

2019 Bill 2

First Session, 30th Legislature, 68 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 2

**AN ACT TO MAKE ALBERTA
OPEN FOR BUSINESS**

THE MINISTER OF LABOUR AND IMMIGRATION

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 2

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2019

AN ACT TO MAKE ALBERTA OPEN FOR BUSINESS

(Assented to , 2019)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Employment Standards Code

Amends RSA 2000 cE-9

1(1) The *Employment Standards Code* is amended by this section.

(2) Section 23 is amended

(a) by repealing subsection (2)(a) and substituting the following:

(a) time off with pay instead of overtime pay will be provided, taken and paid at the employee's wage rate at a time that the employee could have worked and received wages from the employer;

(b) by adding the following after subsection (4):

(5) Time off with pay earned under section 23(2)(a) of the former Act that has not been provided, taken or paid before September 1, 2019 must be provided in accordance with section 23(2)(a) of the former Act unless the overtime agreement or overtime agreement that is part of a collective agreement provides for a higher rate.

(6) In subsection (5), "former Act" means the *Employment Standards Code* as it read before September 1, 2019.

Explanatory Notes

Employment Standards Code

1(1) Amends chapter E-9 of the Revised Statutes of Alberta 2000.

(2) Section 23 presently reads in part:

(2) An agreement referred to in subsection (1) is deemed to include at least the following provisions:

(a) instead of overtime pay, time off, calculated at 1.5 hours off for each hour of overtime, with pay, will be provided, taken and paid at the employee's wage rate at a time that the employee could have worked and received wages from the employer;

(4) An employer must comply with an overtime agreement entered into under this section.

(3) Sections 26, 28 and 29 are repealed and the following is substituted:

Eligibility for general holiday pay

26(1) An employee is eligible for general holiday pay if the employee has worked for the same employer for 30 work days or more in the 12 months preceding the general holiday.

(2) An employee is not entitled to general holiday pay if the employee

- (a) does not work on a general holiday when required or scheduled to do so, or
- (b) is absent from employment without the consent of the employer on the employee's last regular work day preceding, or the employee's first regular work day following, a general holiday.

Resolving doubts about general holiday pay entitlements

27(1) If an employee works an irregular schedule and there is doubt about whether a general holiday is on a day that would normally have been a work day for the employee, the doubt is to be resolved in accordance with subsection (2).

(2) If in at least 5 of the 9 weeks preceding the work week in which the general holiday occurs the employee worked on the same day of the week as the day on which the general holiday falls, the general holiday is to be considered a day that would normally have been a work day for the employee.

General holiday pay — not working on a normal work day

28 If

- (a) a general holiday falls on a day that would normally have been a work day for an employee, and
- (b) the employee does not work on the general holiday,

the employer must pay the employee general holiday pay of an amount that is at least the average daily wage of the employee.

(3) Sections 26, 28 and 29 presently read:

26 An employee is not entitled to general holiday pay if the employee

- (a) does not work on a general holiday when required or scheduled to do so, or*
- (b) is absent from employment without the consent of the employer on the employee's last regular work day preceding, or the employee's first regular work day following, a general holiday.*

27 Repealed 2017 c9 s18.

28 If an employee does not work on a general holiday, the employer must pay the employee general holiday pay of an amount that is at least the average daily wage of the employee.

29 If an employee works on a general holiday, the employer must comply with clause (a) or (b):

- (a) pay the employee general holiday pay of*
 - (i) an amount that is at least the average daily wage of the employee, and*
 - (ii) an amount that is at least 1.5 times the employee's wage rate for each hour of work of the employee on that day,*
- or*
- (b) provide the employee with*
 - (i) an amount that is at least the employee's wage rate times each hour of work on that day, and*
 - (ii) one day's holiday, not later than the employee's next annual vacation, on a day that would normally be a work day for the employee, and general holiday pay for that day of an amount that is at least the employee's average daily wage.*

30 Repealed 2017 c9 s21.

**General holiday pay — working on
a normal work day**

29(1) If a general holiday is on a day that would normally have been a work day for an employee and the employee works on the general holiday, the employer must comply with clause (a) or (b):

- (a) pay the employee general holiday pay of
 - (i) an amount that is at least the average daily wage of the employee, and
 - (ii) an amount that is at least 1.5 times the employee's wage rate for each hour of work of the employee on that day,

or

- (b) provide the employee with
 - (i) an amount that is at least the employee's wage rate times each hour of work on that day, and
 - (ii) one day's holiday, not later than the employee's next annual vacation, on a day that would normally be a work day for the employee, and general holiday pay for that day of an amount that is at least the employee's average daily wage.

