Preliminary Review of Bill 17 – What You Need to Know

On May 24, 2017, the provincial government tabled Bill 17, titled the *Fair and Family-Friendly Workplaces Act*. Bill 17 includes a number of significant reforms to two of the most important workplace-related laws in Alberta, being the Alberta *Employment Standards Code* (the "***ESC***"), and the *Labour Relations Code* (the "***LRC***"). The following is meant to provide a summary of some of the most noteworthy reforms that have been tabled as part of this Bill.

Before launching into a discussion concerning the substance of Bill 17, it is important to first reflect on the consultative process leading up to today. Revisions to workplace-related legislation are significant, given the direct impact that those revisions can have on businesses, employees and on the province's economic wellbeing. As a result of the importance of this legislation, some governments have engaged in significant consultative processes and reviews before proceeding with any revisions. In Ontario, for example, the "Changing Workplaces Review", a project that focused on reviewing the Ontario versions of the *ESC* and *LRC*, proceeded over a period of two years. Those two years of work, which included over 200 public presentations and over 500 written submissions over a two-phase process, resulted in 173 recommendations being put forward. In contrast, consultations regarding the revisions to the *ESC* and the *LRC* took place over a period of weeks, starting in early 2017.

A. The *Employment Standards Code*

What's Changing?

Arguably, the most significant changes to the *ESC* concern its leave-related provisions. Bill 17 will result in increases to certain existing leave entitlements, namely:

1. *Compassionate Care Leave*:
    - Employees will become entitled to this leave after 90 days of employment.
    - The leave period will increase from 8 weeks to 27 weeks.
    - Employees' obligation to provide notice to an employer before returning to work will decrease to 48 hours.
    - Employees do not need to be a primary caregiver to be entitled to this leave.

2. *Maternity and Paternity Leave*:
    - Employees will become entitled to this leave after 90 days of employment.
    - The leave period will increase from 15 weeks to 16 weeks.

In addition, Bill 17 also introduces a number of new forms of unpaid leave:

1. *Long Term Illness and Injury Leave* – Employees will, subject to obtaining a medical certificate, be entitled to up to 16 weeks of leave per calendar year, due to injury, illness or quarantine.

2. *Death or Disappearance of Child Leave* – Employees will be entitled to up to 52 weeks of leave where a child has disappeared and where that disappearance is probably related to a crime. Parents of a child who died where that death was probably related to a crime will be entitled to 104 weeks of leave.

3. *Critical Illness of Child Leave* – Employees will be entitled to up to 36 weeks of leave to provide care or support to a critically ill child.

4. *Personal and Family Responsibility Leave* – Employees are entitled to up to 5 days of leave per calendar year where that leave is necessary for (i) the employees' health, or (ii) for the employees to meet family responsibilities.

5. *Bereavement Leave* – Employees are entitled to up to 3 days of leave per calendar year related to the death of a family member.

6. *Domestic Violence Leave* – Employees who have been the victim of domestic violence are entitled to up to 10 days of leave per calendar year.

7. *Citizenship Ceremony Leave* – Employees are entitled to half a day of leave to attend their citizenship ceremony.

Employees will become eligible for all of these new forms of leave after 90 days of employment. It is important to note that the leave provisions contain a number of rules concerning terminating an employee on leave and concerning the notice required to return to work.

Bill 17 also includes proposals that will impact scheduling and the mobilization of the workforce:

1. *Compressed Work Weeks* – The current regime under the *ESC* will be replaced with provisions that would allow groups of employees to enter into an "Averaging Agreement." Under those agreements, employees would be able to agree to averaging hours of work over periods of 1 to 12 weeks. Any such agreement cannot last for more than 2 years. The agreement cannot allow for a work day that exceeds 12 hours, or a work week exceeding an average of 44 hours.

2. *Banked Overtime* – The ability to bank overtime will increase from 3 months to 6 months. Overtime will however have to be banked at 1.5 times an employee's wage rate, and not at straight time.

3. *Breaks* – Subject to certain exceptions, employers will be required to provide a paid or unpaid 30-minute break to employees within every 5 consecutive hours of work. That break can be divided into 15-minute breaks, if agreed to by the employer and employee.

