

CHANGES COMING IN 2019 FOR BC EMPLOYERS TO *LABOUR RELATIONS CODE* AND *EMPLOYMENT STANDARDS ACT*

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Employers in British Columbia can expect significant changes to the BC *Labour Relations Code* and BC *Employment Standards Act* to be introduced in 2019.

BC *Labour Relations Code*

The present NDP government has been very clear that it considers changes should be made to the BC *Labour Relations Code* (the “Code”).

On October 25, 2018 the BC government released the report of the Labour Relations Code Review Panel (the “Review Panel”), which provides recommendations for amendments to the present *Code*. As a general observation, many, although certainly not all of the recommendations of the Review Panel will be viewed more favourably by the union community than by employers.

Without question, one of the “hot button” issues is the existing requirement for a secret ballot vote for union certification. The majority of the Review Panel is recommending that the requirement under the *Code* for a secret ballot vote should be retained, and also is recommending the vote must be taken within five days (not counting weekends and statutory holidays) to reduce or eliminate the ability of an employer to improperly influence the outcome of the vote. Presently under the *Code* there is a 10 day time period for holding the vote.

However, the minority of the Review Panel is recommending that the secret ballot requirement should be eliminated in favour of a card check system.

The Review Panel has made 29 recommendations in total pertaining to the *Code*. Some of the more significant recommendations of the Review Panel include:

- narrow the right of employer free speech during union organization campaigns and certification applications only to statements of fact or opinion reasonably held with respect to the employer’s business
- provide the Labour Relations Board with enhanced remedial authority to order automatic union certification where an employer has committed an unfair Labour practice

- extend the existing four months statutory freeze on terms and conditions of employment to 12 months following union certification
- provide jurisdiction to the Labour Relations Board to impose a first collective agreement including in circumstances where a union has not obtained a strike mandate
- extend union successorship rights in the building cleaning, security, bus transportation, and health sectors instances of contract re-tendering
- extend union membership card validity from the existing 90 days to a period of six months
- clarify the existing definition of picketing under the *Code* so as to clearly exclude lawful consumer leafletting
- remove education as an essential service generally, although certain educational functions, such as the conducting of Grade 12 examinations, could continue to be declared essential
- retain the existing restriction on secondary picketing and existing ban on use of replacement workers
- provide for an enhanced expedited arbitration process
- increase fines for failure to comply with Labour Relations Board order to \$5,000 for individuals and \$50,000 for companies and unions (presently \$1,000 for individuals and \$10,000 for companies and unions)

The BC government is presently considering the recommendations of the Review Panel and it is expected that legislation amending the *Code* will be introduced in 2019.

BC Employment Standards Act

British Columbia employers can also expect that significant amendments to the *Employment Standards Act* (the “*ESA*”) will be introduced in 2019.

In June of 2018, the Employment Standards Act Reform Project Committee (the “Project Committee”) issued tentative recommendations for amendments to the *ESA*.

The Project Committee has made 78 tentative recommendations. Some of the more significant majority recommendations include:

- allow for one or more alternate standard patterns of working hours within the 40-hour week in addition to the standard of eight-hours per day and require a notice period for change from one standard alternate pattern to another
- right to refuse overtime in circumstances where overtime would conflict with significant family related commitments, scheduled educational commitments, or other employment obligations
- two part test for entitlement to statutory holiday pay, requiring that an employee work on 16 of the 60

days immediately preceding the statutory holiday and work on the employee's scheduled work days immediately before and after the statutory holiday

- introduce a qualifying period of three months consecutive employment for entitlement to statutory leaves
- eliminate individual employee averaging agreements and introducing averaging agreements based on the work unit
- provide for workers and employers advisors for representation of otherwise unrepresented parties in appeals to the Employment Standards Tribunal
- confer discretion on the Director of Employment Standards to waive an administrative penalty imposed under the *ESA*
- existing five days per year unpaid family responsibility leave would be replaced with seven days per year of unpaid leave, which could be taken for reasons of the employee's own illness or for the care, health, or education of a child in the employee's care or the care or health of a member of the employee's immediate family

The Project Committee is presently reviewing submissions from stakeholders concerning its tentative recommendations and is expected to issue final recommendations for amendments to the *ESA* by early 2019. Thereafter, the BC government is expected to introduce amendments to the *ESA*.

Summary

We are aware that employers in British Columbia are keenly interested in keeping informed about the changes to the *Code* and the *ESA* which are undoubtedly in store for 2019.

We will continue to publish bulletins and other materials to ensure that BC employers are kept informed as to when the *Code* and *ESA* changes will be in force.

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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.

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