

By-Law Special Bulletin:

New Workplace Laws and How They May Affect You

On June 7, 2017, the *Fair and Family-Friendly Workplaces Act* (Bill 17) received royal assent. This Act sets out much-publicized changes to Alberta's two major pieces of employment and labour legislation: the *Employment Standards Code* and the *Labour Relations Code*. The *Employment Standards Code* sets out the minimum requirements that all employers must provide to employees in Alberta. The *Labour Relations Code* sets out the law in Alberta with respect to the organization and regulation of unions and unionized workplaces.

Bill 17 contains significant changes that are meant to modernize the laws in Alberta with respect to workplaces. The changes to the *Employment Standards Code* will take effect on January 1, 2018. As such, it is essential for employers to understand the changes and modify their practices and policies as necessary so their workplace rules comply with the new statutory requirements.

Most Alberta employers are non-unionized workplaces. As a result, this article will focus on the changes to the *Employment Standards Code*, with a brief mention of the changes to how a union can be certified in a workplace.

Leaves of Absences

The *Employment Standards Code* currently contains a few mandatory leaves – maternity, reservist and

compassionate care – where employers are required to keep positions available for employees. The changes in Bill 17 that we expect will have the most significant effect on employers are the substantial increases in the leaves of absences available to employees. The changes to the current leaves include the following:

- **Maternity/Parental Leave:** Employees become entitled to maternity and parental leaves after being employed for 90 days, rather than one year as required under the previous legislation. In addition, maternity leave is increased from 15 weeks to 16 weeks.
- **Compassionate Care Leave:** Employees become entitled to compassionate care leave after 90 days of employment. The possible length of compassionate care leave is extended from 8 weeks to 27 weeks. The changes also remove the requirement that the employee seeking the leave be the “primary caregiver” of the seriously ill family member.

There are seven new leaves of absences that will come into effect in 2018, which are set out below. For all leaves, employees are eligible to receive them after being employed for at least 90 days:

- **Death or Disappearance of Child Leave:** If an employee's child dies or goes missing, employees will be entitled to up to 52 weeks

of leave if the child disappears as the probable result of a crime or up to 104 weeks if the child dies as the probable result of a crime.

- **Critical Illness of Child Leave:** If an employee's child becomes critically ill, that employee will be entitled to up to 36 weeks of leave.
- **Long-term Illness and Injury Leave:** Employees will be entitled to up to 16 weeks of leave per calendar year for illness, injury, or quarantine of the employee. The employee will have to provide a medical certificate setting out the estimated duration of the leave.
- **Domestic Violence Leave:** An employee will be entitled to up to 10 days of leave if they become victims of domestic violence.
- **Personal and Family Responsibility Leave:** Employees will be entitled to up to 5 days of leave per year where leave is necessary for the health of the employee or for the employee to meet their family responsibilities in relation to a family member.
- **Bereavement Leave:** Employees will be entitled to up to three days of bereavement leave on the death of a family member.
- **Citizenship Ceremony:** Employees will be entitled to up to half a day leave to obtain a certificate of citizenship.

For all of the above leaves, employers cannot terminate or lay off employees while they are on leave. Employers must reinstate employees returning from leave to their previous position or alternative work of a comparable nature.

In summary, there will be many more circumstances where employees will be entitled to seek and receive unpaid leave.

Overtime

Bill 17 makes two key changes to overtime agreements with respect to employees taking time in lieu of overtime. First, the time in lieu will have to be taken within 6 months of when it was earned, rather than 3 months. Second, unlike the previous legislation where employees received 1 hour in lieu for every 1 hour of overtime, employees will receive 1.5 hours in lieu for every 1 hour of overtime.

Averaging Agreements

Compressed work weeks, which permitted employees to work up to 12 hours in a day without being paid overtime in the old legislation, will be removed from the *Employment Standards Code*.

Instead, the legislation will allow employers to enter into averaging agreements with one employee or a group of employees. The averaging agreement can cover a cycle up to 12 weeks in length, averaging the employee's hours over that cycle. It must:

- be in writing,
- provide a start and an end date for a term less than two years,
- specify the number of weeks which will be averaged,
- specify the scheduled daily and weekly hours of work, up to 12 hours a day and 44 hours a week,
- set out the manner in which overtime pay or time off with pay will be calculated.

