Highlights

What we heard on Employment Standards and Labour Relations

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Alberta

Highlights: What We Heard on Employment Standards and Labour Relations

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Overview

In 2019, the Ministry of Labour and Immigration gathered input regarding Alberta's Labour Relations Code and Employment Standards Code. This followed amendments by the previous government to Alberta's Labour Relations Code and the Employment Standards Code in 2017.

The 2019 consultations have allowed the ministry to better understand the perspective of Albertans and employers, as well the potential effects of policy decisions. Understanding the concerns of unions and employers alike will help government balance labour laws and enhance the competitive advantage of Alberta businesses.

Summary

To gather input from Albertans regarding employment standards, the ministry created a survey and promoted it via social media, websites and emails to ministry stakeholders. Out of 5,421 respondents, three-quarters identified as employees and 12% as employers. Five stakeholders provided written responses.

Survey results indicate various views among employees, employers and employer groups. Employers called for more flexibility in the legislation to better meet their operational requirements and mitigate cost implications. Employees and labour groups wanted to see enhancements or continuance of the current legislation.

The ministry also asked key unions, labour associations, employers, employer associations, and other interested parties for their feedback on Alberta's labour relations legislation and provided a written submission guide. The ministry received 63 written replies. The ministry also held targeted sector-based roundtable discussions with key union, employer, construction, and labour relations attorney stakeholders on select topics. Generally, unions and employers are divided on labour relations issues, with some nuanced differences among participating stakeholders, depending on the issue.

The findings reported below provide highlights on the results of the public employment standards survey as well as the written submissions and targeted in-person meetings for labour relations. Government has taken into account all feedback to consider how best to restore balance to the relationship between employers and employees. Government also received feedback on employment standards and labour relations through red tape reduction submissions, and considered changes to rules that will reduce red tape and regulatory burdens. Information on changes that will reduce red tape is available on Alberta.ca.

Key Findings Employment Standards

Most participants responded on behalf of themselves (86%), whereas 13% represented an organization, such as private or public sector.

Another key highlight from the survey was that 75% of respondents were employees, the majority of whom were between 25 to 54 years of age. Whereas, only 12% of respondents were

Total Responses

- 5,421 Employment Standards survey responses
- 63 written Labour Relations stakeholder responses

employers, the majority of whom were small businesses employing less than 50 employees.

Because the majority of respondents were employees, the weighting of satisfaction and dissatisfaction rates was considered when developing policy options.

Employer groups were scaled as follows:

Employer Scale	Overall Employer Response Rate
Small Business (1-49 employees)	**49%**
Medium-sized Business (50-299 employees)	**28%**
Large-scale Business (300 + employees)	**23%**

Of the employer respondents, private sector employers represented the majority (65%) followed by non-profit and public sector organizations (a combined 26%). Generally, the results did not indicate strong
dissatisfaction for the provisions, except for termination pay and vacation entitlements.

Detailed Summary of Results

Group Termination Notice

Prior to 2018, employers had to provide at least 4 weeks notice to the Minister of Labour if they were terminating 50 or more employees in the same location in a 4-week period. Currently, employers must provide written notice to the Minister of Labour and Immigration, along with affected employees and their unions, if the employer is going to terminate 50 or more employees at a single location within a 4-week period. The number of weeks' notice the employer must provide ranges from 8 to 16 weeks, depending on the number of employees being terminated. If appropriate notice is not provided, the employer may be subject to an administrative penalty.

The written notice must include the number of employees being terminated and the termination date. Often employers do not know in advance how many employees will need to be laid off.

Respondents were asked to explain how satisfied they were with current legislation. They were also asked to identify any regulatory burdens that could be removed to save time, money and resources while still protecting employees.

44% of employers were satisfied with the current time period for providing the Minister of Labour and Immigration group termination notice, compared to 56% who were dissatisfied or neutral. 62% of employees were satisfied, compared to 38% who were dissatisfied or neutral. Suggestions for improvement included making changes to simplify the rules for the length of the notification period.

Temporary Layoff Notices

Currently, for non-COVID-19 layoffs, employers can temporarily lay off an employee for a period no longer than a total of 60 days within a 120-day period. The employer can extend a temporary layoff period beyond the 60 days if an agreement is made with the employee, and the employer continues to pay wages, pensions or benefits. Employment is considered terminated if the temporary layoff reaches 61 days. When the temporary layoff ends, the employer must provide termination pay unless the employee failed to respond to a recall notice.

Respondents were asked to rate their satisfaction with that standard as well as with the duration of the temporary layoff period of 60 days within a 120-day period. They were also asked to identify any

regulatory burdens related to temporary layoffs that could be removed to save time, money and resources while still protecting employees. Survey results indicated 42% of employers were satisfied with the current length of temporary layoffs, while 58% were dissatisfied. Employees were split evenly with 50% satisfied with the current length of temporary layoffs, and 50% dissatisfied or neutral. Feedback included suggestions related to the duration and frequency of layoffs as well as suggestions around timing for layoff and recall notices.

