# Global Employer Handbook Chapter Alberta

## Contents

# INTRODUCTION

Employment relationships in Canada are governed by both legislation and the common law.

Generally, the provinces have jurisdiction over labour and employment law. Therefore, the majority of employment related cases are heard in provincial courts (in Alberta, the Alberta Court of Justice, the Court of King's Bench of Alberta and the Alberta Court of Appeal) or are dealt with through provincial administrative bodies. The federal government retains jurisdiction in certain circumstances, such as specific works and undertakings with exclusive federal jurisdiction (e.g., shipping, railways and banks). Employers operating within these specific spheres are subject to federal legislation and will have matters heard in the federal courts and through federal administrative bodies.

The information outlined in this Chapter is focused predominantly on employers who are subject to provincial legislation and on the operation of Alberta employment and labour laws.

# PART I – HIRING

## A. Basics of Entering an Employment Relationship

Employment relationships in Alberta are not "at will". In the absence of clear language stating the contract is for a fixed term, employment contracts are for an indefinite period until brought to an end by one of the parties.

The employment relationship is governed by the express terms and conditions of the contract (or in the case of a unionized workplace, the collective agreement). Certain terms and conditions will be implied into the employment relationship by operation of common law or by legislation.

Common Law

The "common law" are rules arising from case law and precedents made by judges and administrative tribunals (and in the case of unionized workplaces, labour arbitrators). The common law includes a range of rules and concepts that predate the Canadian legal system, as well as more recent statements or iterations articulated or refined by courts and tribunals.

One of the common law's most important features is that it is constantly changing. As new cases or decisions are released, they become part of the common law. Those new cases can result in significant changes to existing legal rules or may conversely serve to reaffirm existing rules. Trends in certain decisions, or decisions from high courts such as the Supreme Court of Canada play a significant role in articulating this body of law. Certain precedents will bind lower levels of courts to follow the same decision in similar future cases (e.g. in Alberta, the Provincial Court is bound by decisions of the King's Bench, which itself is bound by decisions of the Court of Appeal).

Statutory Provisions

Many provisions are implied into the employment relationship by operation of statute. The most relevant employment-related statutes that apply to business that fall under provincial jurisdiction are:

- *Employment Standards Code*, RSA 2000 c E-9 (the "**Employment Code**"), and the *Employment Standards Regulation*, Alta Reg 14/1997 (the "**Employment Regulation**"), which establish the minimum rules by which every employment relationship must comply;

- *Labour Relations Code*, RSA 2000 c L-1 (the "**Labour Code**") which govern labour relations in provincially regulated unionized environments in Alberta;

- *Alberta Human Rights Act*, RSA 2000 c A-25.5 (the "**Human Rights Act**"), which addresses discrimination-related matters, including sexual harassment;

- Workplace safety is governed by the obligations under the *Occupational Health and Safety Act,* SA 2020 c O-2.2 ("**OHS Act**"), and the *Occupational Health and Safety Code,* Alta Reg 191/2021 ("**OHS Code**"),; and,

- Other important employment-related statutes are the *Workers' Compensation Act* ("**WCA**") and the privacy-related *Personal Information Protection Act* ("**PIPA**") (for private sector employers) and the *Freedom of Information and Protection of Privacy Act* ("**FOIP**") (for public sector employers).

The Employment Code establishes minimum standards for employment in Alberta. Employment contracts with provisions that do not meet a minimum standard will be void *ab initio* (i.e. completely removed from the contract) and replaced with the minimum entitlement. Employers are free to provide entitlements above the minimums.

The Collective Agreement

If a workplace is unionized and employees are members of a bargaining unit, the collective agreement will govern their terms and conditions of employment. If the workplace falls within provincial jurisdiction, the collective agreement and the relationship between the union and the employer will be governed by the Labour Code.

Typically, collective agreements will address issues such as hours of work, work schedules, management rights, wages, hiring, and layoffs. Not all collective agreements will contain the same provisions. Consequently, it is important for an employer to review any applicable collective agreements before taking steps in relation to a position or in relation to an employee that is within the scope of the agreement. Failing to comply with the terms of a collective agreement could result in the bargaining agent initiating grievance proceedings which, in turn, could lead to awards being issued against the employer.

## B. Discrimination in the Hiring Process

The Human Rights Act provides that no employer shall refuse to employ any person, or discriminate against any person with regard to employment, because of their race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability,

age, ancestry, place of origin, marital status, source of income, family status or sexual orientation. This is subject to such discrimination being on the basis of a *bona fide* occupational requirement, in which case it does not contravene the Human Rights Act.

The prohibition against discrimination in the employment context includes the hiring process. Allegations of discrimination can arise as a result of the hiring process in a number of ways. One common source of such allegations relates to the questions asked as part of an employment applications. Unsuccessful candidates for employment may, for example, argue that they were discriminated against because certain questions were posed in an application regarding gender, age, race or disabilities. Therefore, employers should be wary of including questions regarding any of the above-listed enumerated grounds of discrimination in their employment applications. Employers must also exercise caution when choosing what questions and statements to make as part of the recruitment process, even in a pre-hiring stage (such as a job posting or interview).

See Part IV for additional information pertaining to discrimination.

### C. Employment Applications

There are no universal rules regarding how an employer is required to hire an employee, subject to the prohibitions against discrimination codified in the Human Rights Act. Neither the Employment Code nor the Labour Code stipulate that an employee must be hired in a certain manner.

In the unionized environment, collective agreements may contain a number of provisions that are relevant to the hiring process. For example, a collective agreement may state that an employer is required to fill vacant positions within a bargaining unit based on seniority. It is important to review any applicable collective agreement(s) before taking any steps in relation to hiring, including making any job postings.

The hiring process is governed generally by the common law concepts of contract law, including offer, acceptance and consideration. To create an employment contract, there must be an offer of employment made by an employer, a corresponding acceptance of that offer made by the employee, and mutual consideration flowing both ways (the general promise to exchange services for remuneration typically satisfies this requirement).

### D. Use of Employment Contracts

Employment contracts can be either written or oral. Parties often prepare a written employment agreement to avoid uncertainty regarding the terms of employment. This is a good opportunity to clearly outline the terms and conditions of employment, including the employee's position and duties, salary, hours, and how the employment relationship may end in the future (i.e. termination provisions). It is important to understand however that in the absence of a written employment contract, one will be implied to exist at law and will consist of the implied terms arising from common law and legislation. Employment contracts can also incorporate by reference or be supplemented by employer policies and procedures. A well-written employment contract provides significant risk mitigation for employers.

When preparing a written agreement, it is important to remember that it will be subject to both the common law and relevant legislation. Written employment agreements will be interpreted strictly by the courts and in the case of ambiguity, tend to be interpreted in favour of the non-drafting

party (*contra proferentem*). Employment contracts can also be invalidated if they were signed under duress, found to be unconscionable or if they do not comply with the minimum standards outlined in legislation.

Employers should also be aware of the following:

- **Mandatory Arbitration Clauses**: Arbitration is uncommon in Alberta for non-unionized employment matters, though such clauses may if very carefully crafted be included in employment contracts with respect to certain matters. Generally, Canadian courts resist the ability for parties to include contractual clauses completely bypassing the authority of the court.

  Arbitration is the primary dispute process in unionized settings. Collective agreements generally provide specific procedures as to how grievances may be filed and ultimately advanced to arbitration, and in the absence of such specifics, the Labour Code implies certain "model clauses" into the collective agreement while also setting additional rules and authorities for labour arbitrators.

- **Non-Solicitation/Non-Compete Clauses:** Alberta courts are generally resistant to these types of restrictive covenants. They will be presumed unenforceable, unless the party seeking to rely on the clause can demonstrate the provision was drafted as narrowly as possible to achieve a reasonable objective. To be enforced, these restrictive covenants must be drafted to specifically, and should identify the geographic scope of the restriction, the exact activities that are being restricted, and the duration for which the restrictions will apply. Courts will not "blue pencil" or notionally sever clauses which are overly broad. Non-solicitation clauses will generally have greater likelihood of enforceability than a non-competition clause, and may not require geographic scope restrictions to be enforceable.

  Note also that some restrictions on the activities of departing employees previously occupying executive or very senior (i.e. fiduciary) positions exist by operation of common law.

### E. Advertising/Recruitment

There is no Alberta legislation that expressly governs how employers must advertise for positions. Advertising and recruitment must be done in a manner that is not discriminatory and in accordance with any rules that exist in a relevant collective agreement. Additionally, employers must not make misrepresentations as to any facts.

### F. Background Checks/ Employment References

Employers will often seek to perform background checks as part of the hiring process. There are no prohibitions on these background checks in Alberta. Employers must consider their privacy obligations and ensure the collection and use of any personal information in the hiring process is reasonable for the purpose of establishing an employment relationship (see Part VIII Section F and Part IX for further information relating to privacy).

## PART II – Compensation

## A. Minimum Wage

The minimum wage for Alberta is articulated in Part 2 of the Employment Regulation. Since October 1, 2018, the minimum wage in Alberta has been $15.00 per hour (before required statutory deductions) in most cases.

Exceptions and exemptions to the minimum wage exist as follows under the Employment Regulation:

- For an employee who is under the age of 18, and is a student enrolled in an educational institution, the minimum wage is $13.00 per hour for work performed during a school break and during the first 28 hours in a work week for work performed other than during a school break (Employment Regulation, s. 9(1)(a.1)).

- Certain classes of employees are given a weekly minimum wage rather than an hourly minimum. These classes include various types of salespersons, land agents, and members of enumerated professions such as accountants and lawyers. From October 1, 2018 onward, their weekly minimum rate is $598.00 per week. (Employment Regulation, s. 9(1)(b)).

