

TRAVELLING FORWARD

ADAPTING TO COVID-19 IN THE TOURISM INDUSTRY

WELCOME - THE WEBINAR WILL BEGIN AT 8:00 AM



TRAVELLING FORWARD: ADAPTING TO COVID-19 IN THE TOURISM INDUSTRY

Presented by:

Ryan Morasiewicz

Jean Torrens

Leigh Peters

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MEET OUR PRESENTERS



*Ryan Morasiewicz,
Senior Counsel*



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*Leigh Peters,
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AGENDA

- Risk Management Considerations for Businesses
- Bill 32 – Changes to Alberta's Labour & Employment Legislation
- Corporate Restructuring: Things to Consider when Facing Liquidity Challenges
- Pandemic Immigration - Tourism and Work-Related Immigration in the Face of COVID-19
- Q&A

THE EFFECTS OF COVID-19 ON ALBERTA BUSINESSES

Presented by:
Ryan W. Morasiewicz
Chair, MLT Aikins - Outdoor/Adventure Industry Group



OUTDOOR/ADVENTURE INDUSTRY GROUP?

www.adventurelawyers.com



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GRANDMA'S
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WHO WE ARE

- Ryan Morasiewicz (Vancouver)
 - *Corporate-Commercial & Insurance Defense Litigation*
 - *Ground Search Team Leader and K9 Search Dog handler (in training) – North Shore Rescue*
- Leigh Peters (Calgary)
 - *Corporate-Commercial, M&A, Owner-Operator Businesses*
 - *Skier, Hiker, General Mountain Aficionado*
- Thomas Clifford (Vancouver)
 - *Corporate/Commercial Litigation*
 - *Former 2-Discipline Provincial Champion Snowboarder (Bordercross and Halfpipe)*
- Jonathan Bouchier (Calgary)
 - *Construction Litigation, Employment, Insurance Coverage*
 - *Former Professional Snowboarder Competitor*
- Chad Eggerman (Saskatoon)
 - *Projects Lawyer, Corporate/Commercial*
 - *First Snowboarding Instructor in Saskatchewan, Professional Triathlete*
- & the 240+ MLT-Aikins Lawyers Across Western Canada

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- First of its kind practice group in Canada for the “outdoor/adventure” industry
- O/A-specific legal issues
- Full suite of legal services to businesses in industry
 - *Better, value-added advice from lawyers who understand the industry and the context in which you operate*

TODAY:

1) Business Interruption Insurance

- *What is it?*
- *Can COVID-19 related interruptions qualify?*

2) Liability for Spread of COVID-19 at Business Operations

- *Can businesses be liable for negligence if COVID-19 is contracted at their facility/event?*

3) Liability Waivers

- *Can liability waivers be used to preclude businesses from COVID-19 liability?*



BUSINESS INTERRUPTION INSURANCE (“BII”)

“BII” AND BUSINESS CLOSURE DUE TO COVID-19

What is Business Interruption Insurance?

- Covers for loss of income during periods when you cannot carry out business as usual due to an unexpected event
- Typically not part of standard/CGI insurance – must be specifically purchased (add-on)
- 3 variants
- Not standard wording / many variants
 - *Insurer pays for actual loss of “business income” due to “necessary suspension” of operations during “period of restoration”*

“BII” AND BUSINESS CLOSURE DUE TO COVID-19

COVID-19 and Business Interruption Insurance?

- ****Special Note****
- With that said...
 - *Named peril?*
 - *Necessary suspension?*
 - *Physical loss? Temporary?*

BII AND COVID GOING FORWARD

- Policies different: some claims approved
- Ongoing disputes all over
- Some litigation started, more to follow?
- Future policies – exclusions and specific riders?





LIABILITY FOR NEGLIGENCE DUE TO THE SPREAD OF COVID-19?

NEGLIGENCE ANALYSIS

To be liable for negligence, a business must have breached a standard of care owed by a person who has a duty of care.

- To establish negligence, injured person must show:
 - *Duty of Care*
 - ...to others, to exercise reasonable care
 - *Fell below the Standard of Care*
 - What is the standard???
 - *Causation*
 - Did the action (or inaction) cause the injury?

NEGLIGENCE ANALYSIS

To be liable for negligence, a business must have breached a standard of care owed by a person who has a duty of care.

- Duty of care
 - *Established (business to customer)*
- Standard of care – informed by:
 - *Applicable legislation governing the specific business or industry*
 - *Industry specific protocols and guidelines*
 - *Customs and practices of other businesses in the industry*
- Causation
 - *Proven how?*

THE STANDARD OF CARE IS CONSTANTLY CHANGING

“As a result of the constant changes that are being made to government regulations as a result of the changing public health threat posed by COVID-19, what may be sufficiently prudent for businesses to do in one week or month may constitute negligence in the next”

TO AVOID LIABILITY BUSINESSES SHOULD:

- Remain up to date and comply with government orders and recommendations
- Comply with recommendations made by industry organizations and regulatory bodies
- Stay apprised of adaptations and safeguards implemented by peers/competitors and implement them if appropriate
- Take steps, including introducing new policies and procedures to ensure employee compliance with safeguards
- Consider their waiver situation





THE USE OF LIABILITY WAIVERS

CONTEXT

- Hosted activity / something on your premises
- “*Something bad happens*”
- Injury/death [COVID!]
- Lawsuit (or threatened) – “tort” liability [negligence]
- Compensation (\$\$\$)
- Protections?

