



# UPDATE: Balancing the Workplace Scale: Bill 32 Enacts Employer-Friendly Changes to the Employment Standards Code and Labour Relations Code

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The Government of Alberta has passed Bill 32, the *Restoring Balance in Alberta's Workplaces Act, 2020* ([Bill 32](#)) to amend the *Employment Standards Code* ([ESC](#)) and the *Labour Relations Code* ([LRC](#)).

Bill 32 received Royal Assent on July 29, 2020 and enacts numerous changes to the ESC and the LRC, among other legislation. In introducing the new legislation in early July, Labour Minister Jason Copping noted it was intended to “bring balance back to Alberta’s labour laws” and would “help businesses save time and money, letting them focus on getting Albertans back to work while protecting workers”. The Government of Alberta estimates that employers may save an estimated \$100 million per year in reduced “red tape” as a result of the proposed changes.

Bill 32’s notable changes and the dates upon which they come into effect are summarized below.

## Changes to the ESC

### Payment of earnings after termination

Currently, earnings, including termination pay, must be paid out to an employee either within 3 or 10 consecutive days, depending on whether or not termination notice, or termination pay is required. Bill 32 extends the time for payment by allowing the employer to choose to pay the employee’s earnings within either 10 consecutive days after the end of the pay period in which the termination of employment occurs or 31 consecutive days after the last day of employment, regardless of the manner of termination. This change will help employers align final earnings with their regular pay periods, as opposed to having to requisition separate off-cycle cheques or payments for terminated employees. This change comes into effect on November 1, 2020.

### Deductions from earnings

Bill 32 amends the ESC to allow an employer, with proper written notice, to recover an overpayment of earnings paid to the employee resulting from a payroll calculation error or vacation pay having been paid to the employee in advance of the employee being entitled to it. However, employers will only have 6 months to recover any overpayment of earnings resulting from payroll errors and must also provide employees with written notice of the deduction before making it. This is a welcome change for employers, many of whom struggle to recover overpayments from uncooperative employees and whose only recourse was to obtain the employee's consent to deduct the overpayment or to initiate legal action against the employee. This change comes into effect on November 1, 2020.

## **General holiday pay**

Bill 32 removes vacation pay and general holiday pay from the calculation of an employee's average daily wage, which is used to calculate an employee's general holiday pay. Instead, the average daily wage will be, at the employer's election, the employee's total wages averaged over (i) the number of days worked in the 4 weeks preceding a general holiday or (ii) the 4 weeks ending on the last day of the pay period that occurred just before the general holiday. This change comes into effect on November 1, 2020.

## **Hours of work**

Bill 32 allows greater flexibility for employers and unionized employees to agree on mutually acceptable standards relating to hours of work, notice of work times, rest periods and days of rest. Where agreed in a collective agreement, the employer and unionized employees can commit to standards outside of (and even below) those prescribed by the ESC. This is an entirely new change to the ESC that comes into effect on November 1, 2020.

## **Rest periods**

Bill 32 proposes to permit an employer to provide an employee with a paid or unpaid rest period of at least 30 minutes either within or immediately following the first 5 hours of a shift. Additionally, it adds a requirement to provide a second rest period if the employee is working a 10 hour or longer shift. Currently, employers are required to provide a rest period within every 5 consecutive hours of work, subject to certain exceptions such as where urgent work is necessary, or when it is unreasonable for the employee to take a rest period. The employer and employee will still be permitted to agree to break the rest period into two 15-minute breaks. This change comes into effect on November 1, 2020.

## **Averaging agreements**

Currently, hours can be averaged over a period of 1 to 12 weeks in averaging agreements, however Bill 32 increases that period to 52 weeks. In addition, while employers will still be able to seek the consent of employees in implementing an averaging agreement, Bill 32 will permit them to impose averaging agreements on employees by providing 2 weeks' prior written notice or providing the averaging agreement in advance of the employee starting employment. Previously, employers were required to obtain express consent from either an individual employee or the majority of the employees to whom the averaging agreement was to apply. This change comes into effect on November 1, 2020.