- Employees employed in domestic work in a private dwelling, who reside in that dwelling, are also entitled to a specified monthly minimum wage of $2,848.00 per month. (Employment Regulation, s. 9(c)).

- Certain classes of employees are exempted from the minimum wage requirements. These include real estate brokers, certain students in off-campus formal training or work experience programs, extras in film production and counsellors at non-profit camps serving children, handicapped or religious persons. (Employment Regulation, s. 8).

The Employment Regulation also states that an employee who is employed for less than three (3) hours consecutive work must receive pay for three (3) hours of work at not less than the minimum wage to which the employee is entitled (s. 11(1)).

## B. Wage Payments & Deductions

An employer is not entitled to make a deduction from an employee's earnings, except where (s. 12 of the Employment Code*)*:

- Permitted or required by a statute, judgment or order of the court;
- The deduction is authorized by a collective agreement; or
- The deduction is personally authorized in writing by the employee.

Blanket authorizations to deduct any amount at any time are unlikely to be enforceable in Alberta.

Even where a collective agreement or employee's written authorization purports to allow for such a deduction, an employer is prohibited from deducting any amount from the employee in respect of:

- Faulty work of the employee;
- Damage caused by the employee;
- Cash shortages or loss of property, if an individual other than the employee had access to the cash or property;
- Cash shortages resulting from a failure to collect any or all of the purchase price from a purchaser;
- Fees for furnishing, use, repair or laundering of any uniforms or special articles of wearing apparel that the employer requires the employee to wear during their hours of work.

If an employer wishes to reduce an employee's earnings, then the employer must give notice to the employee before the start of the pay period which precedes the reduction. While an employer is technically entitled to implement salary reductions, it is likely that (depending on the magnitude of the reduction) the employee will allege that they have been constructively dismissed as a result and may commence a civil claim. In the unionized context, this will likely also constitute a breach of the collective agreement that is actionable through the arbitration process.

For information relation to pay periods, see Part VIII Section A.

### C. Minimum Age/Child Labor

Persons aged 12 and under may only be employed in an "artistic endeavour", on the condition that they obtain an 'adolescent employment' permit from the Alberta government and have parent or guardian consent.

"Artistic endeavours" are defined in the Employment Regulation as:

- Recorded entertainment, such as film, radio, video or television, including commercials;
- Voice recording for video and computer gaming; and
- Live performances including theatre and musicals.

Persons aged 13-14 may be employed as:

- clerk or messenger in an office or retail store;
- delivery person for small goods and merchandise for a retail store;
- delivering flyers, newspapers and handbills;
- certain duties in the restaurant/food services industry, such as host/hostess, cashier, dish washer, bussing or cleaning tables, serving, assembling food orders (use of certain equipment by these employees, such as the use of deep fryers, slicers and grills, is prohibited);
- an artistic endeavour or any other work not listed above, provided an adolescent employment permit is obtained.

Persons aged 13-14 also have restrictions on when they can be scheduled to work.

Persons aged 15-17 may be employed in any type of work, subject to the following limitations:

- Employees aged 15 cannot work during regular school hours unless enrolled in an off-campus education program;
- They cannot work between 9pm and 12:01am in retail or hospitality without adult supervision;
- They cannot work between 12:01am and 6am in retail or hospitality; and
- They can work between 12:01am and 6am in other jobs, provided they have parental or guardian consent and adult supervision.

Retail includes providers of any food or beverage, commodities, goods, wares, merchandise, gasoline, diesel, propane or other petroleum or natural gas products. Hospitality includes hotels, motels or any place that provides overnight accommodation to the public.

Persons under the age of 18 may be self-employed as an independent contractor or work as a volunteer. In such cases, the Employment Code will not apply as they are not employees. However, employers contracting with such persons are cautioned that at common law, contracts with persons below the age of 18 may not be enforceable.

### D. Overtime Requirements

The Employment Code defines overtime hours in a work week as being the greater of (i) the total hours in excess of 8 hours on each work day, or (ii) the hours of work in excess of 44 hours in a work week, whichever is greater.

The Employment Code provides that an employee must be paid at least 1.5 times their wage rate when they work overtime.

Employers may enter into a written overtime agreement that provides that instead of overtime pay, the employer will provide an employee with time-off with pay (or some combination of time-off and overtime pay). At a minimum, overtime hours that are banked under an overtime agreement must be paid at straight time. The time-off with pay must be taken within six (6) months of the end of the pay period in which it was earned, unless part of a collective agreement that provides for a longer period within which the time-off pay must be taken. If the employee does not use the banked time-off in that period, it must be paid out. An overtime agreement requires at least one (1) month's written notice to the other party to be amended or terminated.

The Employment Code, under section 23.1, allows for hours of work averaging arrangements where, subject to the regulation. If an employer and an employee or a group of employees are not bound by a collective agreement, the employer may require or permit the employee or group of employees to work an averaging arrangement that provides that the employer will average an employee's hours of work over a period of one to 52 weeks for the purpose of determining the employee's entitlement to overtime pay or, instead of overtime pay, time off with pay.

An employer must give at least 2 weeks' written notice of a requirement to work an averaging arrangement to each employee to whom the requirement applies unless the employer and the employee agree otherwise. Employers must ensure that they meet the form requirements for implementing an hours of work averaging arrangement.

## E. Workday/Workweek/Work hours

The Employment Code regulates the hours an employee can work. Employees' hours of work must be confined to a period of 12 consecutive hours in any one work day, unless an accident occurs, urgent work is necessary to a plant or machinery, or other unforeseeable circumstances occur. If hours of work have to be extended, they are to be increased only to the extent necessary to avoid serious interference with the ordinary working of a business, undertaking or other activity.

Importantly, the Employment Regulation excludes certain people from the foregoing rules on overtime and hours of work. Among enumerated exceptions, managers, supervisors, some salespersons and professionals, and employees working in certain occupations (e.g. police, post-secondary academics) are excluded. See Employment Regulation s. 2.

For information pertaining to rest periods, see Part VIII Section D.

## F. Benefits/Health Insurance

### Workers' Compensation

The *Workers' Compensation Act* (WCA) establishes an insurance scheme which requires certain employers in Alberta to obtain coverage for workplace-related incidents. This scheme provides certain benefits to employees who are injured in workplace incidents. Specifically, under the WCA, employees are entitled to wage replacement for lost income while they are totally disabled by a work injury or illness. If the employee is deemed by the WCB to be fully capable of working, then the employee is no longer eligible for wage replacement. The WCB also covers the costs of medical aid required as a result of a workplace injury or illness, including hospital care, medical attention, medication and surgery, in addition to other required benefits and treatments. The WCA is managed, operated and enforced by the Workers' Compensation Board ("**WCB**").

The need to obtain workers' compensation insurance coverage is subject to a number of exceptions, which are outlined in the *Workers' Compensation Regulation*, Alta Reg 325/2002. Those exceptions are extensive and have accordingly not been listed in this document.

Persons engaging independent contractors should be cautioned that if the contractor does not have their own WCB coverage (and is not otherwise exempt), the service recipient could be liable for paying WCB premiums if that person was injured. Service recipients should require contractors to provide a clearance letter for proof of coverage, or confirm they are exempt, before services begin.

The workers' compensation system is funded through the payment of premiums by employers with coverage. Employers receive the benefit of removing the possibility that employees could commence proceedings against them in relation to any covered workplace injuries or diseases.

### Review and Appeal

Employees and employers can have a decision reviewed by the WCB upon request. The request must be submitted within one (1) year from the time and date of the original decision. This time limit may be extended if there is a justifiable reason for doing so. This includes coverage and claims-related decisions.

Once the WCB receives the review request, a supervisor will attempt to work towards a possible resolution, and if this does not resolve the issues, then the WCB forwards the request to the WCB's Dispute Resolution and Decision Review Body (the "**DRDRB**"). The DRDRB will provide each party an opportunity to outline its case and will then make a written decision once it has completed the review.

If either party is not satisfied with the results of the WCB review process, the party may request another review through the Appeals Commission. If the DRDRB decision is dated prior to September 1, 2018, the party has one (1) year to submit their appeal to the appeals commission. of the DRDRB's decision of the. If the DRDRB decision is dated on or after September 1, 2018, the party has two (2) years to submit their appeal. The DRDRB appeal period is one (1) year for all appeals of decisions after March 31, 2021. The Appeals Commission is a separate government entity that reports to the Minister of Labour. Decisions of the Appeals Commission may be judicially reviewed by the Court of King's's Bench of Alberta. Any application for judicial review must be commenced within six (6) months of the Appeal Commission's decision.

For those employers who are not subject to the WCA, there is no legal obligation to obtain insurance for workplace incidents. Employers can choose coverage based on their risk tolerance, recognizing that without insurance, they could be liability for any workplace injuries.

There are no minimum requirements with respect to the provision of other benefits or insurances. The benefits afforded to employees are subject to individual agreements, or where applicable a collective agreement.

# PART III – TIME OFF/LEAVES OF ABSENCE

## A. Paid Time Off

### Vacation Pay

An employer must provide an annual vacation to an employee of at least two (2) weeks of annual vacation during the first four (4) years of his/her consecutive employment. From the fifth year of employment onwards, the employer must provide the employee an annual vacation entitlement of at least three (3) weeks of vacation. The annual vacation provided to an employee is exclusive of any vacations for statutory holidays (see the section titled "**General Holiday Pay**" listed below).