TWO TYPES OF “SOMETHING BAD”

- *“Something Bad Happens”*
 - *the “something bad” is naturally a risk of the activity (if nothing done to reduce likelihood of occurrence)*
 - *the “something bad” is the result of the host (employee)’s negligence*

LIABILITY AND INHERENT RISK OF AN ACTIVITY

- “*Something Bad Happens*” – is it naturally a risk of the activity (if nothing is done to reduce likelihood of occurrence)?
- “Inherent Risk”
 - *An activity’s inherent risk does not give rise to liability (Moddejonge v. Huron County Board of Education)*
- What is an activity’s “Inherent Risk”?
 - *Explicitly tell them...*

LIABILITY WAIVERS IN THE ERA OF COVID-19

- Is COVID-19 an inherent risk of an activity???
- Lawyers draft waivers according to precedent and there is NO Canadian precedent regarding
 - *Whether a business is liable if one customer infects another; and*
 - *Whether traditional liability waivers can be effective in the unordinary circumstances of a global pandemic.*

THANK YOU

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BILL 32 – CHANGES TO ALBERTA'S LABOUR & EMPLOYMENT LEGISLATION:

Presented by:

Jean Torrens

AGENDA

1. Bill 32 Background
2. *Employment Standards Code* Changes
3. *Labour Relations Code* Changes
4. Key Takeaways for Employers



BILL 32 BACKGROUND

BACKGROUND

- In 2017, the former NDP government passed a series of labour and employment legislative amendments through Bill 17: *Fair and Family-friendly Workplaces Act*.
- The UCP government was elected in April 2019 and conducted an employment standards engagement process starting in November 2019.
- Bill 32: *Restoring Balance in Alberta's Workplaces Act* is the first bill legislating major labour and employment reform under the UCP.



IMPACTED LEGISLATION

Major amendments have been made to Alberta's two key pieces of labour and employment legislation through Bill 32:

- *Employment Standards Code, RSA 2000, c E-9 (“**ESC**”)*
- *Labour Relations Code, RSA 2000, c L-1 (“**LRC**”)*

Additionally, some acts that relate specifically to unionized public sector workplaces have been amended.



BILL 32: THE *RESTORING BALANCE IN ALBERTA'S WORKPLACES ACT*, 2020

Timing:

- Bill 32 was announced July 7, 2020.
- It received Royal Assent on July 29, 2020.
- The changes took effect as early as July 29, 2020, with the remainder to take effect by November 1, 2020 or on proclamation (more on specific timing later).



EMPLOYMENT STANDARDS CODE

Key Legislative Changes

TEMPORARY LAYOFFS

Temporary layoff period is extended.

Former legislation

- A temporary layoff period is allowed for **60 days** within a 120-day period
- A temporary layoff will be deemed a termination if a 90 day layoff is exceeded within a 120-day period.
- Exception remains.

Amended legislation

- A temporary layoff period is allowed for **90 days** within a 120-day period



Timing of changes:

August 15, 2020



Impacted legislation:

Employment Standards Code,
s. 62 repealed;
s. 63 amended

TEMPORARY LAYOFFS

Notice requirements are removed.

Former legislation

- **Advance layoff notice of 1-2 weeks required**

Amended legislation

- **Advance layoff notice removed**

- Requirement for specific information to be included in layoff notice under *ESC*, s. 62(3) remains.



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code,
s. 62 repealed;
s. 63 amended

TEMPORARY LAYOFFS

Different rules apply when temporary layoffs are for reasons related to COVID-19.

- Effective June 18, 2020, the temporary layoff period was extended to a maximum of 180 consecutive days, where the layoff is for reasons related to COVID-19.
- In September 2020, a number of Ministerial Orders granted further extensions for members of the Alberta Hotel and Lodging Association and Calgary Hotel Association – temporary layoff allowed until “not more than 30 consecutive days after December 1, 2020”.



Various dates



Employment Standards Code, s. 63.1(2) added

GROUP TERMINATIONS

Same rules apply to all group terminations (i.e. 50+ employees terminated at a single location within 4 weeks).

Former legislation

- Written **notice of 8-16 weeks** (depending on number of employees terminated), to be provided to the Minister prior to a group termination

Amended legislation

- Written **notice of 4 weeks** must be provided to the Minister prior to a group termination, unless the employer is unable to do so



Timing of changes:

August 15, 2020



Impacted legislation:

Employment Standards Code, s. 137 amended

GROUP TERMINATIONS

Same rules apply to all group terminations (i.e. 50+ employees terminated at a single location within 4 weeks).

Former legislation

- Group termination notice required for **all employee types**

Amended legislation

- Group termination rules **do not apply when employed on a seasonal basis or for a definite term or task**



Timing of changes:

August 15, 2020



Impacted legislation:

Employment Standards Code, s. 137 amended

VARIANCES AND EXEMPTIONS

More flexibility for employers to be granted variances or exemptions from *ESC* rules.

Former legislation

- Application of the *ESC* could be varied:
 - For employers, by the Director, and
 - For employer associations and groups of employers, by the Minister

Amended legislation

- Application of the *ESC* can be varied by either the Director or the Minister for an individual employer, a group of employers, or an employer association



August 15, 2020



Employment Standards Code, s. 74(1), 74(6) amended
s. 74(2), 74.1(2)(c), 74.1(3) repealed

VARIANCES AND EXEMPTIONS

Notice requirements for Director's variation or exemption are simplified.

Former legislation

- Methods of providing copies of variance or exemption impacting employees was described in *ESC* (personal notice, posting in workplace, etc.)

Amended legislation

- Impacted employees are simply to be provided a copy of the variance or exemption, without specific methods described

 **Timing of changes:**

August 15, 2020

 **Impacted legislation:**

Employment Standards Code, s. 74(1), 74(6) amended
s. 74(2), 74.1(2)(c), 74.1(3) repealed

FINAL PAY DEADLINE

Deadline for issuing final pay after employment ends is extended.

Former legislation

- Final pay had to be issued within either:
 - 3 days after the last day worked (where termination/resignation notice required), or
 - 10 days after the last day worked (no notice)

Amended legislation

- Final pay must be issued within either (employer's choice):
 - 10 days after the end of final pay period, or
 - 31 days after the last day worked



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code,
s. 8(2) amended
s. 9 and 10 repealed

OVERPAYMENT RECOVERY

Employers can more easily recover overpayments for payroll or vacation pay error.

