

# Alberta Government Announces Details of Alberta Recovery Plan and Overhaul of Employment and Labour Legislation



On June 29, 2020, the Alberta Government released the “*Alberta Recovery Plan*” (the “**Recovery Plan**”), which provides details on the government’s plan to address the economic challenges faced by the Province due to the COVID-19 pandemic and the decline in oil prices. The Recovery Plan includes supports for small and medium businesses, tax cuts, increasing opportunities for investment in Alberta, and reforms to employment legislation. To assist businesses in understanding the resources available to them under the Recovery Plan, we have prepared this comprehensive resource summarizing the various initiatives planned by the Alberta Government.

## Support for Businesses

The Alberta Government has committed up to \$200 million in funding for the “*Small and Medium Enterprise Relaunch Grant Program*” (the “**Relaunch Grant Program**”). The Relaunch Grant Program offers financial assistance to businesses, cooperatives, and non-profit organizations that were (i) required to close or reduce their operations because of public health orders issued by Alberta’s Chief Medical Officer of Health; and (ii) that can demonstrate a revenue reduction of at least 50% in April 2020 and/or May 2020 as a result of these public health orders.

Organizations that are eligible under the “*Small and Medium Enterprise Relaunch Grant Program Guidelines*” may submit an application through their MyAlberta Digital ID (MADI) Account. Instructions on how to create a MADI can be found in the “*Small and Medium Enterprise Relaunch Grant Application Companion Guide*”.

Eligible businesses may be able to receive a one time grant for 15% of the organization’s pre-COVID-19 monthly revenue up to a maximum amount of \$5,000 per business, cooperative, or non-profit organization.

Applications for intake into the Relaunch Grant Program are currently open and will remain open until the later of: (i) August 31, 2020; or (ii) for 4 weeks following the start of Phase 3 of “*Alberta’s Relaunch Strategy*”. Until July 4, 2020, eligible organizations may apply for intake based on region. After July 4, 2020 eligible organizations may apply at anytime before the program closes.

## Job Creation Tax Cut

On June 28, 2019, the “*Job Creation Tax Cut (Alberta Corporate Tax Amendment) Act*” (the “**Job Creation Tax Cut**”) received Royal Assent and provided for a phased-in reduction of Alberta’s corporate tax rate from 12% to 8% over a 3 year period, reaching 8% on January 1, 2022. As part of the Recovery Plan, the implementation of the Job Creation Tax Cut has been accelerated and the Alberta corporate tax rate has been reduced to 8% effective July 1, 2020. The accelerated implementation of the Job Creation Tax Cut means that Alberta’s corporate tax rate remains the lowest in the country.

On July 22, 2020, the Alberta Government announced that it was introducing the Innovation Employment Grant (“**IEG**”). The IEG will begin on January 1, 2021 and will reward small and medium-sized businesses that make investments in technology and innovation by providing a grant of up to 20% of qualifying research and development expenditures. The IEG will include:

- An 8% payment towards a corporation’s research and development spending in a given year, up to its base level of spending; and
- A 20% payment towards a corporation’s research and development spending that exceeds its base level of spending.

A corporation’s base level of spending will be determined by calculating its average qualifying research and development spending over the previous 2 years. Eligible expenditures will be the same as those expenditures that qualify for the federal *Scientific Research and Experimental Development Tax Incentive Program* (SR&ED Program).

The IEG will target smaller, pre-income firms performing research and development that are not immediately benefiting from the Job Creation Tax Cut and will phase out grants for firms with between \$10 million and \$50 million in taxable capital. As the smaller, pre-income firms become more profitable, they will graduate to the Job Creation Tax Cut. The IEG will be delivered through the corporate tax system and will replace the *Alberta Investor Tax Credit* and the *SR&ED Credit* that were eliminated at the provincial level by the Alberta Government on December 5, 2019 through *Bill 20, the Fiscal Measures and Tax Act, 2019*.

## **Investment Programs**

Under the Recovery Plan, the Alberta Government has committed to increase investment opportunities for technology start-up companies through increased funding of existing programs and the creation of additional grants.

There will also be an additional \$200 million spending in funding to support and accelerate research, innovation and entrepreneurship through programs such as Alberta Innovates. Currently, Alberta Innovates offers 33 different funding programs.

The Alberta Government will also be eliminating all of Alberta’s procurement exceptions from the *Canadian Free Trade Agreement* in order to create more competition for contracts and enable Alberta companies to bid in larger Canadian markets. There are currently 14 procurements exceptions that exist for Alberta.

A new investment agency called “*Invest Alberta Corporation*” will also be created to lead an aggressive worldwide campaign to attract job creation, investment, retooling and expanding Alberta’s network of international offices. On July 7, 2020, the Alberta Government introduced Bill 33, the *Alberta Investments Attraction Act*. If passed, Bill 33 will create the “*Invest Alberta Corporation*”, which would be an arm’s length agency to promote Alberta as a prime investment location for businesses across Canada and around the world. Bill 33 also outlines the creation of a public board to

oversee the corporation's operations and investment attraction activities.