An employer is required to give an employee his/her annual vacation in one unbroken period, within 12 months of becoming entitled to that vacation leave. An employee has the option of requesting in writing that the vacation be divided into two or more periods of at least one half-day. If a mutually agreeable time to take vacation cannot be determined, the employer may decide when vacation is to be taken as long as the employee is provided with at least two (2) weeks' notice in writing of the start date of their vacation.

The Employment Code also stipulates how vacation pay must be calculated for an employee. If an employee is paid on a monthly basis, then vacation pay must be at least equal to the employee's wages for the employee's normal hours of work in a month divided by 4 ⅓. Employees who are not paid their vacation time on a monthly basis are entitled to 4% or 6% of their pay, depending on whether they are entitled to 2 or 3 weeks' vacation, respectively.

### Sick Leave Pay

Section 53.97 of the Employment Code allows an employee who has been employed for at least 90 days to take an unpaid leave due to "illness, injury, or quarantine". This leave cannot exceed sixteen (16) weeks in a calendar year. An employee taking this leave will need to provide the employer with a medical certificate stating the estimated duration of the leave before commencing the leave (unless the employee is unable to do so, in which case such a certificate must be provided as soon as reasonable and practical in the circumstances). A "medical certificate" is defined as "a statement signed by a physician who is entitled to practice medicine under the laws of the jurisdiction in which the physician practices or by a member of another health profession authorized by the regulations". An employee on sick leave must provide one (1) week's written notice to the employer of the date he or she intends to return to work.

Workplace injuries are generally covered by the WCA (provided coverage is in place). An employer must ensure compliance with the Human Rights Act in addressing sick leave requests, including the obligation to accommodate time off to a point of undue hardship.

### Holiday Pay

Section 25 of the Employment Code provides that eligible employees in Alberta are entitled to time off with pay for each of the following statutory holidays: New Year's Day, Alberta Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, and any other holiday prescribed by the Employment Regulation or as designated by an employer or pursuant to an agreement with employees. It is worth noting that the National Day for Truth and Reconciliation is a Federal holiday and is not delineated under section 25 of the Employment Code. Employers who are provincially regulated in Alberta are therefore not

required to provide this as a paid holiday. Outside of the public sector, it would generally not be the norm to provide this as a voluntary paid holiday.

An employee is eligible for general holiday pay if the employee has worked for the same employer for 30 work days or more in the past 12 months preceding the general holiday. Different rules apply depending whether or not a holiday is considered to be a normal work day for a particular employee. If in at least 5 of the 9 weeks preceding the work week in which the general holiday occurs the employee worked on the same day of the week as the day on which the general holiday falls, the general holiday is to be considered a day that would normally have been a work day for the employee.

Where a statutory holiday falls on a day that would have normally been a work day for the employee and the employee does not work on the holiday, the employee will be entitled to at least their average daily wage for that day which is calculated by averaging the employee's total wages in whichever of the following periods the employer chooses over the number of days worked by the employee in the period: (a) the 4-week period immediately preceding the general holiday; (b) the 4-week period ending on the last day of the pay period immediately preceding the general holiday.

If a holiday falls on an employee's non-regular day of work, an employee who works the holiday is entitled to 1.5 times their wage rate for each hour worked on that day. If the holiday falls on an employee's non-regular day of work and they do not work the holiday, the employee is not entitled to holiday pay.

An employee is not entitled to general holiday pay if the employee does not work on a general holiday when required or scheduled to do so, or is absent from the employment without consent from the employer on the employee's last day preceding or on their first regular work day following the holiday.

### B. Family and Other Medical Leaves

Section 53.9 of the Employment Code provides that an employee who has worked for an employer for at least 90 days is entitled to up to 27 weeks of unpaid leave to provide care or support to a seriously ill family member (known as "**compassionate care leave**"). The term "family member" is broadly defined.

If an employee wishes to use this leave, then the employee is normally required to provide two (2) weeks' written notice to his/her employer which notice will need to include the estimated date of the employee's return to work. Additionally, an employee is required to provide a "medical certificate" from a physician indicating that the family member has a serious medical condition and that there is significant risk of death within the next 26 weeks from the date the certificate is issued or from the date that the leave began. These requirements are subject to the particular circumstances of an employee's request for leave; a shorter or delayed period of notice of providing a certificate may be permitted if such is provided as soon as reasonable and practicable.

If an employee wishes to return to work from a compassionate care leave, then he/she must provide his/her employer with at least one (1) week's written notice. The notice requirement is subject to any agreement that the employee and employer may reach which would allow the employee to return to work sooner.

Compassionate care leave will end on the last day of the work week in which the family member named in the certificate dies, the employee ceases to provide care or support to the seriously ill family member, or the 27-week maximum period of leave ends (whichever occurs first).

Section 53.95 of the Employment Code provides for a statutory unpaid leave of up to 52 weeks for an employee who is the parent of a child who has disappeared as a probable result of a crime. This leave will be available to those who are employed with an employer for at least 90 days. If an employee's child has died as a probable result of a crime, the employee will be entitled to the unpaid leave for up to 104 weeks. An employee taking this type of leave will have to provide the employer with reasonable verification as soon as reasonably and practicably possible in the circumstances. The employee will also need to provide the employer written notice of the intention to take leave as soon as reasonable and practical to do so. Where the employee's child disappeared but is later found, the leave will end 14 days after the day on which the child is found alive. If the child is found dead, the leave will end 104 weeks from the date the disappearance occurred. This leave will also end prematurely on the day that it is no longer probable the death/disappearance was the result of a crime, or on the date the employee is charged with the crime. An employee on this leave will need to provide at least one (1) week's written notice of his/her intention to return to work.

Section 53.96 of the Employment Code allows an employee who has been employed for at least 90 days to take an unpaid leave of up to 36 weeks for the purposes of providing care or support to their critically ill child. An employee taking this leave will need to provide at least two (2) weeks' written notice (unless a shorter period is necessary in the circumstances). The employee will also need to provide a "medical certificate" before taking this leave (unless circumstances give reason for a delay). The certificate will need to state that the child is critically ill, that the child requires the care or support of the employee, and a start date and end date for the support. This leave may be taken in one or more periods of not less than one (1) week each and will end on the last day of the work week in which the child dies or the employee ceases to provide care or support, or on the end date stipulated on the certificate or the expiry of 36 weeks total leave, whichever comes first. An employee on this leave will have to provide at least one (1) week's written notice from the date he/she intends to return to work.

An employer is required to provide an employee returning from these longer term leaves with the same or alternate work of a comparable nature to what the employee was doing before the leave started.

Section 53.981 of the Employment Code allows an employee who has been employed for at least 90 days and who has been the victim of domestic violence to take up to 10 days of unpaid leave in a calendar year. This leave will cover acts of domestic violence against both the employee and the employee's dependent child or a protected adult living with him/her. An employee taking this leave will need to give the employer as much notice as reasonable and practicable in the circumstances. Unlike with other leave provisions, there will not be an express requirement to provide the employer with reasonable verification of the domestic violence. Section 53.981(2) provides a list of actions and omissions that constitute domestic violence for the purpose of domestic violence leave under the Employment Code.

An employee of at least 90 days will also be entitled to unpaid leave for the following, providing as much notice is given to the employer as is reasonable and practicable in the circumstances:

- Up to five (5) days of leave per calendar year where that leave is necessary for the employee's health or for the employee to meet his or her family responsibilities in relation to a family member (five (5) days per calendar year);

- Up to three (3) days of bereavement leave on the death of a family member (per calendar year); and,

- One half day to attend the employee's own citizenship ceremony (1/2 day).

Certain other leave obligations may arise related to an employer's obligations under the Human Rights Act, based on the rule against discrimination for family status. The extent of such obligations will depend on the circumstances.

### C. Disability Leave

Disability leave is not regulated by statute in Alberta except in the case of workplace injuries, which are generally covered by the WCA. It is important to ensure compliance with the Human Rights Act in addressing disability leave. In cases of disability, consider the availability of other leaves under this section.

### D. Pregnancy/Parental Leave

Pregnant employees who have been employed by the same employer for at least 90 days are entitled to unpaid medical leave up to a period of 16 weeks of unpaid "maternity" leave at any time beginning 12 weeks prior to the estimated delivery date. Following the delivery of the child, the employee must take a leave of at least six (6) weeks unless a medical certificate is obtained indicating that resuming work will not endanger the employee's health. If the employee's pregnancy ends other than as a result of a live birth within 16 weeks of the estimated due date will be entitled to take these same maternity leave provisions. A birth mother who takes pregnancy leave is also entitled to take an additional 37 weeks of unpaid parental leave, which can be taken immediately at the end of the maternity leave. This additional period of parental leave will not be available for a pregnant employee whose pregnancy ended other than as a result of a live birth.

For a non-birthing parent or adoptive parent who has been employed for at least 90 days, an employer must grant parental leave of not more than 37 consecutive weeks within 53 weeks after the child's birth or adoption placement. If both parents are employees, the 37 weeks of parental leave will only be able to be taken wholly by one of the employees or shared between them with only one employee being on leave at a time.

An employee must give the employer at least six (6) weeks' written notice of the date upon which maternity or parental leave will start unless circumstances warrant otherwise. If the pregnancy of an employee interferes with the performance of her duties during the 12 weeks before the estimated date of delivery, an employer may give written notice to the pregnant employee requiring her to start maternity leave.

The employer must place the employee in the same or a comparable position as the one he/she occupied prior to the leave as soon as the leave ends. An employee on maternity or parental must provide the employer with four (4) weeks' written notice on the date the employee intends to resume work. Employers must not terminate an employee or change a condition of employment, without the employee's written consent, because of an employee's pregnancy, or because of a leave allowed by the *Employment Code*. The employer is prohibited from terminating an employee during a parental leave.