Layoffs related to COVID-19 are able to be as long as 180 days as established by the *COVID-19 Pandemic Response Statutes Amendment Act*.

Accrued vacation time on termination

Employees who have worked for the same employer for 1 to 5 years are entitled to receive 2 weeks of vacation each year or 4% of their wages in the previous year. Vacation time increases up to 3 weeks and 6% vacation pay after five years.

When an employee is terminated, an employer cannot make an employee use up their vacation time or vacation pay during the termination notice period, unless both the employer and employee agree to this. If proper termination notice was provided, vacation pay must be provided within 3 days after the employee's job ends. If the employee quits without providing proper notice, the employer must provide vacation pay within 10 days after the date on which the proper amount of notice time ends. If no termination notice is required, the employer must provide vacation pay within 10 days after the last day of employment.

Respondents were asked to rate their satisfaction with the current vacation entitlements during the termination period and the requirement for an employer to pay 4% of an employee's wages earned, if they are terminated before their vacation entitlement. They were also asked to identify any regulatory burdens related to accrued vacation time on termination that could be removed to save time, money and resources while still protecting employees.

The majority of employers at 54% were satisfied with not requiring employees to use vacation entitlements during termination and 67% supported the requirement to pay 4% vacation earned upon terminated.

The majority (50%) of employers were dissatisfied with the 3-day requirement for payment of termination pay. The majority (82% to 84%) of employees were satisfied with accrued vacation entitlements.

The majority of respondents supported maintaining the current rules and indicated there were no regulatory burdens to be removed from this requirement.

Youth Employment Rules

In 2017, the previous government enacted new rules for employing youth, including a permissible list of "light work." However, a number of rules were not proclaimed. Currently, the rules for employing youth include restricting hours of work, types of work youth can do, whether parent or guardian consent is needed, whether a permit is needed, and whether the youth requires supervision. These provisions vary depending on the youth's age and the type of work they do.

Respondents were asked to rate their satisfaction with the current youth rules in terms of awareness, clarity and the permit process. They were also asked to identify any regulatory burdens related to youth employment rules that could be removed to save time, money and resources while still protecting employees.

Overall, the survey results showed that 69% of respondents were satisfied compared to 31%

dissatisfied or neutral. The majority supported maintaining the current rules for youth 13 to 17 years of age as they ensure the well-being and safety of youth.

Hours of Work Averaging Agreements (HWAA)

In 2018, HWAAs were brought in to replace the previous arrangements under Compressed Work Weeks. An HWAA allows an employee or group of employees to work a modified schedule at their regular rate of pay. HWAAs can be included in a collective agreement. Under HWAAs, an employee can be scheduled to work longer hours per day, as long as certain conditions are met. Hours can be averaged over a period of 1 to 12 weeks to determine overtime pay or time off with pay. However, employers cannot schedule employees to work more than 12 hours in a day or 44 hours in a week. HWAAs must be in writing and provided to all affected employees and must include certain criteria to ensure all parties are aware of the terms and conditions.

Respondents were asked to rate their satisfaction with the current HWAA rules in terms of consent, benefits or challenges of a 2-year term and overtime rules. They were also asked to identify any

> Respondents felt it is an administrative burden to amend schedules and draft HWAAs.

regulatory burdens related to HWAAs that could be removed to save time, money and resources while still protecting employees.

When asked about their satisfaction on current overtime rules under an HWAA, 33% of employers were satisfied, compared to 67% that were dissatisfied or neutral. 50% of employees were satisfied, and 50% were dissatisfied or neutral.

Average Daily Wage and General Holiday Pay

Employees who qualify will receive general holiday pay (GHP) for 9 of the general holidays. As of September 1, 2019, employees who worked 30 days in the 12 months before a general holiday will qualify for holiday pay. If a holiday falls on a day of the week that is normally a workday for the employee and the employee works that day, they must be compensated.

In 2018, changes to the average daily wage calculation were implemented so average daily wage is calculated as 5% of the employee's wages, general holiday pay and vacation pay earned in the 4 weeks immediately before the general holiday. This means that when a general holiday occurs within a 4-week period of another general holiday, the general holiday pay paid to the employee for the first holiday is included in the calculation for the following holiday.

Survey respondents were asked how satisfied they were that previously paid GHP and vacation pay in the calculation of average daily wage. They were also asked to identify any regulatory burdens related to average daily wage and GHP that could be removed to save time, money and resources while still protecting employees.

35% of employers were satisfied with including previously paid GHP in the calculation of average daily wage, compared to 65% who were dissatisfied or neutral. 61% of employees were satisfied with including previously paid GHP in the calculation of average daily wage, compared to 39% who were dissatisfied or neutral.