## **Vacation entitlement**

Bill 32 clarifies that vacation entitlements continue to accumulate while an employee is on ESC leaves. Currently, although unstated, it has been the prevailing view that vacation entitlements continued to accrue while an employee is on an ESC leave. This change comes into effect on November 1, 2020.

## Temporary layoff period

Bill 32 increases the temporary layoff period from 60 days within a 120-day period to 90 days within a 120-day period. Layoffs can still be longer if the employer and the employee agree that the employer will either (i) pay wages or an amount instead of wages to the employee; or (ii) continue the employee's benefits or pension contributions; or a collective agreement provides for a longer layoff. Additionally, Bill 32 eliminates the requirement to provide advance notice of layoffs to employees. Despite this, layoffs related to COVID-19 will continue to be up to 180 consecutive days. This change comes into effect on August 15, 2020.

## Group termination

Bill 32 simplifies the current group termination notice periods by simply requiring 4 weeks' prior notice to the Minister (or as much time as is reasonable in the circumstances) when an employer intends to terminate the employment of 50 or more employees at a single location within a 4-week period. Employees and unions will no longer be entitled to receive advance notice of a group termination (although employees must still receive individual notice of their individual termination in accordance with the ESC). This change comes into effect on August 15, 2020.

## Variations and exemptions

[Bill 32 enshrines more flexible rules for employers, first introduced in a temporary Regulation](#), permitting them to more easily and quickly apply for and obtain variations or exemptions to employment standards. These changes come into effect on August 15, 2020.

## Changes to the LRC

### Remedies

Bill 32 limits the Labour Relations Board's (Board) power to certify or refuse to certify a union as the bargaining agent for a unit of employees. The Board will only be able to direct a certification where a prohibited practice results in a representation vote that does not reflect the true wishes of the employees in a bargaining unit and where no other remedy would be sufficient to counteract the effects of the prohibited practice. Previously, and since 2017, the Board has the broad authority to direct a certification, with or without a vote, where it is satisfied an employer has failed to comply with the LRC. In [UFCW Local 401 and Widewaters Calgary Hotel Management Company, ULC](#), 2018 CanLII 33689, the Board concluded that the employer's unfair dismissal of a union organizer during an organizing campaign "poisoned the well" and justified a remedial certification without a vote. However, the decision was made despite scant evidence that the employees could not demonstrate their true wishes in a vote and despite the Board not considering other possible less severe remedies to resolve any such chilling effect. Accordingly, this change appears to reign in, at least in part, this decision. This change comes into force on July 29, 2020.

### Union dues

Bill 32 requires unions to disclose to their members the breakdown of their union dues for general social causes or issues, charities or non-governmental organizations, political activities, and core union activities, being those directly relating to collective bargaining and member representation. In addition, employees will be required to opt-in to paying union dues that relate to non-core union activities. Employees will still be required to remit dues for core union activities. However, employers and unions will be prohibited from

influencing an employee in respect of their opt-in election. Additionally, the Board will resolve any disputes relating to the union's disclosure, whether dues relate to a particular activity or an employee's election. Currently, it is mandatory for union members to remit full dues to their unions and they are not provided with a breakdown of their dues. Finally, Bill 32 also grants the Board the power to suspend payment of union dues during an illegal strike and to require continued payment during an illegal lockout. This change comes into force upon proclamation at a date not yet determined.

## **Union financial reporting requirements**

Bill 32 requires unions to provide financial statements to their members as soon as possible after the end of every fiscal year. There will also be a complaint process for union members to seek relief if the union fails to comply with its obligations. Currently, unions have no obligation to report to their members regarding their financial position. This change comes into force upon proclamation at a date not yet determined.

## **Inquiry into certification application or revocation application Early renewal of collective agreements**

Bill 32 mandates that employers and unions will only renew a collective agreement prior to its expiry where the Board is satisfied that the employees have given informed consent for them to do so. This change comes into force upon proclamation at a date not yet determined.

