

Temporary Changes To Alberta Employment Standards Legislation



On April 6, 2020, the Alberta Government announced temporary changes to the *Employment Standards Code* and *Employment Standards Regulation* to assist employers and employees in this difficult time. What we know about the changes so far, and their potential impact on employers, is set out below. The Government has stated the changes will be in place for as long as it determines they are needed and the Public Health Emergency Order remains in place.

1. Extension of Temporary Layoff Period: Perhaps the most noteworthy change for employers is the extension of the maximum temporary layoff period in the Code from 60 days to 120 days. This means that if an employer temporarily lays off an employee, the employee's employment will not terminate until the 121st day of layoff. Termination under the current Code provision kicks in after 60 days of layoff in 120 days. It has not yet been announced if the extension will be in regard to 120 days in some period of days greater than 120. The change is retroactive to March 17, 2020, which means that the 120-day temporary layoff period applies to layoffs that occurred on or after that date.

This is a welcome change for employers who cannot afford to continue benefits or pay some amount instead of wages in order to extend the temporary layoff beyond 60 days. Employers will still need to keep in mind the potential risk of a constructive dismissal claim if they do not have a contractual right to temporarily layoff the employee.

2. New Family Leave: Employees who cannot work because they need to care for children as a result of the closure of schools or daycares, or who need to care for an ill or self-isolated family member, are now entitled to unpaid, job-protected leave. A medical note is not required, and the 90-day employment requirement that typically applies to such leaves has also been waived. The length of the leave is flexible based on the advice of the Chief Medical Officer – which means we don't know exactly how long such a leave might last. The Minister stated in his announcement that the leave is retroactive to March 17, 2020.

Employers who were planning to temporarily layoff or terminate the employment of any employee who qualifies for such a leave will likely need to reconsider. Additionally, employees who qualify for the leave and who were terminated or temporarily laid off between March 17, 2020 and April 6, 2020 may need to be reinstated or removed from the layoff and placed on a leave of absence as of the termination or temporary layoff

start date. In that case, a new ROE will need to be issued reflecting the leave of absence instead of termination or layoff due to lack of work. These employees are now considered to be entitled to job-protected leave of an unknown duration. Under the legislation prior to the changes, there was an exception to the protection from termination or layoff where an employer suspended or discontinued part or all of its operations. It is not yet apparent if this exception will apply to the new family leave.

As noted, the leave is unpaid, so employers are not required to pay employees during this period. Employees who qualify for this leave will be able to apply for the Canada Emergency Response Benefit or Employment Insurance.

3. Elimination of Specific Notice of Shift/Schedule Changes: The requirement for an employer to provide 24 hours written notice of a shift change to an employee has been removed. The requirement to provide two weeks' notice of a schedule change under an averaging agreement has also been removed. Instead, employers will be required to provide notice of such changes to employees as soon as is practical. This provides employers with much-needed flexibility in a rapidly changing environment.

4. Removal of Group Termination Notice: Employers who have to terminate the employment of more than 50 employees at one location within a four-week period will not have to provide eight to 16 weeks' notice of the group termination to employees and unions. The employer will still be required to notify the Minister. As well, the Code's individual termination notice requirements will continue to apply.

This change will allow employers to proceed with group terminations where necessary without being concerned about complying with the lengthy notice requirements that existed prior to this change. Many employers were concerned about the significant financial impact compliance with the group termination notice periods would entail. Each employee will still be entitled to termination notice or termination pay under the individual termination provisions of the Code.

5. Streamlining of Variances: the provisions regarding variances (permits which allow the relaxation of certain employment standards for particular workplaces) are being relaxed to make them easier to obtain. The Government has not provided the details of how these provisions will be relaxed but it is expected they will better allow employers to respond quickly to the current situation.

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

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