

IMPACTS TO EVERY BUSINESS: WHAT NEW WORKPLACE LEGISLATION MEANS FOR YOU

We don't need to tell you how tough things have been in Calgary for our business community. Over 84,000 Calgarians are looking for work and 7,000 business closed their doors last year. While seeing a reduction in access to capital and economic activity, many businesses have also seen their property tax bills go up, seen an increase to minimum wage and corporate taxes, and seen their heating and transportation costs rise. And now the government is adding new rules around how you manage your workforce.

On May 24, 2017, the provincial government tabled Bill 17, titled *The Fair and Family-Friendly Workplaces Act*. Bill 17 contains significant changes to Alberta's Labour Relations Code (LRC) and the Employment Standards Code (ESC). Taken together, these acts legislate most of the employer-employee relationship and will impact nearly every business in Calgary.

Bill 17 includes 125 pages of legislative amendments, with more details to come in regulations. We at the Chamber have tried to simplify and summarize for you the most impactful changes and what these may mean for you. Where possible we have used the government's own language. You can find their summaries [here](#).

So, what are some of these changes?

Easier union certification

Bill 17 makes it possible to certify a union without a vote. Currently, if employees want a union, they need to have at least 40% of employees in a bargaining unit sign on, and that threshold allows for a secret ballot vote. Under Bill 17, if between 40% and 65% of employees sign cards in favour of a union, a board conducted vote would still be required. However, if over 65% sign cards, no board conducted vote is required. The last time we saw a certification system like this in Alberta was pre-1988.

In a recent Calgary Chamber survey, 74% of you – Calgary businesses – said they will be negatively impacted if the opportunity for employees to vote on joining a union is eliminated. The fundamental right that is afforded to all citizens in a democratic society is the right to vote in private, shielded from public harassment, intimidations, and the fear of retaliation.



The window in which unions have to obtain signatures during an organizing campaign will increase from 90 days to six months. If you are not interested in joining a union, six months is a long time to keep saying no.

A restriction that currently requires employees in the construction industry to have worked for an employer for 30 days before participating in a union certification vote, is being removed. If you have heard of the term “salting,” this is what it refers to. In addition, employees will no longer have up to 90 days to reconsider their decision.

The definition of an “employee” will be changed to include dependent contractors who only work for one employer. This change allows contractors to unionize and bargain collectively. Changes could have significant ramifications for existing contractual relationships and could create a disincentive to hiring, at a time when Alberta would like to see more economic development.

The Bill also now includes farm and ranch workers (non-family members) in the definition of employee, which will likely result in efforts to unionize some farming and ranching operations.

Under Bill 17, in cases where employers have engaged in unfair practices, the Labour Relations Board would be able to grant certification of a union without a vote. The Chamber does not support forced, imposed or automatic union certification as a remedy in cases of unfair labour practice provisions, because union certification may result in situations where the majority of employees do not want union representation. In a recent Calgary Chamber survey, 77% of businesses believe this change will negatively impact their business. There are existing rules to deal with unfair labour practices.

Reverse onus

The government of Alberta has implemented a reverse onus provision within Bill 17. The provision forces employers to prove their innocence if they are accused of disciplining or discharging someone because of union membership or involvement. We currently have a labour relations environment in Alberta that is balanced by the requirements of the Code, and the Chamber supports the current process for managing complaints of unfair labour practices.

We recognize that sometimes employers hold information regarding, for example, why an employee has been dismissed. In these circumstances, it is reasonable for employers to be required to disclose the information in a dispute. This is different than legislating reverse onus.



We do not think it is right that as a matter of policy, employers are presumed to have an improper intent. This would be a significant change and is contrary to the notion of “innocent until proven guilty.”

Reduced negotiating tools

The Chamber is concerned that Bill 17 shifts the balance on the labour landscape towards more and stronger unions. Currently, unions must negotiate for the inclusion of union dues. Under Bill 17, they will now be automatically included if requested by a union.

New rules around First Contract Arbitration means that if the parties negotiating a first collective agreement are unable to reach an agreement (within 90 days of a notice to commence bargaining being served, or of bargaining commencing), they can apply to the Board for a variety of remedies. These include an order compelling binding arbitration or allowing a strike or lockout to proceed during the negotiation of a first collective agreement.

We believe this could undermine the requirement for parties to seek a negotiated settlement and creating a disincentive to reach a mutually agreed upon solution.

In a recent Calgary Chamber survey, 57% of members said they will be negatively impacted by the automatic inclusion of the Rand Formula (inclusion of union dues). 71% of business respondents believe they will be negatively impacted by First Contract Arbitration.

We believe the current system works, as 99% of disputes within the last five years have been solved without a strike or lockout.

Employment Standards Code (ESC)

Much of the government communication and advertising has focused on promoting the “family friendly” changes to employment standards code, specifically compassion care leaves. The Chamber is not against changes such as making existing leaves job protected; meaning employees cannot be fired while on an unpaid leave. We agree it makes sense to align available leaves, with available employment insurance coverage. Nor is the Chamber against some of the new proposed unpaid leaves such as those proposed for the death of a child or domestic violence. We support these moves.



