



RECOMMENDATIONS TO THE ALBERTA GOVERNMENT REGARDING EMPLOYMENT STANDARDS AND LABOUR RELATIONS LEGISLATION

Prior to the 2019 Alberta Budget, the Canadian Payroll Association made the following recommendations to the provincial government for reducing red tape and improving the business climate through updates to employment standards and labour relations legislation. These recommendations will assist the government in fulfilling its mandate to cut unnecessary restrictions on employers that stifle productivity and job creation.

RECOMMENDATION:

Final pay should be made due to terminated employees by either the day which would have been the employee's next pay day or within 7 days of the employee's termination date, whichever comes later.

WHY THIS MATTERS:

Most organizations administer payment through software systems and direct deposit. Since the 3 day time limit usually does not fall within an employer's regular pay cycle, payroll professionals typically need to make an off-cycle payment. Off-cycle payments are more vulnerable to error and/or fraud. Costs associated with this regulatory requirement therefore include staffing time for the payroll professional, payroll manager, and CFO, as well as the cost of an express courier service. If the Alberta government had the best practice found in the Canada Labour Code, Nova Scotia, Ontario, and Prince Edward Island, of final wages being paid on the next regularly scheduled pay date instead of within 3 days of termination, it is conservatively estimated that employers could have saved \$100M between April 2017 and March 2018.

RECOMMENDATION:

The increase in compassionate care leave length from 8 weeks to 27 weeks should not result in the unintended consequence of employers needing to administer 27 separate leaves of absence for each employee.

WHY THIS MATTERS:

Employee may ask for up to 27 different leave periods lasting one week each. Allowing for multiple leave periods creates operational uncertainty especially where the mandatory notice period for taking the leave is short or non-existent (the notice requirement in Alberta is 2 weeks). Employers cannot be certain as to when the employee will take the next interval of leave and is left unable to adequately plan for the employee's absence. The requirement to backfill each subsequent leave is costly for employers and increases red tape burden.

RECOMMENDATION:

The length of personal/family responsibility leave should be reduced from 5 days to a maximum of 3 days.

WHY THIS MATTERS:

The costs and benefits of any given leave of absence should not be considered in isolation of the other statutory leaves. There is a cumulative effect associated with the existence of the leave policies already in place that only compounds with every new leave policy introduced.

RECOMMENDATION:

The qualification periods associated with various kinds of job leaves should be extended.

WHY THIS MATTERS:

Qualification periods ensure that employers only invest the resources necessary to accommodate leave when the employment relationship has endured long enough such that both parties can be reasonably assured that the employment is a good fit.

RECOMMENDATION:

Only layoffs exceeding 60 consecutive days should once again be considered terminations.

WHY THIS MATTERS:

Employers benefit as it allows them to reduce labour costs during periods where demand for labour is lower but still retain the ability to recall their already-on-boarded employees without going through the termination and re-hiring process which is costly and onerous.

RECOMMENDATION:

Variances and exemptions granted to employer groups and associations should no longer be subjected to expiry limits.

WHY THIS MATTERS:

The implementation of the 2 year time limit on employer group established exemption/variances greatly increases the onerousness of the application process. Given that the Director of Employment Standards may amend, revoke, or vary an exemption/variance at any time, the extra oversight mandated by the 2 year time limit is likely unnecessary and therefore an increase to red tape.

RECOMMENDATION:

The Rand formula should be struck out of Alberta's Labour Relations Code; only unionized employees should be obligated to pay union dues.

WHY THIS MATTERS:

The Rand formula's introduction in Alberta's Labour Relations Code effectively creates a mandatory wage cut on hard working Albertans, making it more difficult for employers in a unionized environment to attract skilled labour. Implementing the Rand formula in payroll systems is also onerous as additional payroll system processes must be performed.

RECOMMENDATION:

The time limit for paying an administrative penalty should be increased beyond the current 21 days to 30 days or more.