At the end of the leave, subject to certain narrow exceptions, an employee must be returned to their pre-leave position or substantially similar position.

## PART IV– DISCRIMINATION & HARASSMENT

## A. Discrimination

### Protected Classes and Activities

As previously mentioned in Part I, s. 7 of the Human Rights Act provides that no employer shall refuse to employ any person, or discriminate against any person with regard to employment or a condition of their employment because of their race, religious beliefs, colour, gender, gender, identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation, unless such discrimination is on the basis of a *bona fide* occupational requirement.

Employees may not be discriminated against in the workplace, including during the termination of their employment. If an employee has been discriminated against in his/her termination, then he/she may advance a complaint under the Human Rights Act. This includes protection from certain forms of harassment, including sexual harassment, which is considered a form of gender discrimination.

### Complaints under the *Human Rights Act*

An employee may make a complaint to the Alberta Human Rights Commission in relation to any alleged discriminatory conduct. Section 20(2)(b) of the Human Rights Act stipulates that any such complaint must be made within a year of the alleged contravention. The process for adjudicating complaints is articulated in the Human Rights Act. It provides that upon receipt of a complaint, the employer is given the opportunity to file a response. Following the commission's receipt of the response, the complaint can be assigned to an investigation or a conciliation. A conciliation is a form of dispute resolution, where the dispute may be resolved in an amicable manner.

An employee who alleges discrimination must first establish a *prima facie* case (i.e., a case on its face) of discrimination. This is done when the employee presents evidence that: (a) confirms the allegations that have been made and, (b) that, if believed, is complete and sufficient for a decision to be made in favor of the employee, in the absence of an answer from the employer.

While an employee may have the initial burden of establishing *prima facie* discrimination, it is important to note that employers have an obligation to promptly investigate allegations of discrimination. If there are findings of discrimination made as a result of the employer's investigation, then that employer is tasked with taking the appropriate disciplinary steps against the parties involved.

Once a *prima facie* case is established, the onus shifts to the employer to provide a satisfactory explanation demonstrating that either the conduct did not occur as alleged or was non-discriminatory in nature. Conduct may be found to be non-discriminatory if the employer is able to establish that accommodating the individual's needs would impose an undue hardship.

A further exception applies to the prohibition against discrimination on the grounds of age and marital function in the operation of a retirement, pension or insurance plan, provided that the contravention is *bona fide*. Whether the contravention is *bona fide* depends on whether it is reasonable and justifiable in the circumstances.

If the matter is not resolved through conciliation, then it will be referred to the Director of the Alberta Human Rights Commission, where the Director will decide whether to dismiss the complaint or refer it to the Tribunal for resolution / hearing. If the complaint is dismissed, a written appeal can be made to the Chief Commissioner within 30 days. If the appeal is successful, the complaint will be sent to a hearing in front of the Tribunal; if it is not successful, the only remedy is a judicial review of the Chief Commissioner's decision.

### B. Harassment and Bullying

The Human Rights Act protects employees against certain kinds of harassment in and away from the workplace. Harassment occurs when someone is subjected to unwelcome verbal or physical conduct. Harassment is prohibited under the Human Rights Act if it is based on a protected ground (i.e., race, religious beliefs, colour, gender, physical or mental disability, age, ancestry, place of origin, marital status, gender expression, source of income, family status or sexual orientation).

Sexual harassment is another form of harassment that is considered to be discrimination under the Human Rights Act. It ranges from subtle to obvious unwelcome sexual behaviour. It does not have to be intentional conduct. The awards for general damages in sexual harassment cases are steadily increasing.

More generally, matters related to harassment in the workplace are dealt with by the OHS Act. The OHS Act imposes obligations upon employers to develop and communicate workplace violence and harassment policies and programs and to provide employees with training on those policies.

Employers may be liable for harassment undertaken by their employees. In some cases, this sort of harassment may form the basis of a Workers' Compensation Claim (for example, if it results in a diagnosed psychological injury).

An employer's liability for discrimination is not strictly limited to conduct which takes place in the workplace or during work hours. It includes activities which are related to or associated with employment in some way.

## PART V – TERMINATION & DISMISSAL ISSUES

### A. Overview

An employee's relationship with an employer can end in several ways. In many instances, the end of this relationship will be without incident or protest from either party, such as where the relationship ends as a result of the expiry of a fixed term contract, as a result of a retirement, or by agreement.

In contrast, there are certain situations which are more likely to generate dispute between an employer and an employee. Situations where an employer unilaterally chooses to terminate the relationship may, for example, generate a significant amount of controversy. The friction in these situations will typically involve (a) the employer's cause for terminating the employee, and (b) the employee's entitlement to severance or notice. The following section will provide an overview of some of the issues that arise in these more contentious situations.

## B. Justification for Dismissal

The distinction between termination with or without cause is of major significance. Notably, it dictates whether an employee is entitled to any severance or notice from an employer. An employer may allege termination with "just cause" in a situation where the employee has engaged in conduct which effectively amounts to a repudiation of the employment contract. Employers are not required to provide any notice of termination (or pay in lieu) if termination is with "just cause".

Neither the Employment Code nor the Labour Code contain an express definition of termination with cause or without cause. Established precedent in common law gives rise to the definition. The assessment of just cause requires a contextual analysis of the circumstances surrounding the conduct. The employer's decision to terminate the employee must be shown to be proportional to the employee's conduct. Termination with cause generally arises when an employee's conduct has been sufficiently harmful or deficient, resulting in just cause to terminate the employment relationship. For example, just cause has been established in cases where an employee has engaged in serious misconduct such as theft, insubordination, sexual harassment, or other misconduct. The employer has the onus of showing that it dismissed an employee for just cause. If there is no repudiation of the contract by the employee and the employer merely chooses to end the relationship, then the termination will be found to have been without cause.

Employees may be terminated as a result of performance issues, although it bears noting that performance issues on their own may not be enough to establish just cause. Employers are typically required to advise the employee of the performance issue and warn the employee that failure to remedy the performance issue could result in termination. Employers may also implement progressive discipline regimes where the level of sanction imposed on an employee increases as a result of repeated performance issues.

If an employer condones an employee's inappropriate behavior or fails to discipline the employee, then the employer may not be able to justify a termination for just cause.

A termination will be "wrongful" when an employer has terminated employment "without cause" and has not provided the requisite reasonable notice or alternatively, when an employer has asserted "just cause" but has consequently failed to prove that there was "just cause" before the court on a balance of probabilities.

## C. Mandatory Severance Pay

If an employee who has been employed by the same employer for at least 90 days is terminated without cause, or if an employer is unable to establish that the employee was dismissed for just cause, then the employee will (subject to certain exceptions noted below) be entitled to written notice of termination (or pay *in lieu*). This is a statutory minimum and it is separate and distinct from common law reasonable notice. The employer must give the employee the required working notice or pay the employee the amount the employee would have been entitled to if he/she worked during the termination notice period. If the employee's wages varied, the employer is to calculate the average of an employee's wages during the last 13 weeks he or she worked preceding the date of termination of employment.

The Employment Code outlines the minimum amounts of notice that must be give (or paid *in lieu*) to an employee that has been terminated without cause. Specifically, Section 56 states that the following notice must be given:

- One (1) week, if the employee has been employed by the employer for more than 90 days but fewer than two (2) years;

- Two (2) weeks, if the employee has been employed by the employer for two (2) or more years but fewer than four (4) years;
- Four (4) weeks, if the employee has been employed by the employer for four (4) or more years but fewer than six (6) years;
- Five (5) weeks, if the employee has been employed by the employer for six (6) or more years but fewer than eight (8) years;
- Six (6) weeks, if the employee has been employed by the employer for eight (8) or more years but fewer than 10 years; and
- Eight (8) weeks, if the employee has been employed by the employer for 10 or more years.

In calculating length of service, s. 54 of the Employment Code defines the period of employment to include periods of employment with the same employer, if not more than 90 days has elapsed between the periods of employment.

The Employment Code stipulates that no notice of termination is required where the employee retires, quits, or is terminated for cause. Additionally, it carves out a significant exception for people who are employed in the construction industry and no notice is required if specific circumstances are met.

### D. Use of Severance Agreements and Releases

An employer and a departing employee may enter into a severance agreement outlining the terms of the employee's departure. The agreement typically includes a release of all claims, which is generally agreed to when the parties have resolved outstanding issues. These agreements are generally enforceable in Alberta if the agreement is not signed under duress and is not so unfair as to be considered unconscionable. This is also subject to ensuring that the terms in the release are otherwise enforceable. To be enforceable, employers should also ensure that there is consideration (i.e., something more than the statutory requirement). Employees should be encouraged to obtain independent legal counsel prior to signing the agreement.

### E. Legal Challenges to Dismissal

#### Constructive Dismissal

One form of "wrongful termination" arises if an employer changes a fundamental term or condition of an employee's contract without the employee's consent, or without adequate notice. The employee may be deemed to have been "constructively dismissed." Determining whether an employee has been constructively dismissed requires an analysis of the terms of the employment relationship, along with numerous other relevant contextual factors. Certain conduct by the employer will typically lead to a finding of constructive dismissal, including the reduction of an employee's salary or change in employment duties.

If an employee does not object to the "fundamental change" or "constructive dismissal" within a reasonable period of time, then the employee may be deemed to have acquiesced to the change and could lose the opportunity to claim damages for the alleged dismissal.

#### Dispute Resolution Process/Forums

If an employer and an employee are not in agreement regarding the termination of an employment relationship, then there are several measures that can be taken by either party. The most common recourse in the employment law context is that one party will commence a lawsuit by filing either a Civil Claim (in the Court of Justice) or a Statement of Claim (in the Alberta Court of King's

Bench) against the other party.