Former legislation

- Deduction allowed if:
 - Made under an Act, regulation, court judgment or court order
 - Collective agreement allows deduction, or
 - Employee provides authorization in writing

Amended legislation

- Deduction additionally allowed if recovering:
 - Overpayment of earnings made in error (within 6 months of overpayment; written notice required), or
 - Vacation pay paid before being earned



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code, s. 12(2) amended
s. 12(2.1) added
s. 12(4) added

REST PERIODS

Breaks can now be taken immediately following the 5-hour period in which they are earned.

Former legislation

- 30 minute paid or unpaid break required **within** every 5 consecutive hours worked

Amended legislation

- 30 minute paid or unpaid break required **within or following** every 5 consecutive hours worked.

NOTE: rest period not required if (1) it is unreasonable to provide, (2) unforeseeable circumstances, (3) collective agreement provides otherwise



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code, s. 18 amended

HOLIDAY PAY CALCULATIONS

The calculation for average daily wage (“ADW”), which is used to determine holiday pay, is changing.

Former legislation

- ADW was 5% of an employee’s **wages, vacation pay and general holiday pay** earned in the 4 weeks preceding the holiday

Amended legislation

- ADW is **total wages earned** over the number of days worked in either:
 - The 4-weeks immediately preceding the holiday, or
 - The 4-week period ending on the last day of the pay period before the holiday



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code, s. 1(1)(b) repealed
s. 24.1 added

DEVIATION FROM RULES

Employers and unions may be able to deviate from some rules through a collective agreement.

Former legislation

- Employers and unions can agree to deviate from **rest period** rules.

Amended legislation

- Employers and unions can agree to deviate from the following rules in CBA:
 - Rest periods
 - Max. 12 hour work shift
 - Notice of shift change
 - Days of rest allowances
 - Temporary layoffs



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code, ss. 16(3), 17(3), 19(3), 63(4) added

AVERAGING ARRANGEMENTS

Employer can implement averaging arrangement for non-unionized employees without agreement.

Former legislation

- Employer and employee(s) **could agree** to enter into an hours of work averaging agreement for the purposes of determining overtime entitlement

Amended legislation

- If an employee or group of employees are not bound by a collective agreement, **an employer may permit or require** an averaging arrangement



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code,
s. 1(1)(b.1)-(b.2)
added
s. 23.1 amended

AVERAGING ARRANGEMENTS

Longer averaging periods allowed.

Former legislation

- Employer could average employee's hours of work over a **period of 1 to 12 weeks** to determine overtime entitlement

Amended legislation

- Employer may average employee's hours of work over a **period of 1 to 52 weeks** to determine overtime entitlement



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code,
s. 1(1)(b.1)-(b.2)
added
s. 23.1 amended

VACATION ENTITLEMENT AND LEAVES

Years of employment used for calculating vacation entitlements now explicitly include leave periods.

Former legislation

- The years of employment used to calculate basic vacation entitlement **did not explicitly include leave periods** under the *ESC*

Amended legislation

- The years of employment used to calculate basic vacation entitlement **explicitly includes leave periods** under the *ESC*



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Code,
s. 34 amended

YOUTH EMPLOYMENT

Youth employees will now be permitted to do more jobs without being required to obtain a permit first.

Former legislation

- “Adolescent” workers (13-14 years old) require a permit before they can be hired, unless they are hired in certain approved occupations

Amended legislation

- The list of approved occupations that do not require a permit are expanded to include: **food service workers, janitorial assistants, coaches and tutors**



Timing of changes:

November 1, 2020



Impacted legislation:

Employment Standards Regulation, s. 52(1) amended

PENALTIES FOR BREACH

Penalties issued for breach of the *ESC* are amended and may be adjusted on a case-by-case basis.

Former legislation

- Administrative penalties under the *ESC* had to be paid within 21 days
- Director could increase the administrative penalties set out in the regulation

Amended legislation

- Administrative penalties must be paid within **30 days**
- Director may increase **or decrease** the administrative penalties



November 1, 2020



Employment Standards Regulation, s. 55.2(2) and Schedule 2 amended



LABOUR RELATIONS CODE

Key Legislative Changes

CERTIFICATION/REVOCAION TIMING

Step-by-step timing requirements are removed, with one general deadline imposed.

Former legislation

- The *LRC* contained very **specific timing requirements** for each step in the certification or revocation process (e.g., for voting, board decision)

Amended legislation

- The specific timing for each step is removed and instead the Board shall make it's final decision on certification or revocation application **within 6 months**



Timing of changes:

July 29



Impacted legislation:

Labour Relations Code,
s. 34 amended
s. 53 amended

REMEDIAL CERTIFICATION

Board's power to issue remedial certifications is more limited.

Former legislation

- Broad power for LRB to certify a trade union as a remedy (i.e. remedial certification) for failure to comply with the *LRC*

Amended legislation

- LRB can issue remedial certification only if:
 - A prohibited practice/ULP results in a representation vote that does not reflect true wishes, and
 - No other remedy would counteract the effects

 **Timing of changes:**

July 29

 **Impacted legislation:**

Labour Relations Code,
s. 17(1) amended

REFUSAL TO CERTIFY

Board's power to refuse certification is more limited.

Former legislation

- Broad power for LRB to refuse to certify a trade union as a remedy for failure to comply with the *LRC*

Amended legislation

- LRB can refuse to certify only if:
 - A prohibited practice/ULP results in a representation vote that does not reflect true wishes, and
 - No other remedy would counteract the effects



Timing of changes:

July 29



Impacted legislation:

Labour Relations Code,
s. 17(1) amended

WAITING PERIOD FOR REAPPLICATION

A union may have to wait six months to reapply for certification if it commits a prohibited practice.

Former legislation

- A union has to wait **90 days** after a certification application has been refused or withdrawn before it can reapply; no extended period for non-compliance with *LRC*

Amended legislation

- A union may have to wait **6 months** after a certification application has been refused or withdrawn, in situations where the union has not complied with the *LRC*



Timing of changes:

July 29



Impacted legislation:

Labour Relations Code,
s. 57(2)-(3) added

FIRST CONTRACT ARBITRATION

First contract arbitration is only to be ordered as a last resort.