41% of employers were satisfied with including vacation pay in the calculation of average daily

wage, compared to 59% who were dissatisfied or neutral. 64% of employees were satisfied with including vacation pay in the calculation of average daily wage compared to 36% who were dissatisfied or neutral.

Payment of Earnings upon Termination by Employer

Employers are required to establish one or more pay periods for the calculation of an employee's wages and overtime pay. A pay period must not be longer than one work month. When an employer terminates an employee's employment by way of termination notice, pay, or a combination of notice and pay, the employer must pay the employee's earnings no later than 3 consecutive days after the last day of employment.

The current 3-day requirement is based on 3 consecutive calendar days, which may be different from 3 business days and often does not fall within an employer's regular payroll cycle.

Survey respondents were asked how satisfied they were with the 3-day requirement. They were also asked to identify any regulatory burdens that could be removed to save time, money and resources while still protecting employees.

The majority of employers (72%) were dissatisfied with the three-day requirement. The majority of employees (73%) were satisfied with the three-day requirement.

Administrative Penalties: Payments and Appeals

Currently under the *Employment Standards Code*, when employers have been issued an administrative penalty they must pay or appeal an enforcement action within 21 days. These penalties were introduced in 2018. The survey asked respondents how satisfied they were with the current amount of time for an employer to either pay the administrative penalty or appeal the enforcement action.

34.5% of employers were satisfied with the amount of time they currently have to pay an administrative penalty, while another 65.5% were dissatisfied or neutral. 64% of employees were satisfied and 36% were dissatisfied or neutral.

Employees' Statement of Earnings

The *Employment Standards Code* requires an employer to provide employees with a written statement of earnings at the end of each pay period. The statement of earnings must include key information, such as pay period covered, regular and overtime hours, hours taken off in lieu of overtime, vacation and holiday pay.

Respondents were asked if electronic pay statements should be allowed.

Overall, 82% of respondents said electronic pay statements should be allowed to satisfy the employment standard, compared to 18% who said no.

Director's Variances

Prior to 2018, the Statutory Director of Employment Standards under the *Employment Standards Code* could allow employers to apply for a Director's Permit from certain mandatory obligations and requirements such as: reducing the mandatory 3-hour pay minimum, extending the number of consecutive work days, extending the number of hours worked per day, or extending an averaging period up to 26 weeks.

New rules in 2018 added in several required elements for an application for a variance (the term permit was no longer used for this purpose). Employers found these requirements cumbersome.

Survey respondents were asked how satisfied they were with the rules that can be varied by the Director. They were also asked to identify any

regulatory burdens that could be removed to save time, money and resources while still protecting employees.

More respondents were not satisfied with variances than those who were satisfied: 31% of respondents were satisfied, and 69% were not satisfied or neutral. When asked if there are any other regulatory burdens that could be removed to save time, money and resources, respondents commented that removing the option of Director's Variances might cut down on red tape.

Ministerial Variances and Exemptions (MVEs)

Since 2018, the *Employment Standards Code* allows employer groups or employer associations to apply for MVEs for certain standards in the *Employment Standards Code* or Regulation (MVEs did not exist before 2018). MVEs cannot exceed 2 years and may be amended or revoked by the Minister.

Respondents were asked how satisfied they were with MVE rules and if they support making approved variances permanent in regulation.

Respondents were also asked to identify any regulatory burdens that could be removed to save time, money and resources while still protecting employees. Some respondents suggested that industries should follow regular employment standards rules instead of getting an MVE. Other respondents indicated that when an employer has a MVE, they have greater flexibility to extend an employee's daily hours of work and are then less likely to hire additional staff to cover shifts.

Overall, 29% of respondents were satisfied with MVE rules, and 71% were not satisfied or neutral.

Key Findings: Labour Relations

Stakeholders were asked to provide responses on the following topics:

- Process and Administration
- Labour Relations Board and Arbitrator Powers
- Construction Industry

The government commitment to protect workers from being forced to fund political parties and causes without explicit opt-in approval was outside the scope of this consultation but was part of a separate consultation.

Process and Administration

Certification/Revocation Statutory Timelines

Before changes were introduced to statutory timelines in 2017, there were no specific timelines for completing union certifications or revocation applications.

There is a general consensus among employers and employer associations that they have less time to respond to certification applications than unions have to prepare the applications. This creates hardship for employers, especially when applications occur before holidays or other peak times. Most employer and employer associations expressed that there should be a return to the previous language of the legislation.

While some unions felt that timelines should be shortened, most unions and labour associations generally felt that the current timelines are satisfactory. They noted that a delay between the submission of a certification application and a certification vote could compromise employee trust in the certification process.

Reverse Onus Provisions

Employers and unions disagreed on whether reverse onus provisions should remain in the Labour Relations Code.