## **Reverse onuses**

Bill 32 pares back the reverse onus placed on employers to show that they did nothing wrong when various prohibited practices are alleged against them, limiting this onus only where an employee is dismissed or discharged. In addition, Bill 32 imposes a reverse onus on unions where it is alleged they have engaged in a prohibited practice of coercing, intimidating, threatening, promising or unduly influencing an employee with respect to encouraging or discouraging membership or activity in the union, including a decision to opt-in to paying dues relating to political activities and other causes. This change comes into force upon proclamation at a date not yet determined.

## **Picketing**

Bill 32 prevents picketers from obstructing or impeding a person from crossing a picket line. In addition, unions will be required to obtain an order from the Board to permit secondary picketing. This change comes into force upon proclamation at a date not yet determined.

## **Nurse practitioners**

Bill 32 eliminates the present exclusion of Nurse Practitioners as employees capable of joining a union. Legislation in 2003 first excluded Nurse Practitioners from the application of the LRC. The historic rationale for excluding Nurse Practitioners was that they were highly educated professionals with master's degrees or doctorates, permitted to diagnose illnesses and conditions, treat and manage acute and chronic illnesses, and prescribe medication. However, in 2019, after the former government withdrew from court proceedings, the Board determined that this exclusion violated Nurse Practitioners' right to freedom of association under the *Charter of Rights and Freedoms*. The Board declared the provisions unenforceable and suspended its ruling for 12 months to permit the Government of Alberta to consider its options. This change comes into force upon proclamation at a date not yet determined.

# First contract arbitration

Bill 32 changes the requirements that must be present for the Board to declare that a first contract dispute be resolved by arbitration. Currently, the Board may declare that a first contract dispute be resolved by arbitration if its efforts to provide assistance under section 92.2 of the LRC are unsuccessful and the Board is satisfied that arbitration is otherwise appropriate. In making its decision, the Board must consider whether any extreme bargaining positions have been taken by one or both parties, any unfair labour practices have occurred, or the employer failed to recognize and negotiate with the bargaining agent. Bill 32 proposes changes which would allow the Board to declare such a dispute be resolved by arbitration instead of as an option of last resort where the Board is satisfied that:

- that arbitration is necessary;
- the employer or trade union has failed to comply with the LRC through (i) a refusal to meet to bargain collectively, (ii) a refusal to recognize the authority of the other party to bargain collectively, or (iii) a failure to make a reasonable effort to conclude a collective agreement; and
- no other remedy or remedies would be sufficient to counteract the effects of the failure to comply with the

This change comes into force on July 29, 2020.

## Flexibility for construction unions

Bill 32 permits industrial unions to attempt to form “all employee units” by representing all employees who work for the same employer, regardless of their specific trades. This is an entirely new concept under the LRC. Building trades unions would continue to certify their members based on specific trades. This change comes into force upon proclamation at a date not yet determined.

## Enhanced certainty in construction sector

### Project agreements and major construction projects

Bill 32 permits construction projects to be subject to specific project agreements negotiated on a case-by-case basis between employers and the Building Trades of Alberta. These project agreements would exclude the application of any other collective agreements between the employer and any unions and would last only for the duration (presumably the term of the project). Registered unions would have the option of signing on to the project agreement to participate in the project but would otherwise play no role in its negotiation. Any strike or lockout pertaining to a project agreement would be prohibited. Bill 32 also simplifies the negotiation process for collective agreements relating to designated major construction projects, by permitting the project’s principal contractor to initiate negotiations of multiple agreements with multiple “project trade unions” (broadly defined as meaning any trade union that is a bargaining agent of employees employed or who may be employed in the designated project). If the parties cannot conclude an agreement, mandatory arbitration can be triggered. This change comes into force on July 29, 2020.

## Takeaways for Employers

There is much for employers to be happy about with Bill 32. The changes to the ESC will streamline payroll processes, reduce red tape, and provide more flexibility for work arrangements with employees and workforce reductions. In addition, many of the changes to the LRC are ambitious, not only reversing or limiting many pro-union changes made by the former government in 2017, but fundamentally recasting

the playing field with more favourable rules for employers and individual employees whilst imposing additional hurdles for unions.

We will continue to monitor this situation and provide updates when they are available.

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