Former legislation

- The Board could order a dispute over negotiation of a first collective agreement be resolved by arbitration (i.e. first contract arbitration) **when appropriate**

Amended legislation

- The Board may order first contract arbitration only **when necessary** and when no other remedies would counteract the failure to bargain effectively

 **Timing of changes:**

July 29

 **Impacted legislation:**

Labour Relations Code,
s. 92.3 amended

AMENDING COLLECTIVE AGREEMENT

The Board may amend an agreement that is already in place when a new union is certified.

Former legislation

- When a union becomes bargaining agent and a collective agreement is already in force, the union could terminate the agreement with proper notice

Amended legislation

- In these situations, the trade union can now apply to the Board to **amend the collective agreement already in force**

 **Timing of changes:**

July 29

 **Impacted legislation:**

Labour Relations Code,
s. 40 amended

RENEWING COLLECTIVE AGREEMENTS

Unions are required to communicate with bargaining unit when collective agreement is up for renewal.

Former legislation

- No specific communication about certification or revocation rights when collective agreement is coming to an end

Amended legislation

- When a collective agreement is coming to end, union must inform bargaining unit that no certification/revocation will be permitted if they enter new agreement



Timing of changes:

On proclamation



Impacted legislation:

Labour Relations Code,
s. 37(4)-(7) added
s. 52(4.01)-(4.04) added

UNLAWFUL ACTS DURING PICKETING

It is now unlawful under the *LRC* to obstruct or impede a person who wishes to cross a picket line.

Former legislation

- The *LRC* states that picketing must be conducted without wrongful acts (undefined in *LRC*; but discussed in common law)

Amended legislation

- “Obstructing or impeding a person who wishes to cross a picket line” is explicitly defined as a wrongful act under the *LRC* and therefore prohibited



Timing of changes:

July 29



Impacted legislation:

Labour Relations Code,
s. 84 amended

ILLEGAL STRIKES OR LOCKOUTS

The Board may direct the employer's union dues activity during an illegal strike or lockout.

Former legislation

- Board did not have power to direct employer to suspend union dues collection during illegal strike or collect and remit union dues during illegal lockout

Amended legislation

- Board now has these powers



July 29



Labour Relations Code,
s. 114 and 115 added

ILLEGAL STRIKES OR LOCKOUTS

If the Board grants an order regarding illegal strike/lockout, they must file it with the Court if requested.

Former legislation

- Where the Board grants an order regarding an illegal strike or lockout, they **may file it with the Court**

Amended legislation

- Where the Board grants an order regarding an illegal strike or lockout:
 - The Board may file it with the Court, and
 - **If a party requests the Board to file it with the Court, they must do so**



Timing of changes:

July 29



Impacted legislation:

Labour Relations Code,
s. 88(1) amended

SECONDARY PICKETING

Secondary picketing (picketing at a location other than employees' workplace) must be applied for.

Former legislation

- Secondary picketing was allowed, subject to the common law, and **not restricted** under the *LSC*

Amended legislation

- Unions will be required to **apply for and be granted an order** from the Labour Relations Board before engaging in secondary picketing



Timing of changes:

On proclamation



Impacted legislation:

Labour Relations Code,
s. 84.1 added

UNION DISCIPLINARY POWERS

Unions will be further restricted from disciplining employees who take alternate employment.

Former legislation

- Unions couldn't discipline employees who took non-union employment, if the union failed to propose reasonable alternate employment

Amended legislation

- Unions are further restricted from disciplining members for taking alternative employment if it doesn't threaten the union's "legitimate interests"

 **Timing of changes:**

July 29

 **Impacted legislation:**

Labour Relations Code,
s. 151 amended

REVERSE ONUS ON EMPLOYERS

The reverse onus on employers for unfair labour practice (“ULP”) is more limited.

Former legislation

- Employer had to prove that they *did not commit* ULP in most cases, rather than the union providing that employer *did commit* ULP (i.e., reverse onus)

Amended legislation

- The reverse onus on employers for ULPs only applies in cases where employer has dismissed or discharged employee



July 29



Labour Relations Code,
s. 149(2) amended

REVERSE ONUS ON UNIONS

A reverse onus is added for unions with regard to certain prohibited practices.

Former legislation

- There were no provisions imposing reverse onus on unions contained in the *LRC*

Amended legislation

- Unions bear the burden to prove that they did not coerce, intimidate, threaten or unduly influence an employee to join or carry out activity in a trade union



July 29



Labour Relations Code,
s. 151 amended

UNION DUES FOR POLITICAL ACTIVITIES

Unions are required to disclose the amount of union dues going to political activities.

Former legislation

- **No statutory disclosure** obligation related to union dues and fees going to political activities.

Amended legislation

- **Unions must disclose** amount of union dues and fees going to:
 - “political activities and other causes”,
 - activities under the *LRC*, and
 - other activities.



Timing of changes:

On proclamation



Impacted legislation:

Labour Relations Code,
s. 26.1 added

UNION DUES FOR POLITICAL ACTIVITIES

When is political activity spending disclosure required?

- Disclosure is required to each person required to pay union dues and fees:
 - (1) before charging any union dues or fees, and
 - (2) before changing the amount or percentage of union dues or fees to be charged.

 **Timing of changes:**

On proclamation

 **Impacted legislation:**

Labour Relations Code,
s. 26.1 added

POLITICAL ACTIVITY DEDUCTION ELECTION

Employees must elect to pay the portion of union dues going to political activities (opt-in).

Former legislation

- No statutory election or opt-in procedure related to political activities.

Amended legislation

- Employees are not required to pay the portion of their union dues going to political activities, unless they elect to do so.

 **Timing of changes:**
On proclamation

 **Impacted legislation:**
Labour Relations Code,
s. 26.1 added

POLITICAL ACTIVITY DEDUCTION ELECTION

Employers must be aware of their obligations under this new set of rules.

- Union must notify employers when their employees
 - Elect to pay union dues for political activities, or
 - Revoke an election to pay union dues for political activities.
- Employers shall not deduct union dues and fees that relate to political activities where an employee has not elected to pay them and shall not unduly influence an employee's decision over whether or not to make such an election (it is an unfair labour practice to do either of these things).