Employers and employer organizations generally were in favour of reverse onus provisions being removed from legislation. They argued Section 149(2) of the Code denies their fundamental right to being treated innocent until proven guilty. They proposed that the party making a claim should bear onus. Further, they suggested that as the onus is placed on employers in all situations, the potential exists for mischief when alleging wrongdoing.

Generally, unions do not support making changes to the current rules. They argue that reverse onus provisions are common in other Canadian jurisdictions and that an employee or union cannot be expected to prove unfair labour practice allegations, as the employer would generally be in possession of relevant evidence and the union would not. Some unions opposed having reverse onus provisions apply to them, but a few unions were not opposed.

Strike, Lockout and Picketing Limitations

Before 2017 secondary picketing, or picketing somewhere other than the employer's business, was not permitted by statute. Proposing limitations on strikes, lockouts and picketing elicited some strong and varying responses from stakeholders. In general, employers and unions were of opposing opinions on the issue.

Employers and employer groups, for the most part, advocated for stronger protections against picketing, the re-addition of the Board's ability to suspend union dues in the case of an illegal strike, and that Board orders be filed immediately with the Courts.

Unions and labour associations argued that any statutory provisions that regulate strikes and picketing interfere with employees' rights to association and expression. Some suggest that the discretion given to the Board to regulate picketing is sufficient, while others believe it already goes too far and should be repealed.

Construction Industry

All Employee Bargaining Units

Most stakeholders supported a change to allow all-employee bargaining units. Most employers and all of the industrial unions (i.e. non-traditional craft-based trade unions) who provided written submissions expressed a desire for such a change.

Employers and industrial unions, while supportive of the registration system, countered that the industry has changed, and is moving away from the craft-based registration system. Employers claimed that approximately 60% of industrial construction is now carried out by contractors whose employees are represented by alternative unions.

Conversely, the building trades and traditional craft trade unions opposed all-employee bargaining units and argue that industrial unions have been able to flourish within the current system. A change to all-employee units could potentially impact the specialized training and labour supply that building trades provide, and could negatively impact the registration system.

Build-up Principle

The build-up principle allows the Labour Relations Board to determine if the current number of employees in a bargaining unit represents an expected future larger workforce. Employers, unions and labour associations mostly agreed that the construction industry should continue to be excluded from any application of the build-up principle. Some stakeholders felt that this exclusion

should be codified to insulate the industry from a change in Board policy. Others felt that the Board should continue to have discretion. Some unions stated that the Board should decide to apply the build-up principle in construction on a case-by-case basis, rather than by general policy.

Some stakeholders expressed views on whether the build-up principle should now apply to the construction industry if all-employee bargaining units are permitted. Some craft-based trade unions felt that if wall-to-wall bargaining units are permitted, then some application of the build-up principle in the construction industry would need to be applied. Conversely, one union expressed that if the government decides to apply the build-up principle in the construction industry, there must also be measures to ensure that this does not prevent all-employee bargaining unit applications from succeeding.

Major Construction Projects

Employers, unions and labour groups generally agreed that Part 3, Division 8 (i.e. Collective Agreements Relating to Major Construction Projects) of the Code is useful and should not be repealed.

There was less consensuses on how Division 8 can be improved. Many employers have expressed that maintenance work should be included in Division 8, arguing that projects are built in sequence, with some parts of a project being completed before others. For this reason, it would make sense that the same strike and lockout protection for construction employees apply to maintenance employees as well. Others argued that any strike or lockout by maintenance employees would only incidentally affect the construction of the project, and on that basis, there is no reason to have Division 8 apply to maintenance collective agreements.

Other stakeholders suggested potential modernization provisions, including adding binding arbitration to resolve disputes, creating timelines, and simplifying the approval process to provide parties greater certainty with respect to any major project applications.

> Employers, unions and labour groups agreed that collective agreements relating to major construction projects are useful and should not be repealed.

Continuing Collective Agreements - Construction

Most employers were in favour of continuing collective agreements, but most unions and labour associations expressed that such a change is unwarranted.

Employers for the most part felt that the BC model, where construction industry collective agreements may continue after a competing union has successfully obtained the bargaining rights from an incumbent union, should be adopted in Alberta.

Unions and labor associations generally felt that in order for employee choice in selecting a new bargaining agent to be meaningful, the new bargaining agent would need to be able to negotiate a new collective agreement to best represent their members' interests.

Conclusion

In 2019, government received feedback from Albertans through a public survey on employment standards and from Albertans who wrote to the Minister of Labour and Immigration or made submissions to the Cut Red Tape webpage. Government also received 63 written submissions from targeted stakeholders on labour relations and held targeted sector-based in-person meetings with key union, employer, construction, and labour relations attorney stakeholders on select topics.

For more information, please visit Alberta.ca