On July 9, 2020, the Alberta Government announced the *Alberta Petrochemicals Incentive Program*, which will bring multi-billion dollar investments to petrochemical projects throughout Alberta. During the ten year program period, eligible projects under the program must be built and operational. Once the projects are built and operational, grants will be issued to companies. The Alberta Government will work with members in the industry over the summer to finalize the program guidelines.

On July 22, 2020, the Alberta Government also announced that it would be investing an additional \$175 million into the Alberta Enterprise Corporation (the "**AEC**"). The AEC invests in the venture capital industry in Alberta and the AEC will use this money to support Alberta's tech entrepreneurs with access to capital, operational expertise, and industry networks to grow their businesses.

## **Employment Matters**

The Recovery Plan also details several changes to various employment regimes to attract investment and create new jobs for Albertans.

To create more employment opportunities for Albertans, the Alberta Government will be asking the federal government to suspend large sections of Alberta's *Temporary Foreign Worker Program* to limit the number of new temporary foreign workers who enter Alberta over the next twelve (12) months.

The Alberta Government will also be temporarily reducing its permanent resident nominations by one third under the *Alberta Immigrant Nominee Program*. In addition, policy work will also be completed to reform the *Alberta Immigrant Nominee Program* into the *Alberta Advantage Immigration Program* creating at least four new streams to create jobs in technology start-up ventures. Two of these new streams will be the *Foreign Graduate Startup Visa Program* and the *International Student Entrepreneurship Program*. The launch of these programs will be accelerated and matched with an aggressive promotional campaign focused on top foreign graduates of US Universities who may not be welcomed into the United States after the President of the United States' Proclamation on June 22, 2020 (the "**Proclamation**"), which restricted the entry of certain visa holders, including holders of H1-B's. The Alberta Government will create a start-up visa that will offer fast-track processing for qualified graduates of top universities if they commit to launch a start-up enterprise in Alberta, and will offer a bridge to permanent residency through the *Alberta Immigrant Nominee Program*.

The *Employment Standards Code* ("**ESC**") and *Alberta Labour Relations Code* (the "**Labour Relations Code**") will also be amended to cut "red tape" that may impede job creation. On July 7, 2020, the Alberta Government introduced Bill 32, the *Restoring Balance in Alberta's Workplaces Act*. If passed, Bill 32 would introduce the several changes to the *ESC*, including:

- **Overtime.** Averaging agreements will become averaging arrangements, which are significantly more employer friendly, including: removing the requirement for employee consent and allowing employers to unilaterally implement averaging arrangements on 2 weeks' notice; changing the time period limit of averaging arrangements from 12 weeks to 52 weeks; and permitting employers to specify in the averaging arrangement how the daily and weekly hours can be modified.
- **Lay-offs.** The temporary layoff provisions will be amended, including a removal of the requirement to provide advance notice of a layoff, and extension of the temporary layoff period from 60 days in a 120 day period, to 90 days in a 120 day period (for layoffs as a result of COVID-19, the temporary layoff period

permitted is 180 days).

- **Group Terminations.** The group termination provisions will be amended, such that the required notice is now only 4 weeks for any termination of 50 or more employees in the same location within a 4 week period, whereas it had previously been 8 to 16 weeks. Also, employees and bargaining agents are no longer required to be notified.
- **Payment of Earnings.** The time period for payment of earnings after termination of employment will be relaxed, with earnings now being due either 10 days after the end of the period in which the termination occurs or 31 days after the termination date. Previously, earnings were required to be paid within 3 or 10 consecutive days following a termination, depending on whether the termination was with or without cause.
- **Deductions.** Employers will be permitted to make deductions for overpayment of wages in error provided that they do so within 6 months of the overpayment. Employers will also be permitted to make deductions for advanced but unearned vacation pay. In both cases the employer must give notice of the deduction, but employee consent is no longer required.
- **Holiday Pay.** The method for calculating holiday pay will be revised to the employers' choice of the average wages (excluding vacation pay and previously paid holiday pay) in either the 4 week period preceding the general holiday or the 4 week period ending on the last day of the pay period immediately preceding the general holiday.
- **Breaks.** Periods of rest will be revised such that employees must work 5 hours to receive their first 30 minute paid or unpaid period of rest, and 10 hours to receive their second 30 minute period of paid or unpaid rest.
- **Statutory Leave.** Time that employees spend on a statutory leave will be expressly stated to count for determining the statutory minimum vacation entitlement under the *ESC*.
- **Other.** Other portions of the *ESC* will also be amended, including specific provisions which will allow for collective agreements to override certain requirements in the *ESC*, as well as provisions which will allow for easier access to exemptions or variances to employment standards.

The majority of the changes to the *ESC* will take place on November 1, 2020, although the provisions respecting group terminations, temporary layoffs and a few others will take place on August 15, 2020.