On proclamation



Labour Relations Code,
s. 26.1 added
s. 27(6) added
s. 149 amended

POLITICAL ACTIVITY DEDUCTION ELECTION

Unions and employers cannot unduly influence an individual's deduction election.

- It is a prohibited practice for unions to
 - Use coercion or undue influence to encourage a particular deduction election, or require an employer to terminate an employee because of their deduction election.
- It is an unfair labour practice for employers to
 - Refuse to employ, discriminate against, take disciplinary action or impose a penalty against an employee because of their chosen deduction election, or
 - Use coercion or undue influence to compel an employee's chosen deduction election.

 **Timing of changes:**
On proclamation

 **Impacted legislation:**
Labour Relations Code,
s. 26.1 added
s. 149 amended
s. 151 amended

UNION FINANCIAL STATEMENTS

Unions are required to provide financial statements and other information to members every year.

Former legislation

- No statutory requirement for disclosure of financial statements

Amended legislation

- Unions must provide financial statements and any other information prescribed by the regulations to their members every fiscal year



On proclamation



Labour Relations Code,
s. 24.1 added

ARBITRATION

Arbitrators no longer have power to extend time limits during the grievance and arbitration process.

Former legislation

- Arbitrators could **provide relief from time limits** set out in the collective agreement regarding grievance and arbitration process

Amended legislation

- Arbitrators' **no longer have power to extend time** required to take steps in the grievance or arbitration process that are set out in the collective agreement



Timing of changes:

July 29



Impacted legislation:

Labour Relations Code,
s. 142(3) and (5)
repealed

REASONABLENESS STANDARD

The legislative reasonableness standard has been removed from the *LRC* for Board review.

Former legislation

- When the Board reviewed a decision of an arbitrator, arbitration board or other body, a specific **standard of review was set out in the *LRC***

Amended legislation

- The specific standard set out in the *LRC* is removed and the Board may review the decision on the **standard it sees appropriate**, subject to the common law



On proclamation



Labour Relations Code,
s. 145(3) amended

POWERS OF THE BOARD AND CHAIRS

The Board has expanded powers to dismiss complaints.

Former legislation

- Board has **some power to summarily dismiss complaints** where they are without merit, frivolous, trivial or vexatious

Amended legislation

- **Board may also dismiss** where:
 - Improper motive or an abuse of process, or
 - In the case of a complaint of denial of fair representation, where the complainant refused to accept fair and reasonable settlement



Timing of changes:

July 29



Impacted legislation:

Labour Relations Code,
s. 16(4) amended
s. 153(3.1) added

POWERS OF THE BOARD AND CHAIRS

A Board Chair or Vice-Chair may now sit alone to hear a matter in additional circumstances.

Former legislation

- Normally quorum of the Board is the Chair or a Vice-Chair and 2 other members, **with some exceptions** that allow a Board Chair or Vice-Chair to sit alone

Amended legislation

- **Additional exceptions to quorum rule** where:
 - Board is reviewing decision of arbitrator, arbitration board or other body, or
 - Where the Chair is of the opinion it is necessary because of emergency



Timing of changes:

July 29



Impacted legislation:

Labour Relations Code,
s. 9(10) amended

COSTS AWARDS

The Board now has explicit power to award costs on review of arbitration decision.

Former legislation

- **No specific power to award costs** on review of decision from arbitrator, arbitration board or other body set out in *LRC*

Amended legislation

- The Board may **award any costs it considers appropriate** when reviewing a decision from an arbitrator, arbitration board or other body



Timing of changes:

On proclamation



Impacted legislation:

Labour Relations Code,
s. 145(3.1) added

NURSE PRACTITIONERS

Nurse practitioners are now considered employees under the *LRC*.

Former legislation

- Nurse practitioners were explicitly **excluded from the definition of “employee”** under the *LRC*

Amended legislation

- Nurse practitioners are **included within the definition of “employee”** and have all of the same rights under the *LRC* as other employees



Timing of changes:

On proclamation



Impacted legislation:

Labour Relations Code,
s. 1(1) amended
s. 58.1(4) amended

OTHER CHANGES

There are other changes proposed in Bill 32 that are not discussed here.

- Bill 32 also contains a number of other changes, including:
 - Changes specific to the construction industry.
 - Changes to acts governing public sector labour relations.
 - Changes affecting public post-secondary collective bargaining.
 - Other small changes, including wording changes.
- Please contact us should you require more information on these changes.



KEY TAKEAWAYS FOR EMPLOYERS

KEY TAKEAWAYS FOR EMPLOYERS

Some suggestions for employers based on the legislative changes brought by Bill 32:

- **Temporary layoffs:** Employers should be aware of extended temporary layoff periods under the *ESC* and build layoff provisions into their employment contracts/policies.
- **Hours of work averaging arrangements:** Employers not using averaging arrangements may want to consider implementing one, which can now be done unilaterally.
- **Holiday pay and years of service:** Calculations should be adjusted to reflect these changes.

KEY TAKEAWAYS FOR EMPLOYERS

- **Union certification process:** When a union certification drive is underway, employers may have more time to communicate with their employees and hear employee concerns before the certification vote takes place.
- **Union dues and political activities:** Once rules take effect, employers will have to be sure that they receive their unionized employees' deduction elections from the union and adjust payroll deductions accordingly.
- **Picketing restrictions:** Employers dealing with labour disputes should ensure that new picketing rules are complied with (secondary picketing must be Board approved, picketers cannot obstruct or impede from crossing picket line).