4. *Temporary Layoff* – Employers wishing to place employees on temporary layoff would now be required to provide either 1 or 2 weeks of notice of the layoff. Bill 17 also imposes additional procedural requirements for layoff notices, which are generally in line with existing common law rules. A temporary

layoff will now be deemed a termination if an employee has been laid off for 60 days in a 120-day period, as opposed to triggering on the 60th day of a layoff.

5. *Holiday Pay* – Employees will automatically become eligible for holiday pay, and are consequently no longer required to work for a period of time before becoming eligible. Entitlement to holiday pay will still depend on whether employees would have usually worked on a holiday, or work on a holiday.

6. *Group Termination* – Employers will now be required to provide between 8 and 16 weeks of notice to the Minister of any group termination depending on the size of the group. Additionally, employers will also be required to provide notice to employees' bargaining agents, or to the employees directly. This notice requirement will in turn impact the minimum amount of notice employers are currently required to provide under the *ESC*.

Another area of reform concerns youth employment. Bill 17 proposes to increase the general minimum age to 13 years-old, and to place restrictions on the type of work that can be done by people below 18 years of age. For example, people aged 13 to 15 years old will only be able to perform "light work" positions, and minor will generally not be able to perform "hazardous work". Particulars regarding these restrictions will be developed by the government over the coming months, and will likely be outlined in regulations.

Similarly, the Bill also contains a number of new rules that are specific to farming or ranching operations:

- Employees employed in a farming or ranching operation will now fall under the *ESC*, subject to certain exceptions;
- The provisions in the *ESC* regarding hours of work and overtime will not apply to farming and ranching operations; and
- The *ESC* will not apply to employees who are shareholders of a farming or ranching operation, or who are family of such a shareholder.

Finally, the Bill includes a number of proposed amendments to the enforcement mechanisms in the *ESC*. The limitations period for filing an employment standards complaint has been increased to 2 years. Additionally, employment standards officers and the Director will be given increased authority vis-à-vis the enforcement of orders.

When is it Changing?

If Bill 17 passes, then the majority of the proposed amendments will come into effect as of January 1, 2018. There are certain exceptions to that date:

- The amendments concerning youth employment will come into effect once the necessary regulations have been finalized by the government;

- The revisions to employment standards insofar as they relate to collective agreements will not apply until the earlier of (i) the date a new collective agreement is entered into, or (ii) January 1, 2019; and
- Existing permits issued under the *ESC* will remain in effect until their stated expiry date, or until January 1, 2019, whichever is earlier.

What are the Takeaways for Employers?

The proposed amendments to the *ESC* will generally result in an increase to the minimum working standards for employees. At the same time, these amendments can be expected to have an important economic impact on employers. While many employers already provide for working conditions that exceed minimum requirements of legislation, new, inflexible stipulations will introduce new costs and administrative burdens to contend with. Additional leave entitlements, increasing overtime payments and a number of the other amendments will ultimately impact Alberta businesses and the employees and their families who depend on those businesses for their livelihoods.

Employers operating in a non-unionized environment may need to effect a number of changes to their operations as a result of the amendment proposed in Bill 17. Any existing policies related to the aforementioned amendments will have to be reviewed in order to ensure compliance.

Similarly, employers in unionized settings may see changes to their existing practices depending on the standards outlined in the applicable collective agreements. Employers involved in bargaining or who are on the verge of entering into bargaining will have to keep the new minimum standards in mind when negotiating.

B. The *Labour Relations Code*

What's Changing?

Much like the revisions to the *ESC*, the proposed revisions to the *LRC* are significant. A number of changes are being made to the certification process, most notably:

- A secret ballot representation vote will no longer be required to certify a union where there is evidence of support from more than 65% of the employees in the bargaining unit. This change marks a return to the pre-1988 certification system.
- A vote will be required where an application for certification is supported by between 40% and 65% of the employees in the bargaining unit.
- The expiry period for union cards obtained during an organizing campaign will increase from 90 days to 6 months.
- The Board will also be operating under shorter, mandatory timelines for the certification process:
    - Employers will be required to provide the Board with a list of employees to be included in the bargaining unit within 5 days of the application for certification.

  - Notice of a vote must be given within 10 days of the date of the application for certification, or within 14 days in the case of a mail-in vote.
  - The vote must commence within 3 days of the notice.
  - The vote must be completed not later than 20 days after the receipt of an application for certification, or 25 days in the case of a mail-in vote.

