

# COVID-19: ALBERTA GOVERNMENT ANNOUNCES LIST OF ESSENTIAL SERVICES

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Alberta is in a state of public health emergency, under the authority of the *Public Health Act* due to COVID-19. The Government of Alberta (“[Government](#)”) has not yet declared a provincial state of emergency under the *Emergency Management Act*, however it has been ramping up its response on a daily basis. On March 27, 2020, it published a list of essential services and ordered that non-essential places of business are no longer permitted to offer or provide services to the public at a location accessible to the public. The list of essential services is published on the Government’s [website](#) and we expect that it may be updated and eventually tied-into a formalized ministerial or public health order. If and once this happens, we will update this bulletin accordingly.

## List of Essential Services

The categories of business identified on March 27 as *essential services* includes health and medical, public safety and security, food and shelter, energy, utilities, transportation, industrial, oil and gas, construction, agriculture, essential retail, financial services, information and telecommunications, and public administration and government. We encourage readers to refer to the full list of essential services available on the Government website, as it may be modified from time to time.

## Non-Essential Business, Workplace and Facility Closures

On March 27, the Government also [ordered](#) that specified types of *non-essential places of business* are no longer permitted to offer or provide services to the public. The order includes a list of affected non-essential places of business, being those businesses offering or providing non-essential health services, personal services (i.e. services for the primary purpose of a person’s appearance), wellness services (such as massage and reflexology), and retail stores offering only non-essential goods or services. Only food establishments offering take-out, delivery or drive-through service are allowed to operate, but no dine-in services are permitted.

For the purposes of the March 27 order, the following definitions are provided:

- a “non-essential health service” includes any service that is generally done to protect, promote or maintain health of an individual and where an interruption to the provision of services will not result in an individual’s life, health or safety being immediately endangered; and
- an “essential service” is a service considered critical to preserving life, health, public safety and basic societal functioning.

It is unclear how these two definitions tie-into the list of essential services published on the Government website. We anticipate that the Government will either amend the March 27 order to clarify this relationship, or otherwise issue a new ministerial or public health order in the near future providing that essential services are only those services specifically identified in the list of essential services on the Government website.

The order further provides that any place of business that is still permitted to operate must prevent the risk of transmission of infection, provide for rapid response if a worker or member of the public develops symptoms, and maintain high levels of workplace and worker hygiene.

### **Mandatory Mass Gathering Restrictions**

In addition, the order issued on March 27 amended the mass gathering restrictions previously imposed to limit gatherings to no more than 15 people, indoor or outdoor. People must maintain a minimum of 2 meters distance between one another. Certain services or facilities are exempt, including grocery stores, shopping centres (provided that access is only granted to stores providing essential goods and services), healthcare facilities, airports, the legislature and other essential services.

Workplaces that are not otherwise restricted or ordered to close may have more than 15 workers at a work site as long as they follow all public health guidelines and social distancing measures.

### **Consequences for Non-Compliance**

Failing to comply with the *Public Health Act* could result in fines of up to \$100,000 for a first offence and \$500,000 for a subsequent offence. The province has also implemented a complaint procedure for reporting establishments not following public health orders.

### **Impact on Employers**

Employers impacted by the Government’s announcements are encouraged to continue their operations through teleworking arrangements and other innovations. However, the reality for many Alberta employers is that such measures are simply not possible.

Therefore, some employers are resorting to the temporary layoff provisions of *Alberta’s Employment Standards Code* (the legislation that prescribes minimum standards of employment in provincially-regulated workplaces,

the “Code”).