THANK YOU

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CORPORATE RESTRUCTURING: THINGS TO CONSIDER WHEN FACING LIQUIDITY CHALLENGES

Presented by:

Leigh Peters

STRATEGIES FOR CLIENTS FACING FINANCIAL DISTRESS

- Know where you are and when you are going
 - *Cash flow modelling to determine liquidity position*
- Finding new sources of Money
 - *Divest of non-core or core assets*
 - *Raise debt or equity capital*
 - *Business Arrangements: Corporate reorganizations, joint ventures, strategic alliances*
- Negotiate with key stakeholders
- Seek financial and legal advice

CASH FLOW MODELING AND LIQUIDITY POSITION

- Project your liquidity constraints before they happen
- Understand your financial position today and tomorrow
- Demonstrates compliance or non-compliance with lending covenants under your debt agreements
- Communication with stakeholders (lenders)

DETERMINE YOUR LIQUIDITY POSITION

- **What cash do you currently have on hand and what is your estimated cash flow forecast for the next six months?**
 - Do you have some cash reserves that can be used in the short-term?
 - Do you have an estimate of cash flow needs for the next four weeks? eight weeks? and 12 weeks?
 - Have you prepared any forecasts or estimates for when cash flows may begin to normalize?

DETERMINE YOUR LIQUIDITY POSITION

- **Review vendor, creditor and supplier relationships**
 - What are trade creditors or suppliers owed and when?
 - Is there any potential for contractual relief from trade creditors or suppliers?
 - Are trade creditors pressing for payment or taking steps to enforce amounts owed?
 - Would trade creditors or suppliers consider alternative payment arrangements, including payments over time or deferring amounts outstanding for some period of time?

DETERMINE YOUR LIQUIDITY POSITION

- **Review fixed costs**

- Review fixed costs such as rent, payroll and taxes that are owed and owing.
- Determine if there is relief available from landlords, provincial or Federal Government for these amounts.

DETERMINE YOUR LIQUIDITY POSITION

- **Review debt agreements**

- What do your covenants say?
- Are you currently in default or breach under any of your covenants?
- If no default, is there room to borrow more?
- Would you satisfy conditions for additional credit, new lines of credit or term loans under any of the recently announced government programs?

FINDING NEW SOURCES OF MONEY

- Asset Sales
- Private Equity
- Rescue/Bridge Financing
- Consolidation, Sale, Partnerships, Joint Ventures

ASSET SALES

- Divesting of non-core or core assets
- *Do you have assets to sell?*
- *Are there buyers?*
- *Timing of sales and the discount at which you might have to sell should be top of mind.*

ASSET SALES

- If you are considering an asset sale to strengthen your bottom line, you will need to look at potential valuation gaps and purchase price adjustments.

ASSET SALES

- Valuation Gaps
 - Covid-19 has created a lot of challenges in determining the valuation of a company or a company's assets.
 - Valuations ultimately determine what you will sell your assets for or what you would be willing to buy someone else's assets for.

ASSET SALES

- Unprecedented cancellations, temporary drops in bookings, potential for shut-downs will all affect the valuation of your assets or those of targetco.

ASSET SALES

- So how do you deal with the uncertainty of valuations?
- One mechanism you can incorporate into your purchase or sale transaction documents is a Purchase Price Adjustment.

ASSET SALES

- A post-Closing Purchase Price Adjustment will likely be part of any asset purchase or sale in the coming months.
- This means that, once the deal has been signed and the Closing has occurred, there is a mechanism by which the parties can revisit the valuation at a later date to take into consideration unprecedented changes.

ASSET SALES

- There are a number of different ways that buyers and sellers can determine and adjust purchase prices.
 - Working Capital Adjustments
 - Earn-outs

ASSET SALES

Working Capital Adjustments

- Tourism businesses are no doubt seeing significant reductions in accounts receivable, abnormal inventories, deferred payments, including interest on loans. All of these will affect a working capital valuation and both parties will need to carefully consider what adjustments might be appropriate.

ASSET SALES

- Businesses engaging in M&A activity will need to consider whether changes to revenues and accounts receivable over the previous years is due to COVID-19 and what risk they are willing to take on with respect to the possibility that COVID-19 continues for some period of time.

ASSET SALES

- Businesses should also be looking at how to characterize certain funds if they were received as part of government subsidies and other COVID-19 related programs.
- They might be included in EBITDA for the year, but they can't be expected to continue indefinitely.
- Wage subsidies, rent relief, mortgage relief and other governmental or banking institution programs will have to be delineated and categorized appropriately.

ASSET SALES

- Drafting post-Closing adjustments will require a lot of attention, including things as basic as which accounting principles apply and, as mentioned before, how certain revenue streams are categorized.
- Advice from a proper financial advisor can be extremely helpful.

ASSET SALES

- Earn outs can be used to bridge valuation gaps as well.
 - Earn outs based on achieving certain targets.
 - Reasonable time frames will be important.

ASSET SALES

- Another option to bridge valuation gaps would be to defer payment of a portion of the purchase price until a later date or the occurrence of a future event.
- For example, you could defer payment of 20% of the purchase price until 12 months following a COVID-19 vaccine implementation or the removal of travel restrictions etc.

ASSET SALES

- You can also put a cap on purchase price adjustments so that you can retain some level of deal certainty.
- A “ceiling” would be an upper limit to any purchase price increase to be paid by a buyer to a seller.
- A “floor” would be a lower limit to any purchase price paid by a buyer to a seller.

ASSET SALES

- Finally, when trying to bridge valuation gaps, you might want to consider paying a portion of the purchase price in the form of buyer's equity.
- Private Equity, which we will discuss later, often uses buyer's equity as a way of reducing the cash paid up front and ensuring some role in the business carrying forward.

FINDING NEW SOURCES OF MONEY CONTINUED

- Asset Based Loans
- Existing investors
- Government support
 - BDC/EDC
- Rescue/Bridge Financing
- Private Equity

BRIDGE FINANCING

- Provides short-term liquidity solutions, including additional short-term cash flow, taking out an operating lender or replacing all of the secured financing your company may have.
- Generally shorter terms at higher costs.
- Security is taken generally over unencumbered assets.
- They may be willing to take a second priority secured position to your current term or operating lender.

BRIDGE FINANCING

- A bridge lender could aid in transition from a company's current lender to a new facility.
- This could also give a company the additional time needed to improve its cash flow or make operational changes needed to obtain more traditional financing.