Both the Alberta Court of King's Bench and the Court of Justice (Civil Division) have jurisdiction to adjudicate these kinds of wrongful dismissal actions. The Provincial Court currently has jurisdiction over matters with a value of up to $100,000.00, whereas the Court of King's Bench has jurisdiction over all other matters. The Court of King's Bench has exclusive jurisdiction to hear certain types of applications for relief, such as injunction applications in cases involving breaches of restrictive covenants

In addition to court proceedings, a party may choose to bring an application or make a complaint to an administrative entity regarding improper conduct. Complaints alleging that an employer has failed to comply with the Employment Code may be made to Employment Standards. Employment Standards Officers have broad powers to make investigations and issue directions, including the ability to require an employer to complete audits of compliance. Complaints regarding discriminatory conduct can be made to the Alberta Human Rights Commission. Complaints concerning the misuse of personal information or concerning an employer's refusal to provide certain information, can be made to the Office of the Information and Privacy Commissioner of Alberta. Finally, complaints regarding health and safety may be made to the Alberta Occupational Health and Safety Contact Centre.

The Labour Code provides that collective agreements must include some sort of grievance process. That grievance process is typically the forum where termination-related issues are adjudicated in the union context. As grievance processes may vary from agreement to agreement, it is important to review the relevant provisions of any collective agreement before taking any action. Certain grievance procedures may stipulate a deadline for commencing proceedings and may also limit access to the process for certain categories of employees (e.g. probationary employees will often have restricted rights under the grievance process).

### F. Employment References

There is no statutory obligation for an employer to prepare an employment letter or give employment references. These are provided at employers' discretion.

## PART VI – LAYOFFS / WORK FORCE REDUCTIONS / REDUNDANCIES / COLLECTIVE DISMISSALS

### A. Overview

The Employment Code provides that an employer may choose to issue a temporary layoff instead of terminating employment. Temporary layoffs effectively put the employment relationship on pause. The employer may therefore maintain a relationship with the employee if there is a shortage of work for no longer than 90 days in any 120-day period. It is often prudent to speak to the ability to lay off in an employment contract, as not having express layoff language may generate some constructive dismissal-related risk.

The following section will provide a brief overview of the Employment Code provisions involving temporary layoffs and group terminations.

### B. Procedure

## Mandatory Notice Periods

In order for the layoff notice to be valid, it must (1) be in writing; (2) state that it is a temporary layoff notice, and its effective date; (3) include a copy of the relevant provisions of the Employment Code; and (4) include any other information provided for in the Employment Regulation.

If these requirements are not met, an employee may successfully claim to have been wrongfully or constructively dismissed. Further, while the Employment Code provides for temporary layoffs, some Courts have held that employees who are not subject to a collective agreement or contractual term allowing for a layoff will maintain the right to sue for wrongful or constructive dismissal if they are laid off. Employees who are laid off for one or more periods exceeding 90 days within any 120-day period will be deemed to have been terminated, unless wages or benefits continue to be paid to the employee or the employee is subject to a collective agreement containing recall rights for employees following the layoff.

An employer may request an employee to return to work by providing the employee with a recall notice. The recall notice must: (1) be in writing; (2) be served on the employee; and (3) state that the employee must return to work within 7 days of the date that the recall notice was served on the employee. An employer may terminate an employee who fails to return to work in accordance with the recall notice. In such a case, the employee would not be entitled to any termination notice or pay.

## Collective/ Group Dismissals

Subject to the Employment Regulation, if an employer intends to terminate 50 or more employees at a single location within a four (4)-week period, the employer must provide the Minister with notice at least 4 weeks before the date on which the first termination is to take effect unless the employer is unable to do so, in which case the employer must provide written notice as soon as is reasonable and practicable in the circumstances.

Employers do not need to give group termination notice to employees or unions.

## Transfer of Undertakings/TUPE

The Employment Code states that the employment of an employee is deemed to be continuous and uninterrupted when a business, undertaking or other activity or part of it is sold, leased, transferred or merged or if it continues to operate under a receiver or a receiver-manager.

Where a union is in place in a workplace, this process will be governed by the successorship provisions under the Labour Code. In many cases, they will require that the new employer step into the shoes of the vendor. This means not only adopting the collective agreement that may be in place, but also includes the adoption of certain other agreements made between the vendor and the union.

## Severance Pay

There are no separate statutory requirements in Alberta for severance pay other than the termination notice (or pay i*n lieu*) provisions in the Employment Code.

### Benefits

Employers are not statutorily obligated to maintain benefits for employees who are laid off or terminated.

### Severance Packages/Separation Agreements

See Part V Section D – Use of Severance Agreements and Releases.

# Part VII – UNFAIR COMPETITION/COVENANTS NOT TO COMPETE

## A. Trade Secrets

There are no statutes governing trade secrets as they relate to employment in Alberta.

The common law prescribes obligations upon employees and former employees not to disclose confidential information obtained from their employment. Confidential information has value to the employer by virtue of it being generally not known to other businesses. It is not common knowledge within the industry and is treated as confidential (i.e. reasonable steps are taken to protect it from disclosure). This is to be distinguished from general business skills and knowledge of industry that a former employee acquired through employment since a former employee will be permitted to use the latter unless there are contractual restrictions.

## B. Covenants Not to Compete

There are no statutes governing non-compete agreements as they relate to employment in Alberta.

Employers may include non-competition covenants in their employment agreements. As a starting point, these restrictive covenants will be presumed to be unenforceable as they impose a restraint on trade, especially given the implicit power imbalance between employers and employees. The question of whether a specific non-competition covenant will be enforceable will depend on whether or not a court determines that the covenant is “reasonable” which will engage consideration of the scope of the specific activities being restricted, the duration for which the activities are to be restricted and the geographic area in which the restriction is to operate. If the non-compete is overly broad, it will be unenforceable.

## C. Solicitation of Customers & Employees

There are no statutes governing non-solicitation agreements or the solicitation of employees as they relate to employment in Alberta.

Non-solicitation agreements are more likely to be enforced by a court than non-compete clauses, as they are less restrictive and are more closely aligned with the employer’s legitimate proprietary interests. This is subject to the reasonableness requirements listed above under Part VII Section B.

### D. Canada's *Competition Act*

On June 23, 2023, significant amendments to Canada's *Competition Act*, RSC 1985, c C-34, came into force. Unaffiliated employers are expressly prohibited from "wage-fixing" and "no-poaching" agreements between companies. Any breach of these prohibitions is an offence, with the fine being at the discretion of the Court (no maximum penalty imposed).

### E. Breach of Duty of Loyalty/Breach of Fiduciary Responsibility

The common law prescribes certain obligations on employees and former employees regarding how they may interact with their former employer and its customers, suppliers and other related parties.

All employees have an implied "duty of fidelity" to their employer which includes an obligation not to compete (either directly or indirectly) with their employer while still employed. The essence of the duty of fidelity is the requirement that an employee ought to act honestly and faithfully throughout the term of their contract. Among other things this means that an employee must act in the best interests of the employer and avoid putting themselves in a position that would conflict with the interests of the employer.

The obligations imposed at common law after an employee leaves employment may vary depending on the nature of the employment relationship. If the former employee is considered to owe a greater fiduciary duty to his/her former employer, then the former employee may have greater post-termination restrictions than other employees.

## PART VIII – PERSONNEL ADMINISTRATION

### A. Payroll Requirements

#### Method of Payment

An employee's earnings must be paid by an employer in Canadian currency in cash or by cheque, bill of exchange or order to pay, payable on demand, drawn on an authorized financial institution. If the employer so chooses, the employee's earnings can instead be paid by direct deposit to the employee's account at a financial institution of the employee's choice.

#### Payment Frequency

Employees must establish pay periods for the calculation of wages and overtime and must have at least one pay period per month. Wages earned in a pay period must be paid within 10 days of the end of the pay period.

#### Special Record-Keeping Requirements

Employers must keep an up-to-date record of the following information for each employee, and must provide a written statement of this information to the employee at each pay period:

- Regular and overtime hours of work;
- Wage rate and overtime rate;

- Earnings paid, showing each component of the earnings for each pay period;
- Deductions from earnings and the reason;
- Time off instead of overtime pay provided and taken; and,
- Any other information required by the Employment Regulation.

Further, employers must keep up-to-date records of the following additional information for each employee:

- Name, address, date of birth;
- Date that the present period of employment started;
- Dates on which a general holiday is taken;
- Each annual vacation, including start and end dates, and the period of employment in which the annual vacation was earned;
- Wage rate and overtime rate of the employee upon starting employment, and the date and particulars of any change to those rates documentation relating to maternity and parental leave, reservist leave, compassionate care leave and copies of termination notice and written requests to employees to return to work following temporary lay-off;
- Copies of documentation relating to a leave;
- Copies of overtime agreements;
- Copies of hours of work averaging agreements;
- Copies of parental consents;
- Copies of agreements to use banked overtime during the termination notice period;
- Copies of permits issued, exemptions or variances;
- Copies of any layoff notices or recall notices;
- Copies of any termination notices; and,
- Any other information required by the Employment Regulation.

### B. Required Postings

Section 17 of the Employment Code requires that employers notify employees of their start and end times by posting notices where they will be reasonably seen. An employer cannot require an employee to change from one shift to another without at least 24 hours' written notice and eight (8) hours of rest in between shifts.

Under Alberta's WCA and its regulations, employers must post, and keep posted, a notice advising where the copy of the WCA and its regulations are available for review. Some employment statutes, such as the Labour Code, require notices to be posted under certain circumstances, such as when an application for certification is filed by a union.