In addition, Bill 32 also has significant proposed amendments to the *Labour Relations Code* including:

- **First Contract Arbitration.** First contract arbitration will be an option of last resort, such that the Labour Relations Board (the "**Board**") will only be able to order first contract arbitration if a certain threshold is met. E.g., failure to: meet and bargain, recognize the authority of the union to bargain, or make reasonable efforts to conclude a collective agreement.
- **Union Dues and Financial Statements.** Union dues will be made more transparent, including with a requirement that unions provide members with financial statements in the form set out in the *Labour Relations Code*, and also requiring that no dues be charged for items such as political activities unless members opt in.
- **Reverse Onus.** Use of "reverse onus provisions" will be limited to complaints for wrongful terminations against employers and unfair labour practice complaints against unions.
- **Collective Agreement Renewal.** Early renewal of existing collective agreements will now be permitted with informed employee consent and ratification of the collective agreement by a majority vote of the employees.

- **Picketing.** The provisions regarding picketing have been substantially modified, including prohibition against obstructing or impeding a person who wishes to cross the picket line and picketing at a secondary location will now require an order of the Board.
- **Board Powers.** The Board's powers will be expanded, including the ability to dismiss complaints in the preliminary stages, as well as award costs in grievance arbitration reviews.
- **Remedial Certification.** The Board's ability to order or deny certification as a remedy will be limited to situations where a prohibited practice results in a vote that does not reflect the employees' true wishes and no other remedy would be sufficient.
- **Certification/Revocation Applications.** Certification and revocation applications provisions will be revised to remove the current timelines and require that Board decisions be provided within six months. Further, unions will be prohibited from repeating certification applications for six months where the union has engaged in a prohibited practice relating to a certification.
- **Arbitrator Powers.** The power of arbitrators will be limited such that they can no longer provide relief for certain timelines under the *Labour Relations Code*. Arbitrators may also now consider Alberta labour arbitration principles, whereas they were previously restricted to Canadian labour arbitration principles.
- **Post-Secondary Interest Arbitration.** Post-Secondary Interest Arbitration in academic staff collective agreements will be rendered void.
- **Nurse Practitioners.** Nurse practitioners will be included under the *Labour Relations Code*.
- **Construction Industry.** There are also various changes specific to the construction industry, including:
  - Prohibiting early termination of collective agreements and allowing collective agreements to be renewed with overlapping periods in certain circumstances, in order to address issues with competing union raids.
  - Clarification of application of provisions relating to Building Trade Unions, including those involving discipline such as fines.
  - Permitting industrial unions to apply for all-employee bargaining units.
  - There are also proposed changes to major construction projects, including: permitting Building Trades of Alberta to negotiate specific project agreements, which would exclude the application of any other collective agreements between the employer and any unions; providing the Minister (as opposed to the Cabinet) with the power to approve major construction projects within 120 days of the application; permitting major construction owners to serve as the principal contractor and negotiate major project agreements; and the inclusion of arbitration provisions where parties cannot reach agreement.

Most of the changes to the *Labour Relations Code* would take effect upon Bill 32 receiving Royal Assent, except for those relating to union financial statements and dues, early renewal of collective agreements, picketing, nurse practitioners and provisions addressing the construction sector (except major construction projects).

## Other Programs

The Alberta Government has also committed to the following under the Recovery Plan:

- Releasing a technology and innovation strategy in fall 2020;
- The development of a plan to use Canada Infrastructure Bank (CIB) to help rebuild and diversify Alberta's economy, with a particular focus on growing key economic sectors like tourism, agriculture, and energy;
- Leveraging \$476 million in stimulus funding through the *Technology Innovation*

*and Emissions Reduction (TIER) fund* for investments in technology and innovation to reduce emissions; and

- Acceleration of the *Fairness for Newcomers Action Plan*, with support by the *Fair Registration Practices Act*, to speed up the process of credential recognition of newcomers to Alberta to allow them to practice in the careers they have received training for.

## **Gowling WLG Focus**

As we navigate through the various challenges posed by the COVID-19 pandemic, we expect the Alberta Government to continue to monitor the situation and provide suitable responses to assist businesses and individuals.

For most employers, the proposed changes under Bill 32 are likely to be a welcome change. While some changes, such as calculation of the average daily wage and payment of termination pay, will help simplify the day-to-day payroll side for employers, other changes may help to keep employers in business, such as making averaging arrangements easier to implement and reversing many of the union favourable changes made in 2017.

The acceleration of the corporate tax cut to 8% effective July 1, 2020 is also welcome news for Alberta corporations given the current economic climate, and should have the intended result of accelerating job creation and stimulating economic growth in this challenging environment.

The numerous investment programs announced by the Alberta Government aimed at injecting capital into various industries is indicative of the commitment to assisting current businesses overcome the challenges they face as well as providing a channel for recent graduates, entrepreneurs and new, innovative companies and to view Alberta as a promising place to start up their business ventures.

We will continue to provide regular updates with respect to the Alberta Government's programs and announcements as additional information becomes available.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

by Zafar Jaffer , Amy-Lynn Kosick , Ted Thiessen , Timothy Bailey , Simanpreet Panaych and Natalie Gillespie, Gowling WLG