- The decertification process will generally remain the same, but will now be subject to tighter timelines. A vote pursuant to a decertification application will have to take place not later than 20 days after the application is received by the Board, or 25 days in the case of a mail-in vote. Notably, secret ballot votes will still be required for all decertification applications. The new rules dispensing with votes when documentary evidence of 65% or more of employees supporting an outcome will not be adopted in decertification proceedings.

With regards to how a bargaining unit is defined, the Bill proposes to include "dependent contractors" as employees. This change will impact new certifications, and existing certificates, as the Bill includes provisions that would allow for dependent contractors to, upon application, be declared a part of an existing bargaining unit.

The Bill will also result in employees of farms and ranches being included in the definition of employee, which will likely, in turn, result in the certification of farming and ranching operations.

Bill 17 refers to a number of changes related to entering into a first collective agreement. First, the statutory freeze period for wages and other working conditions following certification has been increased to 120 days. Second, 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, then they can apply to the Board for a variety of remedies, including an order compelling binding arbitration or allowing a strike or lockout to proceed during the negotiation of a first collective agreement.

In relation to strikes and lockouts generally, the Bill includes amendments that would allow picketers to strike at allied employer sites (i.e., sites other than the employer's place of work). Those sites are defined as:

- Sites the employer uses to further a lockout or resist a strike; and
- Sites at which a third party assists the employer in furthering a lockout or in resisting a strike by performing services for the employer that it does not normally provide.

The essential services provisions in the *LRC* have also been expanded to include three new categories of employers:

- Continuing care facilities (i.e., employers operating nursing homes, and sites regulated under the *Supportive Living Accommodation Licensing Act* and the *Co-ordinated Home Care Program Regulation*);

- Health care labs; and
- Canadian Blood Services and its agents/successors.

Certain employers that fall into those categories will now be required to enter into essential services agreements within 120 days of Bill 17 receiving royal assent, unless a longer period is agreed to between the parties.

The Bill contains a number of proposed changes to the Labour Relations Board itself. The Board will be given increased powers, including the power to issue marshalling orders that will result in related applications brought in a variety of forums being combined into one proceeding. This new power will hopefully reduce the number of proceedings taking place regarding a single issue or set of facts. The Board will also now have the power to order the production of records prior to a hearing.

The proposed revisions to the *LRC* will also impact how certain unfair labour practices applications proceed. Employers will now bear the onus in cases where an employee has alleged an unfair labour practice based on discipline or discharge because of union affiliation.

Unions would also have the express power to apply to the Board for an order allowing them access to remote employer sites. Unions would be able to obtain orders allowing them to access an employer's site to persuade employees to join a union, and to conduct union business.

Arbitrators have also seen an increase to their jurisdiction. The Bill proposes giving arbitrators specific powers to order particulars before a hearing, to require pre-hearing production, and to make interim or preliminary orders. Of note is the fact that appeals from an arbitrator's decision will now be heard by the Board, and not by the Court of Queen's Bench on judicial review. Appeals of decisions by the Board will be to the Alberta Court of Appeal, and will require leave from the Court of Appeal.

When is it Changing?

Bill 17 outlines three separate coming into force dates:

- May 24, 2017 – The coming into force of certain amendments to the essential services provisions.
- September 1, 2017 – The coming into force date for the amendments regarding the certification process, the decertification process, and for the revisions to the appeal procedure from an arbitrator's decision.
- January 1, 2018 – The coming into force date for the amendments concerning farming and ranching operations.

Those amendments that are not explicitly referred to above will come into effect upon royal assent, which we anticipate to be in the fall of 2017.

What are the Takeaways for Employers?

The changes that have been proposed to the *LRC* are widespread, and will (much like the changes to the *ESC*) have a significant impact on employers. The impacts and policy implications of a number of these proposed changes were previously addressed by Neuman Thompson in its submissions to the Minister during the consultative process. A copy of those submissions has been attached for reference.

Over the coming weeks, Neuman Thompson will continue to provide an ongoing analysis of the various changes to the *LRC* that are being proposed by the government, including analysis regarding the practical considerations and policy implications of those changes. We look forward to engaging in discussions surrounding these issues.