BC EMPLOYERS TAKE NOTE: CHANGES TO BC LABOUR RELATIONS CODE ARE NOW IN FORCE

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The BC government is moving ahead with long-anticipated amendments to the BC *Labour Relations Code* (the "**Code**"). In large measure, the amendments reflect the recommendations for change which were made in a report released in the fall of 2018 by the Labour Relations Review Panel. These amendments are now in force as a result of the *Labour Relations Code Amendment Act*, 2019 receiving Royal Assent on May 30, 2019.

In a recent news release, the government explained that the focus of the amendments are "greater protection for workers, job security, labour rights, and stability for employers."

The amendments can be seen as tilting back the existing balance in the *Code* more in favour trade unions and employees. However, it is not the case that trade unions are getting everything that they hoped for.

The purpose of this bulletin is to provide a summary of the more significant amendments to the *Code*. Further, more detailed information can be obtained from any member of the McMillan Vancouver Employment and Labour Group.

Union Certification

Unions in British Columbia lobbied hard for the outright elimination of the secret ballot requirement for union certification. Although this most coveted of union objectives was not achieved, the existing requirement to hold a union certification vote within ten days from the date of application for certification has been reduced to five business days (excluding Saturdays, Sundays and statutory holidays) from the date of application.

This shorter time requirement for holding a certification vote will generally be viewed by unions as at least an acceptable compromise. For employers, the decision of the government to maintain the secret ballot requirement is a positive outcome.

The requirement that a secret ballot vote be held within five business days is intended to reduce the opportunity for employers to engage in anti-union campaigns intended to persuade employees to vote against union certification.

Employer Free Speech

Before the amendments became law, employers had a broad right to communicate views on any matter including on representation of employees by a trade union, provided no intimidation or coercion was used. This existing right, which was seen as providing the opportunity for employers to engage in anti-union campaigns, is now considerably narrowed. Employers are now limited to communicating to employees only statements of fact or opinion reasonably held about the employer's business.

Automatic Certification

In circumstances where an employer has committed an unfair labour practice, including possibly where it has over stepped the narrower bounds of free speech, the BC Labour Relations Board now has specific remedial authority to order automatic union certification without a vote where it considers it is "just or equitable" to do so. This expanded authority is intended to have the effect of dissuading employers from engaging in unfair labour practices including during union organizing campaigns.

Union Raiding Rules

Previously unions were able to apply to the Board to represent employees who were already represented by a different trade union during the 7th and 8th months in each year of a collective agreement (known as the raiding period). Unions are now restricted from raiding until the 7th and 8th months of the 3rd year of the term of a collective agreement, or if the collective agreement is for a term of 3 years or less, the last year of the term of the collective agreement. The purpose of this amendment is to provide for additional industrial stability.

Successorship

The union successorship provisions of the *Code*, which protect a union certification and collective agreement on a sale of a business, are now extended to circumstances where a contract is retendered and substantially similar services continue to be performed by the new contractor. Specifically, union successorship applies to retendering in the building cleaning services, security services, bus transportation services, food services, health sector non-clinical services, and any other services added by regulation.

Picketing

The definition of picketing under the *Code* has now been clarified to specifically exclude from the definition of picketing lawful consumer leafletting that does not unduly restrict access to or egress from that place of business or operations of employment or prevent employees from working at or from that place of employment.

Statutory Freeze Following Union Certification

The statutory freeze period during which employee pay and other terms of employment must not be changed by the employer following the certification of a union has been increased from 4 months to 12 months. This extended statutory freeze period provides enhanced protection for unions in attempting to negotiate a first collective agreement with an employer.

Imposition of First Collective Agreement

The opportunity for a union to apply to the Board for an imposed first collective agreement is now expanded to include the circumstance where no strike vote has been taken. This amendment provides an advantage to unions seeking to achieve a first collective agreement including in circumstances where employees may be reluctant to take strike action against the employer.

Expedited Collective Agreement Arbitration

The *Code* has long contained a provision for expedited arbitration with the intent to make the arbitration process both quicker and more accessible for unions and employers. The existing expedited arbitration process has been strengthened. The appointed arbitrator must conduct a case management conference within seven days, conclude the arbitration hearing within 90 days, and render written reasons within 30 days after the end of the arbitration hearing, with a seven page limit on the written reasons.

Arbitration Case Management Conferences

There is now an obligation for an arbitration board to conduct a case management conference within 30 days of the appointment of the arbitration board for the purpose of exchanging information and documents and scheduling hearing dates and encouraging settlement of the dispute.

Appointment of a Facilitator

A collective agreement must contain a provision for a joint consultation committee. Previously, the Board could appoint a facilitator to assist the joint consultation committee, but only where both parties requested such an appointment. The Board may now appoint a facilitator where either party makes a request for such an appointment.

Section 54 Adjustment Plans

Where an employer intends to introduce a measure, policy, practice or change that affects the terms and conditions or security of employment of a significant number of employees, at least 60 days notice must be provided from the employer to the union. Either the union or the employer may now apply to the Board for

the appointment of a mediator to assist in developing the required Section 54 adjustment plan.

Appeal of Arbitration Awards

The jurisdiction of the BC Court of Appeal to hear appeals of arbitration awards has been narrowed to review where "...the basis of the decision or award is a matter or issue general law" this amendment will have the effect of expanding the jurisdiction of the Board with respect to review of arbitration awards.

Employers should familiarize themselves with these changes that are now in effect. If you have any questions about the changes do not hesitate to contact any of the Vancouver employment and labour group authors.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.