(2) An amount or a day's holiday earned under section 29 of the former Act that has not been provided, taken or paid before September 1, 2019 must be provided in accordance with section 29 of the former Act.

(3) In subsection (2), "former Act" means the *Employment Standards Code* as it read before September 1, 2019.

**General holiday pay — working on
unscheduled work day**

30 If

- (a) a general holiday is on a day that is not normally a work day for an employee, and
- (b) the employee works on the general holiday,

the employer must pay the employee general holiday pay of an amount that is at least 1.5 times the wage rate of the employee for each hour of work on that day.

(4) Section 33.1(1) is amended

(a) by striking out “section 29(b)(ii)” and substituting “section 29(1)(b)(ii)”;

(b) in clause (a)

(i) by striking out “section 29(a)” and substituting “section 29(1)(a)”;

(ii) by striking out “section 29(b)(i)” and substituting “section 29(1)(b)(i)”.

(5) Section 61.1(3) is amended by striking out “section 29(b)(ii)” and substituting “section 29(1)(b)(ii)”.

Labour Relations Code

Amends RSA 2000 cL-1

2(1) The *Labour Relations Code* is amended by this section.

(2) The following is added after section 5:

Support to employees

5.1 The Minister may establish a program to provide support and assistance to employees with respect to matters under this Act, the *Police Officers Collective Bargaining Act*, the *Public Education Collective Bargaining Act* and the *Public Service Employee Relations Act*.

(3) Section 33(a)(ii) is amended by striking out “6 months” and substituting “90 days”.

(4) Section 33.1(1) presently reads in part:

33.1(1) If an employee has not taken a holiday to which the employee is entitled under section 29(b)(ii) and

(a) the employment of the employee is terminated by the employer, the employee is entitled to be paid general holiday pay calculated under section 29(a) less the amount paid to the employee under section 29(b)(i), or

(5) Section 61.1(3) presently reads:

(3) Where an employee has not taken the day's holiday referred to in section 29(b)(ii), an employer must not require the employee to use it during the termination notice period.

Labour Relations Code

2(1) Amends chapter L-1 of the Revised Statutes of Alberta 2000.

(2) Support to employees.

(3) Section 33(a) presently reads:

33 An application for certification shall be supported by evidence, in a form satisfactory to the Board, that

(a) at least 40% of the employees in the unit applied for, by

(4) Section 34 is repealed and the following is substituted:

Inquiry into certification application

34(1) In this section, “working day” means any day other than a Saturday, a Sunday or any other holiday as defined in the *Interpretation Act*.

(2) Before granting an application for certification, the Board shall satisfy itself, after any investigation that it considers necessary, that

- (a) the applicant is a trade union,
- (b) the application is timely,
- (c) the unit applied for, or a unit reasonably similar to it, is an appropriate unit for collective bargaining,
- (d) the employees in the unit the Board considers an appropriate unit for collective bargaining have voted, at a representation vote conducted by the Board, to select the trade union as their bargaining agent, and
- (e) the application is not prohibited by section 38.

(3) The Board shall provide the employer with notice of the application for certification forthwith after receipt of the application.

(4) Forthwith, and no later than 5 working days after the date of the application for certification, the employer shall provide to the Board information it requires for the purpose of determining

- (a) the employees to be included in the bargaining unit applied for or a reasonably similar unit,

- (i) *maintaining membership in good standing in the trade union, or*
- (ii) *applying for membership in the trade union and paying on their own behalf a sum of not less than \$2 not longer than 6 months before the date the application for certification was made,*

or both, have indicated their support for the trade union, or

(4) Section 34 presently reads:

34(1) In this section, “working day” means any day other than a Saturday, a Sunday or any other holiday as defined in the Interpretation Act.

(2) Before granting an application for certification, the Board shall satisfy itself, after any investigation that it considers necessary, that

- (a) the applicant is a trade union,*
- (b) the application is timely,*
- (c) the unit applied for, or a unit reasonably similar to it, is an appropriate unit for collective bargaining,*
- (d) subject to subsection (8), the employees in the unit the Board considers an appropriate unit for collective bargaining have voted, at a representation vote conducted by the Board, to select the trade union as their bargaining agent, and*
- (e) the application is not prohibited by section 38.*

(3) The Board shall provide the employer with notice of the application for certification forthwith after receipt of the application.

(4) Forthwith, and no later than 5 working days after the date of the application for certification, the employer shall provide to the Board information it requires for the purpose of determining

- (a) the employees to be included in the bargaining unit applied for or a reasonably similar unit,*
- (b) the appropriateness of the unit or a reasonably similar unit for collective bargaining, and*

- (b) the appropriateness of the unit or a reasonably similar unit for collective bargaining, and
- (c) the timeliness of the application.

