Alberta Motor Transport Association
Our Momentum

BULLETIN - August 10, 2020

Big Changes to Alberta's Workplace Legislation

Bill 32: Restoring Balance in Alberta's Workplaces Act, 2020 – What it Means for Industry

Over the last few years, the Alberta Government has changed labour legislation several times. On July 7th, 2020, the Province introduced Bill 32, the Restoring Balance in Alberta's Workplaces Act, 2020. Bill 32 proposes several changes to the Employment Standards Code, the Labour Relations Code and other labour-related legislation that will impact the Alberta commercial transportation industry (unionized and non-unionized carriers or fleets).

With continuous changes, it can get confusing. The Alberta Motor Transport Association has you covered. Lets explore the proposed changes below.

Employment Standards Code

1. Deductions from Employee Wages – Employers will now be able to correct and recover payroll errors or costs without the need to obtain an employees' written authorization of approval (prior to deductions from an employee's wages). For example, if you overpaid one of your drivers' general holiday pay, there is no permission required by the employee to deduct the over-payment from their next pay. However, employers will still be required to notify employees when over-payments are to be deducted from wages (written notice).
2. Averaging Arrangement – For transportation operations, averaging agreements do not usually apply. Averaging agreements are for workers with set schedules who opt to work less days with longer hours, in exchange for extra days off. Those arrangements require regular operations that are not fluctuating or unpredictable, like trucking. However, some fleets may choose to have administrative or managerial staff (with regular schedules) on averaging arrangements. The Government is proposing to replace the cumbersome 'Averaging Agreement' provisions with a revised 'Averaging Arrangement' scheme. These provisions would allow employers to require employees to work under an averaged work schedule instead of requiring an averaging contract between employees and employer (unless under a collective agreement). Currently, to amend or enter an Averaging Agreement, employers require 51 per cent of all employees in agreeance. Not anymore. The proposed changes would allow employers to implement the schedule by providing employees with at least two weeks notice. As well, an employee's hours of work can be averaged over a 52-week period (up from 12 weeks). These provisions will provide employers with additional flexibility with respect to the management of hours of work, overtime liability and the changing demands of a business. Those with existing averaging agreements, wishing to move to averaging arrangements, will be able to cancel existing agreements with 30 days' notice.
3. General Holiday Pay - General holiday pay changes will significantly simplify calculations for carriers. Employers will no longer have to include vacation and general holiday pay in their average daily wage calculation. Average daily wage will be the employees' total wages averaged over the number of days they worked in the:

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- Four weeks immediately before the general holiday, or
- Four weeks ending on the last day of the pay period that occurred just before the holiday

Employers can choose which calculation period best aligns with their payroll cycle.

4. Temporary Layoffs (non-COVID related) – With these amendments, employers could temporarily lay off workers for up to 90 days in a 120-day period. This represents an increase from the current regime, which allows layoffs of up to 60 days in a 120-day period.

5. Group Terminations – Currently, there are different requirements for reporting and providing termination notice, depending on the number of staff being terminated. The Government proposes employers will only have to provide notice (four weeks or as much time as reasonable) to the Minister of Labour and Immigration for organizational terminations of 50 or more staff. Additionally, notice no longer needs to be provided to employees and/or bargaining agents.

6. Payment of Earnings at Termination - Employers will be able to pay employee's final earnings a little differently than before:

- Ten consecutive days after the end of the pay period in which they were terminated, or 31 consecutive days after the workers last day of employment.

This is more than the current rules which require final pay to be issued within either three or 10 days after the last day of employment.

7. Rest Periods - Rest period language will be returning to the way it was in, and prior to 2017. Employees must now work five (5) hours to qualify for a 30-minute break. Employees who work more than 10 hours, are entitled to two, 30-minute breaks. Breaks can alternatively be taken at any time mutually agreed upon by the employer and employee. For employees governed by the Hours of Service regulations, Hours of Service will prevail.

Labour Relations Code

What this means for the unionized carriers and fleets

1. Union Dues

Unions will be required to provide financial statements to their members at the end of each fiscal year. If a financial statement has not been provided or is inadequate, the Labour Relations Board (the "Board") can issue remedies. Unions must indicate the percentage of union dues that relate to political activities and disclose the amount of dues which directly relate to collective bargaining and member representation activities (under the Labour Relations Code). Union members will now have the option to pay, or not pay dues, related to political activities. Alternatively, unions will not be allowed to collect those amounts unless members opt to do so. A trade union will not be allowed to suspend, expel or take disciplinary action against a union member who does not elect to pay. A party may apply to the Board if a dispute arises under this section. If prohibited strikes occur, the Board will be able direct employers to suspend the deduction and remittance of union dues for one (1) to six (6) months. If a prohibited lockout occurs, the Board can direct employers to pay union dues for one (1) to six (6) months from the start of lockouts.