WHY THIS MATTERS:

30 days allows employers to integrate payment of the administrative penalty into their month's end financial processes. Any additional time to pay administrative penalties could also be dedicated towards aiding the employer in understanding how to achieve and maintain compliance. Education should be considered a higher priority than penalization when it comes to compliance.

RECOMMENDATION:

Enable employers to proactively deduct payments in error and overpayments of vacation.

WHY THIS MATTERS:

Many jurisdictions have foregone requiring employers to receive consent because payments made in error are not earned. Overpayments can have significant ramifications on organizations' financial viability, especially small businesses. Because disciplining employees who refuse to repay an overpayment is illegal, the only recourse available to employers is to take the employee to civil court. Taking an employee to civil court is frequently viewed as an unworkable option due to the legal costs involved, and because of the potential reputational harms and damage to general employee morale.

RECOMMENDATION:

Statutory holiday remuneration eligibility policy should be relaxed such that employers should no longer be obligated to provide holiday remuneration to employees who are elect-to-work.

WHY THIS MATTERS:

The purpose of holiday remuneration eligibility is to provide compensation to employees in recognition of the fact that the holiday is a mandatory paid day off work and, in the case where the employer chooses to order the employee to work on the holiday, this recognition involves forcing employers to pay a premium. Neither of these purposes of holiday remuneration apply to elect-to-work employees because, by definition, they cannot be ordered to work on any given day.

RECOMMENDATION:

Make electronic pay statements part of legislation and not merely an administrative policy.

WHY THIS MATTERS:

The current lack of official confirmation of the legal status of electronic pay statements leads to uncertainty and time wasted searching in vain for a written law on this issue. Most Canadian jurisdictions have already included treatment of pay statements in their employment standards legislation. Alberta is encouraged to take a proactive approach on this issue to avoid lagging behind.

RECOMMENDATION:

Alberta should align its policy with other jurisdictions by eliminating continuous employment provisions.

WHY THIS MATTERS:

Mandating that employers view employment as continuous over periods where an employee is not working for the employer introduces costs associated with increased seniority even when an employee has not worked for the entire period for which these benefits are supposed to apply. Continuous employment policy affects employers with seasonal operations and employers with irregular demand for labour disproportionately – for every season that an employee's employment discontinues, the employee's benefits may grow increasingly onerous and costly.

RECOMMENDATION:

Set the official termination date as the "layoff date" when an employee is laid off and subsequently terminated.

WHY THIS MATTERS:

Layoff periods should not count towards seniority upon termination because employees do not dedicate any labour to organizations while laid off.

RECOMMENDATION:

Unclaimed wages should be sent to the Ministry of Labour and Immigration instead of remaining on employers' liability accounts.

WHY THIS MATTERS:

This provides direction to employers on how to administer unclaimed wages, and enables employees to more easily locate and access these funds, especially if their former employer is no longer in business.

RECOMMENDATION:

Codify treatment of hours worked during shifts that straddle between general holidays and regular work days to avoid confusion and non-compliance, and streamline for automation.

WHY THIS MATTERS:

The lack of formal codification of this administrative policy can lead to time wasted searching in vain for a written law on this issue, uncertainty as to how to treat holiday pay in certain cases and, in worst case scenarios, inconsistent payment of wages.

RECOMMENDATION:

Any legislative/administrative changes that affect payroll should give payroll professionals and payroll service and software providers the time to analyze, program, integrate, test and communicate the changes.

WHY THIS MATTERS:

All amendments to legislation, regulations, and administration require a sufficient period to enable employers to fully implement. This includes the time to adequately:

1. Analyze the new requirement(s)
2. Program changes within payroll and/or HR systems
3. Test system changes
4. Incorporate changes within collective agreements and/or company policies
5. Communicate changes to employees and other stakeholders

Payroll Service and Software Providers (PSSPs) require additional time to educate and train clients, and to ensure consistent programming across their multitude of payroll systems.