Employers are also required to post orders issued under the OHS Act, as well as any health and safety notices prepared concerning conditions or procedures on a work site.

Collective agreements may also contain certain provisions regarding when an employer must post information and may provide a union with access to a billboard for posting.

### C. Required Training

Section 3(2) of the OHS Act requires that an employer must generally ensure a worker is trained in the safe operation of equipment the worker is required to operate. The OHS Act and OHS Code provide for further specific training requirements for specific workers, for example surface mine blasters. Further, the OHS Code requires employers to provide training to workers to address hazards in the workplace such as workplace violence and working alone.

### D. Meal and Rest Periods

Unless agreed to under a collective agreement, an employer must provide an employee who works a shift that exceeds 5 hours but is less than 10 hours with at least one rest period of at least 30 minutes, whether paid or unpaid. An employer must provide an employee who works a shift of 10 hours or more with at least 2 rest periods of at least 30 minutes each, whether paid or unpaid. If an employer and an employee agree, a rest period may be taken in 2 periods of at least 15 minutes each.
Employers must also ensure that a minimum number of rest days are provided:

- One (1) day of rest in each work week;
- Two (2) consecutive days of rest in each period of 2 consecutive work weeks;
- Three (3) consecutive days of rest in each period of 3 consecutive work weeks; and
- Four (4) consecutive days of rest in each period of 4 consecutive work weeks.

Every employer must allow each employee to take at least 4 consecutive days of rest after a period of 24 consecutive work days.

### E. Payment Upon Termination

- Under the Employment Code, upon termination of employment by the employer or the employee, the employer must pay all wages owing to the employee within within 10 consecutive days after the end of the pay period in which termination occurred, or

- 31 consecutive days after the last day of employment.

### F. Personnel Records

#### Right of Access

Employers are privy to a significant amount of personal information regarding employees. Generally, employees in Alberta are entitled to access their personal information held by an organization. The applicable statute governing the disclosure of an employee's personal information depends on whether the organization is a private or public body.

The use of personal information by private sector employers is typically governed by the *Personal Information Protection Act*, SA 2003, c. P-6.5 ("**PIPA**"). PIPA states that an organization is responsible for the personal information that is in its custody or under its control. It requires employers to take reasonable security measures and develop policies and practices to protect personal information. These policies should be made available in writing, upon request. An organization must also designate one or more individuals to be responsible for ensuring compliance with PIPA.

Sections 24 of PIPA states that an individual may request that an organization to provide the individual with access to personal information about the individual or to provide the individual with information about the use or disclosure of personal information about the individual. Upon request, an organization must provide the applicant with access to their personal information, subject to numerous exceptions outlined in the legislation. Employees can also request that the organization correct an error or omission relating to the employee's personal information. Any request must be in writing and include sufficient detail to enable the organization, with reasonable effort, to identify

any record in the custody or under the control of the organization containing the personal information.

PIPA also establishes a number of restrictions regarding a person or entity's collection, use and disclosure of personal information. Typically, consent is required from a person before his/her personal information can be disclosed, used or collected. Under PIPA, there are exceptions when consent is not required.

If there has been a breach of personal information and the organization determines that there is a real risk of significant harm as a result of the breach, section 34.1(1) of PIPA requires the organization to provide notice to the Office of the Information and Privacy Commissioner ("**OIPC**") without unreasonable delay.

Alberta's *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 ("**FOIP**") governs the collection, use, and disclosure of personal information by public bodies, including Government of Alberta ministries, boards, agencies and commissions, as well as school boards, post-secondary educational institutions, municipalities, police services and commissions, health care bodies, Métis settlements, public libraries, drainage and irrigation districts, and housing management bodies. FOIP does not apply to private businesses, non-profit organizations, or professional regulatory organizations operating in Alberta. In those cases, PIPA will apply.

FOIP also provides specific restrictions to ensure the protection of privacy of personal information. This includes specific requirements regarding the purpose of collection of information, the manner of collection, the accuracy and retention and the right to request correction of information. *FOIP* also specifies the use and disclosure of personal information by public bodies. For example, if a public body is subject to FOIP, s. 40 permits the public body to disclose personal information where disclosure is authorized or required by an enactment of Alberta or Canada. Accordingly, FOIP permits disclosure of medical information if authorized or required by the *WCA* or other legislation. Exceptions to disclosure apply, such as cases where the record would invade the personal privacy of a third party.

PIPA and FOIP do not apply to "health information" as defined in Alberta's *Health Information Act, RSA 2000, c H-5* ("**HIA**"). The HIA governs the collection, use and disclosure of personal health information and is applicable to "custodians" as defined under the HIA. Broadly speaking, a custodian is an organization or individual in the health care system who receives and uses health information and is responsible for ensuring that it is collected, used and disclosed appropriately.

The enforcement of PIPA, FOIP and the HIA come within the authority of the OIPC. Decisions of the OIPC are subject to judicial review. As previously noted, a judicial review application must be commenced within six (6) months of a decision being made.

The personal information of employees working in federally regulated organizations within the private sector is protected under the *Personal Information Protection and Electronic Documents Act, SC 2000, c 5* ("**PIPEDA**"). PIPEDA falls under the authority of the Office of the Privacy Commissioner of Canada.

## Retention Requirements

The records listed under Part VIII, Section A must be retained by the employer for at least three (3) years from the date that the record is made.

# PART IX – PRIVACY

## A. Drug and Alcohol Testing

There is no statute in Alberta that specifically regulates drug and alcohol testing. The Human Rights Act protects individuals against discrimination on the basis of mental or physical disability. Drug and alcohol dependencies are considered to be disabilities protected under the legislation. As such, testing programs that negatively affect persons who suffer from substance dependency may be considered discriminatory and unenforceable. However, a testing program can be upheld if it is a *bona fide* occupational requirement (BFOR). Testing programs may also be established in such a manner as to largely mitigate issues of discrimination.

As drug and alcohol issues remain an ongoing concern in a number of workplaces, employers have often attempted to implement testing policies that aim to curtail drug use. Those testing policies have generally taken six (6) distinct forms: pre-access testing, pre-employment testing, post-incident testing, for cause testing, return to work testing, and random testing. The law typically favours pre-access testing, pre-employment testing, post-incident testing, return to work testing, and for cause testing in safety sensitive positions. Random testing is more controversial, although has become more prevalent in recent years across the province in certain safety sensitive workplaces.

## B. Off-Duty Conduct

There is no statute in Alberta that specifically relates to off-duty conduct of employees.

The issue of off-duty conduct typically arises in the context of whether an employee can be disciplined for conduct that occurred outside of his/her normal work duties. Determining whether off-duty conduct is grounds for disciplining an employee must be done on a case-by-case basis and will depend on a variety of factors including the nature of the conduct, the impact on the reputation of the employer, and the nexus between the conduct and the employee's position. Certain egregious conduct, such as serious criminal conduct while off-duty, may be grounds for termination.

## C. Medical Information

Employers must collect, use and disclose medical information in accordance with applicable privacy legislation. See Part VIII Section F for further information.

## D. Searches

There is no statute in Alberta that specifically regulates searching employees or the possessions of employees. However, employees are entitled to a reasonable expectation of privacy in the workplace. There must be a balance between the employee's right to privacy against the employer's concerns with security and safety in the workplace. The degree of privacy to which a person is entitled in any given situation will vary depending on all the circumstances. Determining what kind of searches can be implemented often involves a consideration of the context of a particular workplace. For example, it has been held that search of employees with a drug sniffing dog were not permissible at a mine site, because the privacy interests of the employees outweighed the legitimate business intent of the employer.

### E. Lie Detector Test

There is no legislation in Alberta that contains specific provisions related to the administration of lie detector tests in the workplace.

### F. Fingerprints

There is no legislation in Alberta that contains specific provisions related the issue of fingerprinting. However, fingerprints do create a record of personal information which requires compliance with privacy legislation, such as *PIPA*, *PIPEDA* or *FOIP*. Fingerprints are also biological characteristics, the collection of which has given rise to issues of alleged discrimination under the Human Rights Act.

### G. Social Insurance Numbers

Employers are required to ask for and record an employee's social insurance number (SIN) within three (3) days of the employee's first day of work. Employers must notify Service Canada within six (6) days of the employee starting work if the employee failed to provide a SIN. If you do not make a reasonable effort to get a SIN, you may have to pay a penalty.

Even if you have not received your employee's SIN, you have to make deductions and remit them, and file your T4 information return on or before the last day of February of the following calendar year.

### H. Surveillance and Monitoring

Privacy legislation such as PIPA or PIPEDA applies to the use of video surveillance in the workplace. In Alberta, video surveillance of an employee who is "identifiable" has been found to amount to "personal information" under PIPA. Likewise, GPS data tracking individual employees' locations during work can qualify as "employee personal information".

Much like other kinds of workplace policies, the enforceability of workplace surveillance is assessed based on a balancing of an employer and its employees' respective interests. That balancing will typically involve a consideration of an employer's rationale for implementing surveillance (i.e., the interest that an employer is looking to protect) and of the modalities of the surveillance technology it wishes to implement. Additionally, consideration will be given to whether steps other than surveillance have been or could be implemented (e.g. the deployment of additional supervisors).

Employers are cautioned to carefully consider the use of covert video surveillance in the workplace. In light of the exceptionally invasive nature of covert surveillance, an employer will typically have to establish a fairly significant basis for insisting on that kind of surveillance. Employers may also consider the use of non-surreptitious monitoring which still engages a similar form of balancing between employer and employee interests but has a lower threshold. Finally, considerations must be given to the location of the surveillance cameras, as placing them in certain places (breakrooms, washrooms) may be deemed a violation of privacy rights.