BRIDGE FINANCING

- Can be expensive
- It is often short term in nature
- Watch out for bridge financing options that are “loans to own”

PRIVATE EQUITY

- Private equity refers to investments from private equity or venture capital firms (often representing high net worth individuals) into private companies or into public companies.

PRIVATE EQUITY

- Do you currently have private equity involvement and can you call on them to make additional investments?
- Are there additional private equity options available?

BUSINESS ARRANGEMENTS

- **Consolidation, Sale and other Corporate Structures**
 - When facing a liquidity crisis, creativity is key.
 - If you cannot resolve the crisis with financing, it might be time to look at what opportunities exist to ensure the future of your business.

BUSINESS ARRANGEMENTS

- Consolidation with or sale to another entity who is in a better financial position.
- Strategic Alliances: Partnering or joint venturing with other entities to build on each others' strengths while mitigating each others' weaknesses.

NEGOTIATING WITH KEY STAKEHOLDERS

- Review all the agreements that govern your business:
 - Supplier and Vendor agreements
 - Customer agreements and booking policies
 - Project contractor agreements
 - Employment agreements
 - Financial services agreements

CONTRACTUAL CONSIDERATIONS

- Look at your agreements and consider whether there are any ways to stretch your commitments and/or defer payments.
- Slow the burn.

CONTRACTUAL CONSIDERATIONS

Key Contract Clauses:

- In reviewing your contractual obligations and requirements, pay particular attention to these three key clauses:
 - *Force Majeure*
 - *Default*
 - *Termination*

CONTRACTUAL CONSIDERATIONS

- Force Majeure
 - Is there a specific reference to epidemic or pandemic in your contracts?
 - If not, is there language in the force majeure clause covering “any other causes beyond the party’s control”?
 - How broadly is the force majeure events defined?
 - What happens in a force majeure event—for example, does a force majeure event provide for an immediate right of termination?
 - If so, how are payments, losses and damages allocated?

CONTRACTUAL CONSIDERATIONS

- Default
 - Most contracts provide for default provisions.
 - Consider whether you are in default and what effect that might have on your business.
 - What are the remedies available?
 - If you are pursuing a project, you will also want to consider the financing obligations behind that project.
 - Are your lenders financing?
 - Will they have an opportunity to back out of financing that project?
 - What if you can no longer get financing for a project?

CONTRACTUAL CONSIDERATIONS

- Termination
 - *What kind of termination clauses do you have?*
 - Termination for Convenience?
 - Material Breach of Agreement?
 - Are there Cure Periods?
 - Only in the Event of Default?

DEALING WITH LENDERS

- Be proactive, timely, thorough and transparent
- Be candid
- Be responsive
- Be reliable
- Lean on advisers

BE PROACTIVE

Approach lenders to discuss challenges early on

- Notify lenders of challenges at earliest date possible
- Lenders appreciate early warning
- More options available to resolve problems identified early
- Do not wait until credit facilities are up for renewal
- Proactive approach: creates lender confidence
- Proactive approach: builds borrower credibility

BE CANDID

Share details of business challenges with your lenders

- Do not conceal, downplay or minimize problems
- Lenders appreciate candour
- Offer to provide on-site tours of business
- Offer to provide full access to financial statements
- Lenders take “bad news” better than “surprises”
- If possible, present both problems and potential solutions

BE RESPONSIVE

Establish and maintain reliable lines of communication

- Lenders value open communication with borrowers
- “Radio silence” from borrower harms lender relationships
- Keep appointments
- Respond when lender requests follow-up
- Lenders have confidence in borrowers they can contact
- Provide lenders with email, cell phone and home phone

BE RELIABLE

Honour commitments you make to lenders

- Resist making unrealistic commitments to lenders
- Only make promises to lenders that you can keep
- If you anticipate inability to honour a commitment, notify lender as soon as possible
- Accept responsibility for failure to honour commitments

LEAN ON ADVISERS

Hire a well-regarded financial adviser

- A financial adviser can be very effective in providing both formal and informal restructuring options for distressed companies.
- A financial adviser can assist in the review of the liquidity position discussed above and potentially identify other operational changes or improvements that can assist a company in improving its cash flow position.
- Financial advisers will generally be from a professional services firm such as an accounting firm or a boutique restructuring and insolvency advisory firm.

LEAN ON ADVISORS

Hiring recognized advisers builds your credibility

- Involvement of trusted professionals builds lender comfort.
- Lenders understand that credible professionals associate themselves with credible borrowers.

INSOLVENCY AND RESTRUCTURING

- Insolvency and Restructuring could be the last resort.
- Our firm has done a two part series on Restructuring and Insolvency options and procedures that are available below:
- **Restructuring Options for Businesses — Part 1: Finding the Right Path: Formal Restructuring and Informal Workout Options**
- **Restructuring Options for Businesses — Part 2: So You Have Chosen Formal Restructuring, What's Next?**

THANK YOU

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PANDEMIC IMMIGRATION - TOURISM AND WORK- RELATED IMMIGRATION IN THE FACE OF COVID-19

Presented by:

Scott Bell

WHAT ARE WE COVERING?

- Travel Restriction
- Work Permit and Application Processing
- Self-Isolation/Quarantine Issues
- A Picture of the Future

IS THERE A COMPLETE BAN ON FOREIGN NATIONALS TRAVELLING TO CANADA?

- Two different Orders-in-Council
 - Prohibition of Entry into Canada from the United States
 - Prohibition of Entry into Canada from any Country other than the United States
- These Orders are in effect indefinitely

WHAT DO THE RESTRICTIONS FOR TRAVEL FROM THE U.S. LOOK LIKE?

- Are they asymptomatic?
- Can they self-isolate for 14 days after entry?
- Is the reasons for travel optional or discretionary?



WHAT DO THE TRAVEL RESTRICTIONS FOR THE REST OF THE WORLD LOOK LIKE?

- Are they asymptomatic?
- Are they exempt from the travel ban?
 - Do they hold a work permit; or
 - A work permit pre-approval?
- Is the reasons for travel optional or discretionary?

