

# Alberta Compliance Alert: Sweeping, Pro-Employer ESC Changes Take Effect November 1, 2020



The past 3 years have been a roller coaster ride for Alberta employers. It began in 2017 when the province's then Liberal government adopted legislation (Bill 17, aka, *Fair and Family-Friendly Workplaces Act*) making sweeping, employee-friendly changes to employment and labour laws. Two years later, an abrupt change in direction occurred when Alberta's newly elected Progressive Conservative government passed pro-employer "*Open for Business*" legislation peeling back parts of Bill 17. And with COVID-19 under seeming control, the PC government renewed its counteroffensive on July 7 by tabling new Bill 32, *Restoring Balance in Alberta's Workplace Act*. Here are the 10 Bill 32 revisions to the Alberta *Employment Standards Code* (ESC), which are almost sure to pass, HR directors in Alberta need to know about.

## 1. Extension of Temporary Layoffs

**Current Rule:** Temporary layoffs can last up to 60 days within a 120-day period (although that period has been temporarily extended to 180 days for COVID-19 layoffs).

**Change:** Bill 32 would extend the layoff period to 90 days within a 120-day period and allows for even longer layoffs if:

- The employer agrees during the extension period to either pay wages (or an amount instead of wages) to employees, or continue employees' benefits or pension contributions; or
- A collective agreement provides for a longer layoff.

## 2. No More Advance Notice for Temporary Layoffs

**Current Rule:** Employers must give employees 1 or 2 weeks' advance notice of layoffs depending on how long the person has been employed, unless a collective agreement provides otherwise.

**Change:** Bill 32 would eliminate the advance notice requirement.

### **3. No More Employee Notice of Group Termination**

**Current Rule:** Employers must give advance notice to terminate a group of 50 or more employees: (1) of 4 weeks to the government; and (2) to the employees and unions by a time that varies depending on the size of the group: (i) 50 to 99 employees: 8 weeks; (ii) 101 to 299: 12 weeks; and (iii) 300 or more: 16 weeks.

**Change:** Under Bill 32, employers need only provide the 4 weeks' government notice of group termination and don't have to provide notice to the employees and unions.

### **4. More Time to Pay Final Earnings Upon Termination**

**Current Rule:** Employers must pay a terminated employee's earnings no later than 3 consecutive days after the last day of employment. As a result, employers may have to run costly off-cycle payments.

**Change:** Employers can provide final pay to terminated employees either:

- 10 consecutive days after the end of the pay period in which they were terminated; or
- 31 consecutive days after the last day of employment.

### **5. Consent No Longer Required to Deduct Overpayments**

**Current Rule:** Employers must get an employee's written consent to deduct overpayments due to payroll errors or vacation pay provided in advance. If they can't get consent, they have to sue the employee to recover the overpayment.

**Change:** Employers will no longer need consent to make deductions for overpayments and vacation pay advances, as long as:

- The overpayment happened within the past 6 months; and
- The employer gives the employee written notice of the deduction in writing.

### **6. Simplification of Holiday Pay Calculations**

**Current Rule:** Employers must include vacation pay and general holiday pay in calculating an employee's average daily wage for purposes of determining his/her general holiday pay entitlement.

**Change:** Employers will no longer have to figure vacation and general holiday pay into the equation and can calculate average daily wage by averaging total wages earned over whichever of the following the employer chooses:

- The 4 weeks immediately preceding the general holiday; or
- The 4 weeks ending on the last day of the pay period that occurred just before the general holiday.

### **7. Averaging Agreements Can Last Longer**

**Current Rule:** Hours of work under an averaging agreement can be averaged over a period of 1 to 12 weeks.

**Change:** Averaging of hours will be allowed for a period of up to 52 weeks.

## 8. Employers Can Impose Compressed Work Week Agreements Unilaterally

**Current Rule:** To implement compressed work week arrangements, employers must get the consent of the individual employee or a majority of the employees the arrangement affects.

**Change:** Employers will be able to impose compressed work week arrangements without employee consent as long as they provide written notice at least 2 weeks in advance.

## 9. More Flexibility for Rest Periods

**Current Rule:** Employers must give employees a paid or unpaid rest period of at least 30 minutes *within* every 5 consecutive hours of work unless an exception applies.

**Change:** Employers will be allowed to give employees a paid or unpaid rest period of at least 30 minutes *either within or after* the first 5 hours of a shift, as well as a *second rest period* if the employee works a shift of 10 hours or longer. As under current rules, the sides can agree to split the rest period into a pair of 15-minute breaks.

## 10. Clarification that Vacation Accrues During Unpaid Leaves

**Current Rule:** The ESC doesn't expressly say whether employees continue to accrue vacation when they're on parental, maternity and other unpaid ESC leaves, although the general consensus is that they do.

**Change:** Bill 32 clarifies that vacation entitlements continue to accumulate while an employee is on ESC leaves.

## What Happens Next

If and when Bill 32 passes, it will take effect November 1, 2020. Exceptions: Changes to temporary layoff and group termination rules (Changes 1 to 3 above) are slated to go into effect on August 15, 2020.