Compressed work week

Compressed work weeks are arrangement that allow employees to work more hours in a day, but less days a week (i.e. 4 days at 10 hours a day). Going forward, all such agreements would require support of the majority of affected employees, or be contained within a union collective agreement. It is not yet clear how approval for scheduling, would be made with non-union employees.

Overtime

Currently, every overtime hour worked corresponds with one banked hour. Bill 17 will mandate that overtime be banked for up to six months (up from three months) at a rate of one and a half hours banked, for every hour of overtime worked (up from 1:1).

In a Chamber survey, 80% said changing how overtime is banked, calculated or scheduled will have a negative impact on their business.

Paid Holidays

There are nine available paid holidays in Alberta. Currently to be eligible, an employee must have worked for the same employer for at least 30 days in the 12 preceding months, and the holiday must also be a normal work day for the employee. Bill 17 will allow for employees to be automatically eligible and paid for all holidays, even if the holiday does not land on a regular work day.

During consultation with members, 76% said changes to paid holiday calculations will have a negative impact on their business.

Rest periods

Currently, workers are guaranteed 30 minutes of rest per shift that exceeds 5 hours. Bill 17 requires a 30-minute rest period be provided for each 5 consecutive hours that are worked (vs. per shift).

Vacation pay

The ESC would be clarified to indicate that employees must be paid 4% or 2 weeks of their total wages as vacation pay until they have been employed for 5 years, after



which they must receive at least 6%. There may be changes as to how vacation pay is calculated, i.e. more than the basic wage.

Statutory leaves

In addition to protecting existing unpaid leaves and adding some new ones, Bill 17 reduced the eligibility or the time an employee has to work at the same business before being eligible for a leave, to 90 days. Currently an employee must work for the same employer for a year, or 52 weeks before being eligible for leaves. Another change is that employees can return from a leave with 48 hours notice to their employer, instead of two weeks. This could pose difficulties for employers managing temporary staff.

In a Chamber survey, 80% of respondents said adding new leaves or reducing eligibility requirements will have a negative impact on their business.

Consultations

The Chamber is very concerned about the short consultation period for all these changes. In Ontario, the government spent two years reviewing their workplace legislation. In Alberta, there was a 36-day consultation period.

Stakeholders had to interpret what provisions were under consideration based on an online survey about the employment standards code, and a mandate letter to Andrew Sims, the lawyer asked to recommend changes to the labour relations code. When asked about the short consultation period, Mr. Sims is quoted as saying that he has 45 years' experience in this field, and "most of this is not new to people who are expert in the field." The small and medium sized businesses at the Calgary Chamber are not experts in this, but still deserve to have their voices heard.

The government said the bill hadn't been written in advance, but the consultations closed on April 18, 2017, and according to their website, received nearly 5,000 surveys and 340 written submissions. Less than four weeks after receiving these submission, on May 23, 2017, the government tabled 150 pages of legal amendments.



Conclusion

We believe Alberta's current labour relations framework largely supports industry's economic competitiveness by enabling fairness for unions, employees, and employers, all while enabling the labour market to adjust to meet economic needs.

Chamber members support the protection of workers and the alignment of benefits in Alberta with available employment insurance coverage. In fact, most employers consider their employees to be among their greatest assets. Let us be clear, the Chamber, and many employers, support the portions of the Bill that relate to expanding protected leaves.

After a reduction in corporate income taxes and fees – the next thing Calgary businesses think government can do to support Calgary business is a more business-friendly perspective or tone. We do not want to simplify this discussion into a political argument that pits employee versus employer. Calgary's businesses want to create well-paid and rewarding jobs and careers.

Alberta's model has been the most successful in Canada for producing prosperity and opportunity for workers. Let's not throw that away. Legislating new standards based on the rules in other provinces, does not take into account the historical rates of employment and high standard of living in Alberta. In 2016 Alberta was the province with the highest average weekly wages in the country, 17% higher than the national average.

The current labour relations system is exceptionally successful in resolving conflict. We believe the current system works, as 99% of disputes within the last five years have been resolved without a strike or lockout.

The cumulative cost of government policies and regulations imposed on Calgary businesses from all levels of government is taking a toll. When proposing new policy, the government needs to take into account the current state of the economy and the increasing burden on businesses due to higher corporate taxes, property taxes, carbon pricing, and minimum wage hikes.

These amendments are expected to pass in the next week or so before the Legislature recesses for the summer. We don't expect that there will be a lot of changes, if any, during the passage of the amendments in the Legislature. Most amendments are expected to come into force on January 1, 2018.

We will continue to oppose the major changes that will affect nearly every employer in Alberta, along with those imposed on short timelines, without sufficient consultation and examination of potential impacts.