If an employer intends to use one of the aforementioned forms of surveillance/monitoring, then it is prudent for the employer to have a policy in place that is communicated to employees.

### I. Cannabis (medical and recreational use)

There is currently no Alberta legislation that contains specific provisions with respect to testing for impairment, or with respect to cannabis. Issues related to the use of cannabis for employers are generally regulated through their own policies, subject to legislation described below

If impairment creates a hazard or unsafe work situation, employers, supervisors, workers and other worksite parties have an obligation to address it and implement controls under the OHS Act. Both medical and recreational marijuana have the potential to impair employees which can affect the health and safety of the workplace.

It is important for employers to develop clear policies of what constitutes an impairment in the workplace and how impairment will be investigated by the employer. If there is an observed impairment, employers or supervisors should take steps to address unsafe situations and control the hazard, such as not assigning activities to a worker or not allowing them to continue working.

With respect to medical cannabis, employees are required to inform their employer if they are prescribed a medication that may cause impairment, thereby impacting their ability to perform their job in a safe, competent manner.

If an employee identifies as being addicted or dependant on recreational cannabis, the addiction is a disease and employers will have a duty to accommodate that employee to the point of undue hardship. Employers must be cognisant of human rights legislation when dealing with impairment from recreational cannabis users.

## J. Social Media

Where an employee's posts on social media detrimentally impact the employer's business in a real and substantial way, an employer may be justified in disciplining the employee. The employee’s conduct may be deserving of discipline where there is a real and material connection between the off-duty conduct and the workplace. Whether the employer is justified in disciplining and employee and the level of discipline imposed on the employee ultimately depends on the severity of the employee's conduct and on the circumstances of each case, having regard to any applicable mitigating factors.

## K. Weapons/Workplace Violence Policy

Pursuant to the OHS Code, an employer must ensure that a violence prevention policy includes a statement that the employer:

- Is committed to eliminating or, if not reasonably practicable, controlling the hazard of violence;
- Will investigate any incidences of violence and take corrective action to address the incidents; and,
- Will include a statement that the employer will not disclose the circumstances related to an incident of violence or the names of the complainant, the person alleged to have committed the violence, and any witnesses, except where necessary to investigate the incident or to take corrective action, or to inform the parties involved in the incident of the results of the investigation and any corrective action to be taken to address the incident, to inform workers of a specific or general threat of violence or potential violence, or as required by law.

- Will include a statement that the violence prevention policy is not intended to discourage a worker form exercising his or her rights pursuant to any other law.

The violence prevention policy must include the measures that an employer will take to eliminate or control the hazard of violence to workers and information about the nature of the extent of the hazard of violence. The violence prevention policy must also include various types of procedure that will be followed with respect to information disclosure, assisting employees, etc.

# PART X – EMPLOYEE INJURIES AND WORKERS' COMPENSATION

## A. Work-Related Injuries

WCB compensates for injuries that occur in the workplace, including work-related accidents and diseases. WCB may also compensate for a re-injury of a previous work injury. If a worker suffers a workplace injury and is no longer able to work that day, the employer is still responsible for paying the full day's wages of the employee who suffered the workplace accident. An employee who suffers an injury as a result of their serious and wilful misconduct will in most cases not be entitled to coverage under WCB.

In the instance of a workplace injury or illness, the employee, the employee's physician, and the employer are required to provide reporting forms to the WCB. The WCB then confirms if the employee is covered; where there is proper workers' compensation coverage for the employee, and that the injury or illness arose out of or in the course of employment. The claim is then processed to determine the appropriate compensation benefits for the employee.

## B. Non-Work-Related Injuries

Health problems that are unrelated to an employee's place of work are not covered by WCB. However, if an unrelated health problem is made worse by a workplace injury, an employee may be entitled to compensation for the time that it takes to recover. Each case will be assessed on its particular set of facts to determine whether the employee is entitled to coverage for the injury.

Employers should be cognisant that coverage for injuries may extend beyond the four walls of an employer's facility. Coverage for injuries could potentially, depending on the circumstances, include injuries sustained while travelling from or to the workplace. Conversely, certain injuries sustained in an employer's physical workplace may not be insured.

See Part II Section F for addition information on workers' compensation and the review and appeal process.

# PART XI – UNEMPLOYMENT COMPENSATION

## A. Eligibility

Employment insurance for employees in Alberta is governed by federal legislation, the *Employment Insurance Act*, RSC 1996, c. 23 (the "**EIA**"). It is administered by Employment and Social Development Canada.

An insured person qualifies for benefits if the person has had an interruption of earnings from employment; and if the person has had, during their qualifying period, at least the number of hours of insurable employment set out in in the EIA. The qualifying period is the past 52 weeks or the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period pursuant to s. 10 of the EIA, whichever is shorter. The number of hours of insurable employment required to quality for employment insurance will depend on a variety of factors, such as the regional rate of unemployment or whether the insured person committed a violation pursuant to the EIA.

A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was: capable of and available for work and unable to obtain suitable employment; unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or engaged in jury service.

A claimant may be disentitled from receiving employment benefits if the claimant has not applied for suitable employment that is vacant after becoming aware that it is vacant or becoming vacant or if the individual failed to accept the employment after it has been offered to the individual. An individual may also be disentitled to employment benefits if they fail to attend an interview with or follow a direction of the commission.

### B. Procedure

A claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three (3) weeks after the week for which benefits are claimed. Where a claimant has not made a claim for benefits for four (4) or more consecutive weeks, the first claim for benefits after that period for a week of unemployment shall be made within one week after the week for which benefits are claimed. The claimant has the burden of proving their entitlement to benefits. The claimant can apply electronically or by paper.

If the application for employment insurance is successful, the claimant must wait for the “waiting period” of one (1) week before they are entitled to payments.

If an application for employment insurance is denied, the claimant can submit a request for reconsideration. This request must be submitted 30 days after the date the decision was communicated to the claimant. A Service Canada agent will subsequently review the request for reconsideration.

See the Government of Canada’s “Employment Insurance” page for additional information.

## PART XII – HEALTH AND SAFETY

### A. Overview

In Alberta, the health and safety of workers is governed by the OHS Act and the accompanying OHS Code. The OHS Act promotes a shared responsibility between the employer and employee for the health and safety of workers in the workplace. Every employer, as far as is reasonably practicable, must ensure the health and safety of all of its employees, as well as any other workers present at a workplace at which the employer's work is being carried out. An employer must remedy any workplace conditions that are hazardous to the health and/or safety of its workers.

While the OHS Act outlines a number of key general concepts regarding workplace health and safety standards, the majority of the specific standards are outlined in the OHS Code. As the OHS Code is comprehensive, and outlines standards for a significant number of workplace health and safety matters, a complete summary of the OHS Code has been omitted from this text. Please consult the Province of Alberta Ministry of Labour website for the most up to date version of the OHS Code.

## B. Regulatory Requirements

### Contraventions

An employer must ensure that its workers are aware of their responsibilities and duties under the OHS Act and OHS Code. This entails communicating adequate instructions of safety precautions to employees either verbally or in writing and following up to ensure that the instructions are carried out. Employers must provide and maintain in good condition protective equipment, devices, and clothing as required by the *OHS Code*, and ensure that their workers use such equipment.

Under the OHS Act, Occupational Health and Safety Officers ("**Officers**") or an investigator may at any reasonable hour enter and inspect a work site. In carrying out an investigation, the Officers and investigators can request and examine any documents that relate to the health or safety of workers. They may also do the following: inspect or seize any material, product or equipment, make tests and take photographs or recordings in respect of any work site, and interview and obtain statements from individuals, regardless of whether or not they were at the work site.

If an Officer makes an adverse finding regarding the safety or the health of employees in a workplace, then he/she may issue an order to address that finding. The power to issue orders is outlined in the OHS Act and includes the power to order a work stoppage.

The OHS Act requires employers to immediately notify a Director appointed under the Act of any accidents that involves the following:

- An injury or accident that results in death;
- An injury or accident that results in a worker being admitted to a hospital;
- An unplanned or uncontrolled explosion, fire, or flood that causes a serious injury or that has the potential of causing a serious injury;
- The collapse or upset of a crane, derrick, or hoist;
- The collapse or failure of any component of a building or structure necessary for the structural integrity of the building or structure; or
- Any incident specified in the OHS Regulation.

If one of these incidents occurs, the employer is required to carry out an investigation and prepare a report outlining the circumstances of the injury or accident and the corrective action, if any, undertaken to prevent a recurrence. The report must be available for inspection by an officer, and the employer is required to retain a copy of the report for two (2) years after the incident.

Offences under the OHS Act are strict liability offences. If the Crown proves beyond a reasonable doubt that the employer is guilty of an offence, the burden of proof shifts to the employer to show that on a balance of probabilities, it exercised due diligence. The employer must show that it exercised all reasonable care or had a mistaken belief in a set of facts, which if true, would have rendered its actions innocent.

An employer that contravenes or fails to comply with an order under the OHS Actor the OHS Code is guilty of an offence and is liable for penalties as outlined in the OHS Act.

### Appeals

The Alberta Labour Relations Board ("**ALRB**") is the designated appeal body pursuant to the OHS Act. An appeal must be commenced by completing the ALRB's Notice of Appeal form. The Notice of Appeal must be received by the Board within 30 days of the Appellant having been served or given notice of the order, administrative penalty, cancellation or suspension, report or reasons being appealed.

Decisions of the ALRB may be subject to an application for judicial review before the Alberta Court of King's Bench pursuant to the OHS Act.