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2. Reverse Onus

If complaints are made against employers, employers will be responsible for proving they did nothing wrong only when complaints are about unfair terminations. Additionally, unions will be required to prove they did nothing wrong in case of alleged union coercion, intimidation or opt-in violations.

3. Board Powers

Proposed changes have expanded the Board's powers to allow the Board to dismiss complaints in preliminary stages. Additionally, the Board will be given the ability to address prohibited practices where unfair representational votes by employees did not reflect the true wishes of those employees. The Board will also be able to refuse certifications and order new votes to take place.

4. Arbitrator Powers

2017 amendments which gave arbitrators the power to relieve against collective agreement timelines, will be removed. Additionally, arbitrators will now be required to make decisions in accordance with the provisions of the Labour Relations Code, and not general Canadian principles of arbitration. This last change will presumably mean that arbitrators will take a much more 'Alberta-centric' approach to adjudicating disputes rather than applying principles from other provinces that developed in completely different contexts.

5. Picketing, Strikes and Lockouts

Significant changes have been proposed to the way picketing operates during a strike. Picketing would be deemed wrongful if it obstructs or impedes a person from crossing a picket line. This means that picketers will no longer be allowed to stop individuals and vehicles from entering employer premises. Furthermore, unions will be required to get approval from the Labour Relations Board before picketing somewhere other than an employer's place of business. During an illegal strike, the Board may order employers to continue to suspend union dues. During an illegal lockout, the Board may order employers to continue to pay employees' union dues.

6. Union Certification and Revocation Applications

Specific timelines will be removed for the union certification processes. Instead, the Labour Relations Board will have to complete certification applications within six months. This greatly expands the amount of time within which these applications can take place, giving parties more time to properly consider and adjudicate issues that often arise in the certification and revocation contexts.

7. First Contract Arbitration

The Bill proposes to limit the circumstances under which parties can compel first contract arbitration by adding new criteria to when such an order can be granted by the Board. This change will help promote free collective bargaining and reinforces the fact that first contract arbitration ought to be a last resort.

8. Employers Working with Unions

Employers and unions will be able to work with unions to set or alter rules that fit the needs of their business. This would include hours of work, days of rest, overtime and more.

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9. Renewing Collective Agreements

Employers would have the ability to renew collective agreements with their workers at an earlier time (before expiry), as long as the Labour Relations Board is satisfied that employees have given informed consent.

10. Construction Industry

Several changes will significantly impact the construction industry:

- Proposed changes would permit renewals of agreements that overlap with open periods, provided that the employees who voted for the new agreement were aware this would prevent competing unions from applying for certification.
- Under current legislation, if unions successfully raid bargaining units, current collective agreements can be terminated with 2 months notice. Proposed changes would make that provision inapplicable to the construction industry.
- Some unions have previously attempted to fine members who work either for non-union companies or for companies represented by other trade unions. Proposed changes will clarify that discipline or fines cannot be imposed unless the member gained alternative work which is truly comparable in terms of functions, duration, pay and industry.
- The proposed changes will follow the lead of B.C. and Saskatchewan and permit unions to apply for multi-trade bargaining units for both construction and maintenance. The exception will be if there is proven to be a "substantial and imminent change in the composition of the bargaining unit" so that it is an unrepresentative group. (i.e. the build-up principle will apply when the application is for a multi-trade bargaining unit). This change will also allow consolidation of existing bargaining units into one.
- New provisions will facilitate agreements on construction projects to be negotiated by the Building Trades of Alberta as an entity apart from its constituent member unions. These agreements will be permitted for the duration of projects and will operate outside of the registration scheme.
- Major projects can be approved by a Minister instead of cabinet
- Government will have 120 days to respond to a major project application, with the possibility of extending timelines
- Project owners can be principal contractors when negotiating major project agreements. Projects will also be able to have more than one project agreement, with the ability to renegotiate

If the legislation is passed, most provisions would come into effect on November 1, 2020. Certain changes with respect to group terminations, layoffs, and variances have come into effect as of August 15, 2020.

For more information

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References

- https://www.alberta.ca/restoring-balance-in-albertas-workplaces.aspx