HOW ARE DETERMINATIONS ON OPTIONAL OR DISCRETIONARY PURPOSE APPLIED IN PRACTICE?

- Should apply to travel for tourism, recreation, or entertainment
- Has been applied overly broad by the Canada Border Services Agency
- Exercise caution when assuming a travel purpose passes the test

IS INTERNATIONAL TOURISM TO CANADA SHUTDOWN?

- Essentially impossible to travel to Canada for a purpose tied to tourism, entertainment, or recreation
- Travel for work possible but not for a tourism connected purpose



WHAT ABOUT BUSINESS TRAVEL – IS THAT STILL POSSIBLE?

- Where is the traveller coming from?
- Can their purpose be established as non-optional or non-discretionary?

ARE FOREIGN BUSINESS OWNERS ABLE TO ENTER CANADA UNDER THE TRAVEL RESTRICTIONS?

- Foreign business owners may not be allowed entry
- What industry is the business in?
- Is the business seasonal or year round?
- Is the business allowed to operate under local lockdown orders?

WHEN DOES A WORK PERMIT OR PRE-APPROVAL NOT MEET THE OPTIONAL OR DISCRETIONARY TEST?

- Is the work permit open or employer specific (closed)?
- Is the employer connected to the work permit operating?
- Has the foreign worker been terminated or laid-off?

DO THE FOREIGN WORKERS COMING TO CANADA HAVE TO BE WORKING IN AN ESSENTIAL SERVICES INDUSTRY?

- Main question should still be whether it is optional or discretionary?
- Essential services or essential purposes tests may apply at a U.S. land border
- Holding a valid work permit does not automatically mean the traveller is essential

ARE LABOUR MARKET IMPACT ASSESSMENTS STILL BEING PROCESSED?

- Labour Market Impact Assessments (LMIA)
 - Regular processing
 - Global Talent Stream
- LMIA Online Submission Pilot
- Email Submission Pilot
- Expedite requests for name changes on approved LMIA's

ARE LMIAS RESTRICTED IN ALBERTA?

- Alberta Government is expanding the refusal to process list
- An additional 475 occupations will be added
- Accommodation and Food Services positions will be affected
- Canceling 800 existing applications

ARE WORK PERMIT APPLICATIONS STILL BEING PROCESSED?



- Work permit applications are still being processed
- Some delays due to capacity issues
- Expect delays overseas with biometrics and passport submissions

WHAT ABOUT WORK PERMIT EXTENSIONS/RENEWALS AND PERMANENT RESIDENCY?

- Extension and renewal applications still being processed
- Expect processing delays due to capacity issues
- Permanent residency is open and it is a good time to consider that as an option

ARE PORT OF ENTRY WORK PERMIT APPLICATIONS STILL POSSIBLE?

- Are they eligible to apply at the port of entry generally?
- Is the foreign national traveling from the U.S. or another country?

IS THE INTERNATIONAL EXPERIENCE CLASS PROGRAM OPERATING?

- Rounds of Invitation are suspended
- There is no indication on when the program may open again
- Other considerations should be made for securing work permits

CAN WE HIRE FOREIGN WORKERS WHO HAVE LOST THEIR JOBS WITH OTHER EMPLOYERS?

- New Pilot Program makes this process easier
- Foreign workers can start with a new employer much quicker under the Pilot Program
- You need an approval letter issued after the work permit is submitted

HOW DO SELF-ISOLATION OR QUARANTINE RULES WORK?



- Federal and provincial self-isolation rules are in place
- Travellers entering Canada must self-isolate for 14 days and monitor for symptoms
- Credible self-Isolation plan is a must

WHAT ABOUT PROVINCIAL SELF-ISOLATION RULES?

- Patchwork of rules from province to province
- MB, SK, AB, and BC all have their own rules
- Most require a similar 14 day self-isolation period

ARE THERE EXEMPTIONS TO SELF-ISOLATION?

- Expect self-isolation rules to apply
- Narrow and limited exemptions
 - Medical services
 - Trucking
 - COVID-19 response services
 - Essential services under section 6(e)

WHAT ABOUT ALBERTA ISOLATION RULES?

- Alberta Alignment Order issued on August 27, 2020
- Federal exempted travellers are deemed exempt from provincial self-isolation rules
- Must follow enhanced restrictions

ALBERTA RAPID TESTING PILOT

- Open at Calgary Airport and Coutts Land Port
- Eligible travellers can volunteer for a rapid test
- Must isolate until results are received
- Must take a second test in Alberta six or seven days later
- Must remain in Alberta for 14 days

WHAT ARE MY OBLIGATIONS AS AN EMPLOYER TO MY FOREIGN WORKERS WHO HAVE TO SELF-ISOLATE?

- Employers may have obligations
- Failure to follow may result in non-compliance finding
- Depends on a number of factors including:
 - Type of worker
 - Type of work permit application
 - Employment contracts

IS THERE A PENALTY FOR FAILURE TO SELF-ISOLATE?

- Federal:
 - \$750,000 and/or up to six months in jail
 - \$1,000,000 and/or up to three years in jail
- Provincial:
 - \$1,000 up to \$500,000
 - Depends on province



ONCE A TRAVELER HAS
SUCCESSFULLY ENTERED CANADA AND
MET THEIR SELF-ISOLATION
OBLIGATIONS, WHAT CAN THEY DO?

WHEN WILL TRAVEL RESTRICTIONS BE LIFTED?

- Orders in Council set to expire but keep getting extended
- Expect some form of travel restrictions for U.S. and the rest of the world to remain in place into 2021
- 2022 before we see a full lifting of travel restrictions
- Some countries may gain access before others

WHAT ABOUT SELF-ISOLATION REQUIREMENTS?

- Self-isolation will be the normal for sometime, likely into 2022
- Provinces or the federal government may lift self-isolation at different times, creating a further patchwork
- Self-isolation will continue to impact tourism even when travel restrictions are lifted
- Rapid testing will be the solution

THANK YOU

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QUESTIONS?

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