(5) Before conducting a representation vote, the Board shall satisfy itself, on the basis of the evidence submitted in support of the application and the Board's investigation in respect of the application, that at the time of the application for certification the trade union had the support, in the form set out in section 33(a) or (b), of at least 40% of the employees in the unit applied for.

(6) The Board shall give notice of a vote within 10 working days of the date of application for certification, and the vote must commence within 3 working days of the notice.

(7) In cases requiring a mail-in vote, the Board shall commence the mail-in voting process no later than 14 working days after the date of the application for certification.

(8) In accordance with any rules made by the Board, the Board may prohibit, as of the time of giving the notice of the representation vote referred to in subsection (6), any electioneering or issuing of propaganda that may influence employees in their voting decision.

(9) The Board shall conduct any representation vote and shall complete its investigations and inquiries into and consideration of an application for certification as soon as possible and no later than 20 working days after receipt of the application for certification, or 25 working days in the case of a mail-in vote.

(10) Unless the Chair approves an extension, the Board shall make every effort to meet the timelines in this section, but a failure to meet any of the timelines does not invalidate the proceedings or prevent the completion of the certification process.

(11) This section applies with respect to an application for certification made on or after the day on which the Bill to enact *An Act to Make Alberta Open for Business* receives first reading.

(c) the timeliness of the application.

(5) Before conducting a representation vote, the Board shall satisfy itself, on the basis of the evidence submitted in support of the application and the Board's investigation in respect of the application, that at the time of the application for certification the trade union had the support, in the form set out in section 33(a) or (b), of at least 40% of the employees in the unit applied for.

(6) Subject to subsection (8), the Board shall give notice of a vote within 10 working days of the date of application for certification, and the vote must commence within 3 working days of the notice.

(7) In cases requiring a mail-in vote, the Board shall commence the mail-in voting process no later than 14 working days after the date of the application for certification.

(8) A representation vote is not required if, on the basis of the evidence submitted in support of the application and the Board's investigation in respect of that evidence, the Board is satisfied that at the time of the application for certification the trade union had the support, in the form set out in section 33(a), of more than 65% of the employees in the unit the Board determines to be an appropriate unit for collective bargaining under section 35(1).

(9) At any time after the Board begins assessing an application referred to in subsection (8), the trade union may elect to waive its right to certification under subsection (8) and to proceed with the application based on the results of a representation vote.

(10) If the Board determines under subsection (8) that the trade union lacks the necessary 65% support of the employees in the unit applied for or a reasonably similar unit found to be appropriate for collective bargaining, but has the 40% support required by subsection (5), or if there is a waiver under subsection (9), the Board shall within 3 working days of that determination or waiver, give notice of a representation vote.

(11) In accordance with any rules made by the Board, the Board may prohibit, as of the time of giving the notice of the representation vote referred to in subsection (6) or (10), any electioneering or issuing of propaganda that may influence employees in their voting decision.

(12) If, on or after the day on which the Bill to enact *An Act to Make Alberta Open for Business* receives first reading but before it receives Royal Assent,

- (a) an application for certification is made, and
- (b) the employees in the unit the Board considers an appropriate unit for collective bargaining have not voted, at a representation vote conducted by the Board, to select the trade union as their bargaining agent,

and a certificate under section 39 is granted, whether before, on or after the day the Bill receives Royal Assent, the certificate is void.

(5) Section 67.1 is amended

- (a) by repealing subsection (1) and substituting the following:**

Marshalling of proceedings

67.1(1) In this section,

- (a) “adjudicative body” means a body or person referred to in subsection (1.1) but does not include
 - (i) a body of a professional association established under an enactment that holds a hearing or other disciplinary proceeding,
 - (ii) the Ombudsman,
 - (iii) The Provincial Court of Alberta or a judge of that Court,
 - (iv) a justice of the peace conferred with the authority to determine a question of constitutional law under the *Provincial Court Act*,
 - (v) the Court of Queen’s Bench of Alberta or a judge or master in chambers of that Court, or
 - (vi) the Court of Appeal of Alberta or a judge of that Court;

(12) The Board shall conduct any representation vote and shall complete its investigations and inquiries into and consideration of an application for certification as soon as possible and no later than 20 working days after receipt of the application for certification, or 25 working days in the case of a mail-in vote.

(13) Unless the Chair approves an extension, the Board shall make every effort to meet the timelines in this section, but a failure to meet any of the timelines does not invalidate the proceedings or prevent the completion of the certification process.

