on permits. Criteria for permits will be published in regulation or policy.
- Employment Standards Officers have been given the authority to direct employers to conduct self-audits in a form prescribed by the Ministry of Labour.

- The ministry will be allowed to publish information regarding employers found to contravene the Code.
- The Employment Standards Director may issue third-party demands that include recovery of fees and costs owed to the Employment Standards Branch. In addition, the repercussions for failures to comply have been clarified.
- Collections will be allowed from a joint bank account as currently provided in the **Civil Enforcement Act**.
- The legislative time limit for Employment Standards Officers to issue orders will be removed.
- Clarifications to the Code establish time periods for the recovery of earnings that are not dependent on when the order was issued, and allow orders to capture a broader range of entitlements.

8. Exemptions and exclusions related to farms and ranches

Only those farms and ranches with paid employees who are not the owner or related to the owner will be affected by this legislation. Unpaid farm and ranch workers, such as relatives, friends and neighbours helping out, will not be affected. Children doing chores or participating in activities such as 4-H, helping neighbours and friends, as well as recreational activities such as hunting will also not be affected.

- Family members are exempt from all **Employment Standards Code** provisions. "Family member" is defined in the amendment to the **Enhanced Protection for Farm and Ranch Workers Act**.
- Greenhouses, nurseries, mushroom and sod farms will continue not to be considered farms under the Code.
- Standards outlined for youth under the Code will also apply to farms and ranches.
- General holiday pay will apply. Employees who work a holiday must receive straight time pay and either:
  - General pay calculated at 4.2 percent of the previous four weeks' wages; or
  - An alternate day off, agreed to by the employer and employee.
- Vacation and vacation pay entitlements in the Code will apply. Vacation pay will be calculated on total wages, not on a maximum of 44 hours per week.
- Four days of rest must be provided for every 28 days, at the employer's discretion if the employer and employee can't agree on dates.
- Previous standards on hours of work and overtime will not apply.
- Minimum wage will apply.

9. Changes to definitions of insurance agents and securities salesmen

Previously, employers of salesmen under the **Securities Act** and 100-percent-commission-paid insurance agents were excluded from the requirement to provide certain minimum benefits to employees, namely hours of work records, holiday and vacation pay, and minimum wage.

As a result of the changes, employers of "salesmen" under the **Securities Act** are no longer excluded from these obligations. Instead, only those employers who are either a "dealer" or an "adviser" (under the **Securities Act**) are excluded from these obligations for employees who make trades in securities or derivatives for that dealer or adviser.

In addition, while entirely commission-based insurance agents (those holding an insurance agent's certificate) were previously excluded, the definition has been expanded to include those holding a "restricted insurance agent's certificate" where the employee is paid entirely by commission.

Labour Relations Code

Most of the changes to the **Labour Relations Code** came into effect when Bill 17 received royal assent on June 7, 2017. Others take effect on September 1, 2017, and the remainder on January 1, 2018. See the chart at the end for details.

The preamble to the **Labour Relations Code** will have four major themes:

1. Good employer/employee relationships foster prosperity;
2. Employers, employees and unions benefit from clear labour laws;
3. The rights of freedom of association and free collective bargaining for workers who choose a union to represent them aid economic and social well-being;
4. The Code provides fair mechanisms to choose unions, fair bargaining structures and an equitable arbitration process to resolve disputes.

Union certification and collective agreements

The processes for certifying a new trade union and decertifying bargaining units already in place will be changed as of January 1, 2018, as outlined below. Note that for collective agreements that expire after January 1, 2018, relevant changes to the **Employment Standards Code** will be deferred until January 1, 2019 or the date of a new agreement.

If between 40 percent and 65 percent of employees sign cards in favour of a union, a board-conducted vote will be required. If over 65 percent sign cards, no board-conducted vote will be required. The Labour Relations Board will retain the ability to conduct a vote for any application if there is doubt as to the

authenticity of the support, or in any other situation the board feels a vote is necessary. The decertification process would mirror the certification process as far as possible.

The restriction requiring employees in the construction industry to have worked for an employer for 30 days to participate in a union-certification vote will be removed. In addition, employees will not have up to 90 days to reconsider their decision.

Where the Labour Relations Board finds an employer has engaged in unfair practices, the board will be able to grant certification of a union without the need for a vote. Similarly, if the union has engaged in unfair practices, the board will be able to revoke a union's certificate without the need for a vote.