The maximum duration of a temporary layoff under the Code is normally 60 total days in a 120 day period. On the 61st day, the employee’s employment is automatically terminated. However, the period of temporary layoff can be extended beyond 60 days if the employer makes regular payments to or on behalf of the employee (e.g., wages, pensions or benefits) and the employee agrees to these payments in lieu of a limit on the length of the layoff. Employment is automatically terminated when such payments in lieu cease. If an employee is laid off for a period of time that is longer than a temporary layoff as set out above, the employee will generally be entitled to termination pay.<sup>[1]</sup>

**However, on April 6, 2020, the Government amended the Code by extending the length of time designated as a temporary layoff to no more than 120 consecutive days total.<sup>[2]</sup> Any employee who is on a temporary layoff for more than 120 consecutive days will be deemed to have been automatically terminated, subject to the exceptions outlined above (i.e., if the employer makes regular payments to or on behalf of the employee, etc.). Any temporary layoff notice given on or after March 17, 2020 will be captured by this amendment.**

But employers should be aware that there is case law that suggests a temporary lay-off without pay may amount to constructive dismissal in the absence of a contractual right to do so. Constructive dismissal occurs where an employer has not expressly terminated an employee’s employment, but a termination can be interpreted from the employer’s conduct. However, there is also case law that suggests an employer is not required to pay damages when the employee is by law prohibited from performing services for what appears to be a lengthy and open-ended period of time (a “supervening illegality”).

Suffice it to say, it remains to be seen how courts and tribunals will interpret the legal effect of a temporary layoff in the COVID-19 era.

### **Alberta Governmental Reliefs for Employers**

Please refer to our other COVID-19 bulletins for the federal reliefs available for employers. The list below provides a high-level overview of the government reliefs available to Alberta employers as of March 27. Additional measures may be subsequently announced.

#### *Corporate income tax:*

- Corporate income tax balances and instalment payments coming due between March 18 – August 31, 2020 are deferred until August 31, 2020 to increase employers’ access to cash so they can pay employees, address debts and continue operations.

#### *Property tax:*

- Education property tax rates will be frozen at last year's level. Collection of non-residential education property tax for businesses will be deferred for 6 months. Deferred amounts will be repaid in future tax years.
- Commercial landlords are encouraged to pass savings on to their tenants through reduced or deferred payments to help employers pay their employees and stay in business.
- Businesses capable of paying their taxes in full are encouraged to do so. This will assist the province in supporting Albertans through the pandemic.

#### *WCB premiums:*

- Small, medium and large private sector employers can defer WCB premium payments until 2021. For small and medium businesses, the Government will cover 50% of the 2020 premium when it is due in 2021. For employers who have already paid [WCB premiums](#) in 2020, they are eligible for a rebate or credit.

#### *Utility payments:*

- Residential, farm and small commercial customers can defer electricity and natural gas bill payments (regardless of provider) for the next 90 days to ensure no cut-offs. Customers are encouraged to contact utility provider directly to arrange for the deferral.

#### *Tourism levy:*

- Hotels and lodging providers can delay paying the tourism levy until August 31 for amounts that become due to Government on or after March 27, 2020. Deferred payments will not be subject to penalties or interest. However, hotels and lodging providers are still expected to file returns, and must collect the tourism levy from any guests staying at their properties during this period.

#### *Banking:*

- Credit Unions: Businesses should contact their credit union directly to work out a plan for their particular situation.
- ATB Financial: Small business customers can apply for a payment deferral on loans and lines of credit for up to 6 months and access additional working capital.

#### *Conclusion*

The Government has provided some explanation on essential services; however, we anticipate that the

Government will need to clarify how the published list of essential services relates to the ordered closure of non-essential places of business. We will continue to update you as new measures and orders are announced.

In the meantime, McMillan's COVID-19 Response Team and Essential Services Team are available to help businesses assess how the orders issued by the Government affect operations, and can assist with stabilizing your business during any temporary shutdown period. If you have any questions on the impacts of the recent announcements on your business, please reach out to the authors of this bulletin or visit McMillan's [COVID-19 Resource Centre](#).

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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[1] The Code requires that up to two (2) weeks' advance notice of temporary layoff must be provided to employees, unless there is a collective agreement that states otherwise or there are "unforeseeable circumstances". Business required to shutdown as a result of the essential services order may be able to argue that the layoffs were due to unforeseeable circumstances.[ps2id id='1' target='']

[2] Ministerial Order 18.2020 [Labour and Immigration].

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### **A Cautionary Note**

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