(5) Section 67.1 presently reads in part:

67.1(1) In this section, “proceeding” means any proceeding before the Board, before an arbitrator, arbitration board or other body arising from a collective agreement required to be filed under this Act, or before any other adjudicative body under an enactment dealing with employment matters other than the following:

- (a) a complaint, inquiry, hearing or other disciplinary proceeding of a professional association pursuant to an enactment;*
- (b) a proceeding under the Provincial Offences Procedure Act;*
- (c) a proceeding under the Ombudsman Act.*

(7) If one of the proceedings that is the subject of the application is under the Alberta Human Rights Act, the Board shall notify the director under that Act.

(10) At or after the hearing, the Chair or vice-chair may grant an order that may include any one or more of the following:

- (a) a direction that grievances or arbitrations arising out of common circumstances be consolidated and heard in one proceeding;*
- (b) where an issue that is the subject of one or more proceedings includes a complaint or other matter before the Board, directions as to which should proceed first or in what forum*

- (b) “proceeding” includes any investigation or inquiry of a person or body referred to in subsection (1.1).

(1.1) This section applies with respect to the following:

- (a) the Board;
- (b) an arbitrator, arbitration board or other body arising from a collective agreement required to be filed under this Act;
- (c) the following persons or bodies when dealing with employment matters:
 - (i) the Alberta Human Rights Commission and any human rights tribunal appointed under the *Alberta Human Rights Act*;
 - (ii) the Appeals Commission and the Workers’ Compensation Board under the *Workers’ Compensation Act*;
 - (iii) an appeal body under the *Employment Standards Code*;
 - (iv) the Office of the Information and Privacy Commissioner under the *Freedom of Information and Protection of Privacy Act*;
 - (v) a Board of Reference under the *School Act*;
 - (vi) any other body or person determined by the Board.

(b) by repealing subsection (7);

(c) in subsection (10)

(i) in clause (b) by adding “or” after “unnecessary”;

(ii) by adding the following after clause (d):

- (d.1) a direction to a specified adjudicative body to determine one or more of the issues that is the subject of the application for a marshalling order;

the issues should be decided, so as to best protect the interests involved while avoiding unnecessary duplicative proceedings;

- (c) conditions under which proceedings will continue, including an order or schedule of proceedings;*
- (d) a stay of any proceeding that will be effectively determined by an arbitration or other proceeding;*
- (e) any further directions that the parties may agree on or that, in the opinion of the Board, are just and equitable in the circumstances.*

(11) The Chair or vice-chair, in conducting proceedings and making any orders under this section, shall take into account

- (a) that the purpose of the proceedings is to enhance the fairness, cost and efficiency of the proceedings in issue while ensuring that the interests of the parties are protected;*
- (b) that the process under this section should be expeditious and should not be a source of overall delay in the resolution of the proceedings in issue;*
- (c) that while the director under the Alberta Human Rights Act is not, in a proceeding under section 22 of that Act, subject to any direction given by the Board, the director may be informed or influenced by the Board's proceedings.*

(12) Pending the director's decision in relation to any complaint under the Alberta Human Rights Act, if it is appropriate to do so, the Board may defer its decision, or give any necessary interim order, under this section.

(d.2) where a proceeding is stayed by an order under clause (d) or an adjudicative body is specified under clause (d.1), a direction that no further proceeding, investigation, inquiry or other matter by an adjudicative body may be commenced or continued in relation to a matter to which the marshalling order applies;

(d) in subsection (11)

(i) by adding the following after clause (b):

(b.1) whether an employee's right to fair representation with respect to any human rights issue, including any duty to accommodate, has been, or will be, appropriately investigated and protected if the matter is to proceed by arbitration rather than through a complaint under the *Alberta Human Rights Act*.

(ii) by repealing clause (c);

(e) by repealing subsection (12).

Consequential Amendment

Amends SA 2012 cE-0.3

3(1) The *Education Act* is amended by this section.

(2) Section 274 is amended by adding the following after subsection (2):

(3) Section 67.1(1.1)(c)(v) is amended by striking out "*School Act*" and substituting "*Education Act*".

Coming into Force

4(1) Section 1 comes into force on September 1, 2019.

(2) Section 2(2) comes into force on October 1, 2019.

(3) Section 2(3) and (4) are deemed to have come into force on the day the Bill to enact *An Act to Make Alberta Open for Business* received first reading.

Consequential Amendment

3(1) Amends chapter E-0.3 of the Statutes of Alberta, 2012.

(2) Section 274 presently reads:

274(1) The Labour Relations Code is amended by this section.

(2) Section 48(1)(c) is amended by striking out “school district or division” and substituting “school division”.

Coming into Force

4 Coming into force.