In addition:

- All collective agreements must be filed with the Director of Mediation Services.
- A loophole that allowed international parent unions of an Alberta building trade union to avoid the existing registration bargaining system and bargain with employers directly will be eliminated.
- The current 90-day ban on labour making the same or a similar application for union certification to the Labour Relations Board will be clarified.
- First contract arbitration will be put in place to end difficult negotiations between an employer and a newly certified union.
- When requested by a union, a collective agreement will have to provide for Rand Formula union dues check-off for all employees in the bargaining unit. Religious exemptions will continue to apply. This automatic "dues check-off" is already in place in most collective agreements. Exemptions will exist for those with religious objections that see the equivalent of dues directed toward a mutually agreed upon registered charity.
- Unions and employers will be allowed to ask for a supervised strike or lockout vote prior to the expiry of a collective agreement to be conducted after.

Arbitration

The Labour Relations Board will have specific authority to refer disputes to arbitration where there have been egregious unfair labour practices. This would align Alberta with the 1996 Supreme Court of Canada decision on the Royal Oak Mine case.

Arbitrators will be able to extend the time available in a grievance matter even after the expiration of the time frame set in a collective agreement. They will also be able to make interim orders, expedite proceedings, set dates, work with the parties to resolve differences and apply solutions in accordance with other employment legislation. Electronic hearings and submissions will be allowed in grievance arbitration hearings.

Dependent contractors: The definition of employee is changed to include dependent contractors who only work for one employer. This change allows contractors to unionize and bargain collectively.

Unfair labour practice complaints: In complaints of unfair labour practices involving discipline, dismissal or other alleged intimidation of an employee, the employer will be required to prove the action it took does not constitute an unfair labour practice, rather than requiring the employee to try to prove that it does. In these situations, the employer is the only party that really knows and can explain why the action was taken.

MERFs: All provisions of the Code dealing with Market Enhancement Recovery Funds (MERFs) in the construction industry will be removed to allow for the development of unrestricted MERFs in the future.

Union dues: The current provision of the Code that suspends the collection and remittance of union dues during an illegal strike has been removed.

Secondary picketing: Restrictions on secondary picketing have been removed and new powers to regulate substituted.

Essential services

All continuing care facilities, including those operated by the non-profit sector and those that are privately owned, are now included within essential services provisions of the Code. Strikes will be allowed; however, essential service agreements must be in place to continue operations during labour disruptions.

Health care laboratories and blood supply services are also now included in the Code's essential services provisions. Strikes will be allowed; however, essential service agreements must be in place to continue operations during labour disruptions.

Communication with remote employees: The Code is updated to allow the Labour Relations Board to facilitate a union's ability to communicate with employees working in remote or inaccessible places.

Reviewing complaints: If a union has a review process approved by the Labour Relations Board, an employee will need to use that review process for complaints that the union did not fairly represent them, prior to taking such a complaint to the board.

New powers for the Labour Relations Board

The Labour Relations Board has been given new powers, including the ability to:

- Decide how and whether to publish any of its decisions to improve privacy protection for parties;
- Require a party to produce all documents related to a matter coming before the board;
- Restrict disclosure of certain sensitive commercial or labour relations information it received;
- Review arbitration awards, rather than the courts;

- Manage proceedings that come before it, including the ability to defer a case where some other remedy may be available;
- Proceed with an application after the death or incapacity of a chairperson or vice-chair;
- Prohibit parties from making the same, or similar, applications by simply adjourning the matter indefinitely.

How farms and ranches will be affected

The **Labour Relations Code** will apply to the agricultural sector and will give waged non-family employees the ability to unionize and to bargain collectively.

Specific amendments exclude family members from the Code and allow the government to appoint a Public Emergency Tribunal to end a dispute and arbitrate an agreement, if a strike or lockout could harm livestock or damage crops.

Bill 17 Enforcement Dates

Coming into force	Areas affected	Employers
May 25, 2017	Essential services changes	Union
June 7, 2017	**Labour Relations Code** changes not mentioned in this table	Union
September 1, 2017	Certification, revocation and judicial review changes	Union
January 1, 2018	Farm and ranch employees and dependent contractors	Union
January 1, 2018	Most **Employment Standards Code** requirements not mentioned in this table	All
May 1, 2018	Youth employment provisions	All
January 1, 2019, or the date of a new collective agreement, whichever is earlier	The new standards of the **Employment Standards Code** (sections 6 to 67) where a collective agreement is in effect on January 1, 2018	Union