If you have employees who work fewer days per week and more than 8 hours per day, you will want to consider putting in place an averaging agreement or otherwise be subject to increased overtime costs.

Holiday Pay

Employees will become immediately eligible for

holiday pay. They will no longer be required to work for 30 days before being entitled to holiday pay.

Administrative Penalties

Bill 17 will contain a new administrative penalties system that will allow for the imposition of penalties up to \$10,000 per day for each contravention. This will be administered by Employment Standards officers and will likely be a very significant tool of enforcement after it is adopted and the officers are trained. A similar system was adopted under the *Occupational Health and Safety Act* in 2013 and has seen increased use every year since.

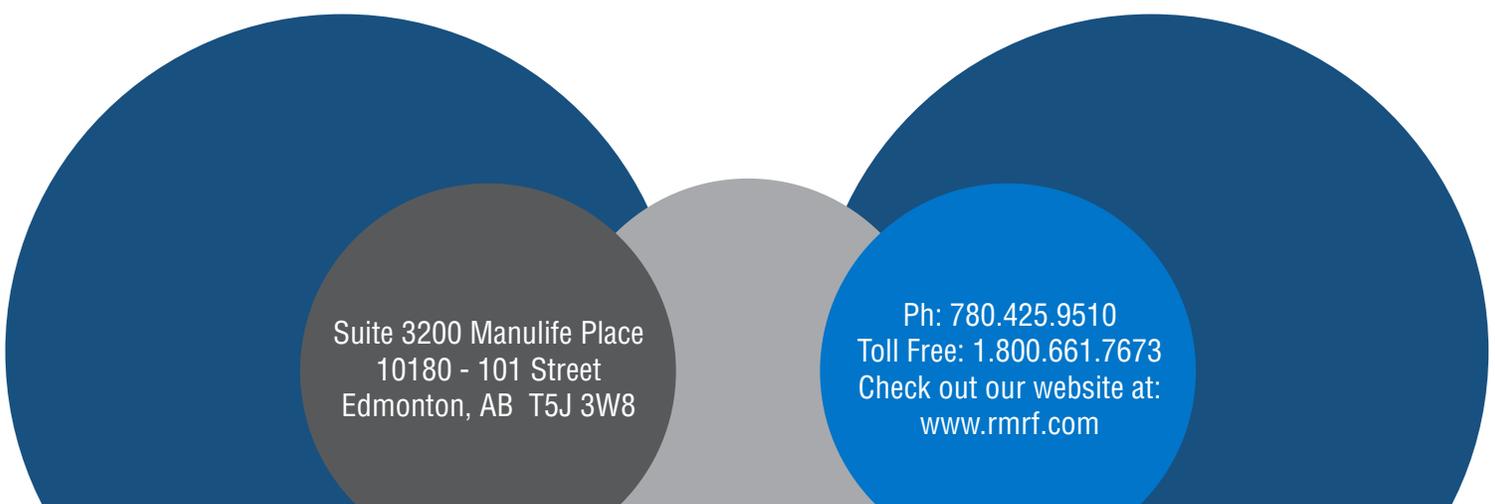
Union Certification

Of the changes to the *Labour Relation Code*, questions arise as to how employees can unionize. The amendments in Bill 17 will set out that if more than 65% of employees in a proposed bargaining unit sign up with the applying trade union, then certification of the bargaining unit will be automatic and not require a representation vote. It will still require a union to apply, rather than a group of employees doing so independently. These changes will take effect September 1, 2017. It is not anticipated that these changes will make a substantial difference to most non-unionized employers.

Conclusion

In light of the numerous changes and the enhanced risk of liability arising from the administrative penalties regime, all employers should review their policies and procedures to ensure their workplace will comply with the new laws before they take effect on January 1, 2018. Since the *Employment Standards Code* sets minimum requirements, any contractual terms that do not meet those requirements will be void and unenforceable. Therefore, employers should review all existing employment contracts they have with their staff to ensure that all leave requirements and overtime requirements are in line with the new legal landscape.

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