## C. Changes to the OHS Act

The Government of Alberta replaced the old OHS Act with a new version called the *Occupational Health and Safety Act*, SA 2020, c O-2.2 (the "**New OHS Act**"). The changes to the old OHS Act were introduced in *Bill 47, the Ensuring Safety and Cutting Red Tape Act, 2020*. The changes in the New OHS Act took effect on December 1, 2021. A summary of the changes in the New OHS Act are as follows:

**Refusal of Dangerous Work**

- The New OHS Act narrows circumstances in which a worker can refuse work. A worker will only be able to refuse work if the work poses an "undue hazard", defined as "a hazard that poses a serious and immediate threat to the health and safety of a person."
- Workers cannot be subject to "disciplinary action" for refusing to perform work (changed from "discriminatory action").
- The New OHS Act removes the employer's statutory obligation to continue to pay the same wages and benefits to workers who refuse work.
- Employers can assign other work to a worker who has temporarily refused work. These temporary assignments will not be deemed to be disciplinary in nature if there is no loss in pay to the worker.

**Health and Safety Programs**

- Employers must continue to establish a health and safety program; however, the program does not need to be established in conjunction with the joint work site health and safety committee.
- The New OHS Act requires employers who "regularly" employ 20 or more workers are required to establish and implement a health and safety committee and a health and safety program; however, many of the requirements in the old OHS Act related to a health and safety program have been removed or amended.

**Incident Reporting and Investigations**

- Employers will have a statutory obligation to report when an illness results in the death of a worker, in addition to the previous requirements of reporting injuries and incidents that resulted in the death of a worker.

- Employers must report an injury, illness, or incident "in which there is reason to believe the worker has been or will be admitted to a hospital beyond treatment in an emergency room or urgent care facility."

- Under the New OHS Act, employers will be required to investigate near misses.

**Duties to Workers and Non-Workers**

- Employers must ensure workers are "adequately trained in all matters necessary to perform their work in a healthy and safe manner."

- The New OHS Act narrows the employer's duty to non-workers near the worksite to those "whose health and safety may be materially affected by identifiable and controllable hazards originating from the work site."

**Self-Employed Person**

Under the New OHS Act a self-employer is deemed to be an employer (under the old OHS Act, a self-employed person was deemed to be a worker).

Effective March 31, 2023, the OHS Code requires additional obligations from the employer to ensure the health and safety of their employees. The amendments require employers to develop an emergency transportation plan, new standards for first aid kits and personal protective equipment, a reduced threshold for noise exposure and other changes associated with oil and gas wells, explosives, mining, overhead powerline and electrical utility workers, work in confined spaces and the control of hazardous energy.

# PART XIII – TRADE UNIONS – INDUSTRIAL RELATIONS

## A. Overview

Labour relations in Alberta are governed primarily by the Labour Code. This legislation is administered by the ALRB which is the independent and impartial tribunal responsible for the day-to-day administration of Alberta’s labour laws.

The Labour Code regulates unionized employment in Alberta; governs the relationship between unionized employees, unions, and employers; sets a framework for proper conduct in the union-management relationship; and sets out timelines relating to bargaining rights in order to enhance stability. This is subject to specific exclusions which, for example, provide that the Labour Code does not apply to the following:

- an employer as defined in the *Public Service Employee Relations Act* and to whom that Act applies;
- a person employed by an employer as defined in the *Public Service Employee Relations Act* and to whom that Act applies;
- employers and employees in respect of whom the Labour Code does not apply by virtue

of a provision of another Act;

- employees who are police officers of a municipal police service appointed pursuant to the *Police Act*, except to the extent that the Labour Code is made applicable by the *Police Officers Collective Bargaining Act*;
- employees employed on a farm or ranch as set out in s. 1(1)(l)(iv), or to their employer while the employer is acting in the capacity of their employer; and,
- employees employed in domestic work in a private dwelling or to their employer while the employer is ordinarily resident in the dwelling and acting in the capacity of their employer.

Additionally, the Labour Code does not apply to employees who are working in federally-regulated settings where federal legislation would apply. In such cases, the *Canada Labour Code,* applies.

## The Collective Agreement

The Labour Code provides that certain provisions must be included in a collective agreement. Specifically, collective agreements must include provisions concerning union recognition and the scope of the collective agreement. Additionally, the agreement must state that no strike or lockout can take place while it is in force. Finally, there must be language regarding the deduction and remittance of union dues, and regarding applicable arbitration and grievance procedures.

In addition to the above, collective agreements will typically contain provisions regarding the following:

- Union membership or dues payments;
- Terminations without just cause;
- Seniority;
- Layoff and recall;
- Hours of work;
- Pay and benefits;
- Other work rules;
- Discrimination; and,
- Management rights.

The Labour Code provides that the collective agreement, once concluded, is binding on:

- the bargaining agent and every employee in the unit on whose behalf it was bargaining collectively;
- the employer, where the employer acted on the employer's own behalf; and
- the employers' organization and each employer on whose behalf it was bargaining collectively, where the employers' organization acted on behalf of employers.

A copy of a collective agreement must be filed with the Director of Mediation Services by both the employer and the trade union within 30 days of entering into the agreement.

Where a union is newly certified and no collective agreement exists, and the parties have bargained for at least 90 days (or a strike/lockout notice has been served), a party may apply to the ALRB for assistance in settling the terms of a first collective agreement. The ALRB may issue directions or appoint a mediator to attempt to resolve the dispute; if these efforts are unsuccessful, the ALRB has the discretion to determine that the dispute will be resolved by arbitration in very exceptional circumstances. If the ALRB declares that arbitration is necessary, any strike or lockout action becomes illegal at that time. An arbitrated agreement may not be for a term exceeding 18

months and its award may not alter previously agreed items without the consent of both parties. Unions and employers can renew a collective agreement before it expires, as long as there is informed consent by affected employees.

### B. Right to Organize/Process of Unionization

Part 2 Division 5 of the Labour Code governs certification.

Where there is no union certified to represent employees and no collective agreement is in force, a trade union may apply to the ALRB for certification. In order to certify, the application must be supported by evidence that at least 40% of the employees in the proposed bargaining unit have indicated their support for a trade union by either maintain membership in the union or by applying for membership in the union by paying a sum of at least $2.00 no longer than 90 days before the date of the application. Alternatively, at least 40% of the employees in the proposed bargaining unit must have, not longer than 90 days before the date of application for certification, indicated in writing their selection of the trade union to be their bargaining agent.

While there are no firm deadlines for all of the steps in the certification process, that process will generally proceed expediently. Once a certification application is received, and provided it meets the initial filing requirements, an officer of the ALRB will proceed with an investigation. Following the investigation, a final report is prepared outlining the findings. The union and employer have the opportunity to object to the findings in the report before a decision is made by the ALRB regarding the application, including a decision regarding whether to proceed with a vote. A hearing may occur prior to a final decision by the ALRB. A final decision must be made by the ALRB with respect to a certification within six (6) months.

If a vote is ordered with respect to a certification application, then the vote will be conducted by the ALRB. The vote will occur in person or by mail, depending on the circumstances. If the outcome is that over 50% of employees vote in favour of a certification, then this will generally result in a certificate being issued.

The ALRB has the express ability to prohibit any electioneering or propaganda once a notice of a representation vote has been given that may influence employees' voting decisions. Certain Labour Code provisions restrict an employer's conduct and communication towards employees, particularly during a union organizing campaign. These provisions are in place to ensure that an employer is not influencing the certification process. Note that in certain cases, there are very tight (i.e under 24hr) timelines to register complaints with the ALRB regarding electioneering and the voting process.

A trade union will not be certified as a bargaining agent if, in the opinion of the ALRB, the trade union is dominated or influenced by an employer so as to impair the trade union's fitness to represent employees. A trade union will not be certified as a bargaining agent if, in the opinion of the ALRB, picketing of the place of employment of the employees affected, or elsewhere, directly resulted in union membership or union support.

Decertification can take place when employers, unions or employees file for revocation. The most common type of revocation application is made by employees. For an employee revocation to take place the following steps must be completed:

At least 40% of the employees in the bargaining unit must sign a petition supporting the revocation of a union's bargaining rights. The petition and a completed application form is submitted to the ALRB at a time when employees are allowed to file for revocation. The Board investigates and may hold hearings about the application. If the application meets the requirements of the Labour

Code, the ALRB holds a secret ballot vote of the affected employees; and if the majority of the employees voting vote in favour of the revocation, the ALRB normally revokes the union's bargaining rights. This terminates any existing collective agreement.

Voluntary recognition is an alternative means for a union to acquire bargaining rights. An employer and trade union can agree that the employer recognizes the union as the exclusive bargaining agent for its members.

The Labour Code imposes strict timelines in bargaining and should be referred to carefully to ensure compliance.

### C. Managing a Unionized Workforce

#### Prohibited Practices

Employers cannot participate or interfere with the representation of employees or the formation or administration of a trade union, with the exception of exercising their right to free speech. Further, employers cannot discriminate against employees because of union membership or involvement; nor can they intimidate, coerce, threaten, make promises to, or exercise undue influence over employees regarding union support.

Section 151 of the Labour Code outlines a number of prohibited practices by unions. Those practices include:

- using coercion, intimidation, threats, promises or undue influence of any kind with respect to any employee with a view to encouraging or discouraging membership or activity in or for a trade union;
- requiring an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union; and
- seeking to compel an employer or employers' organization to bargain collectively with the trade union if the trade union is not the bargaining agent for a unit of employees that includes employees of the employer.

Additionally, and as referred to briefly above, the Labour Code expressly provides that employees and unions are unable to engage in dispute-related misconduct. Section 154 defines that conduct as being, "a course of conduct of incitement, intimidation, coercion, undue influence, provocation, infiltration or any other similar course of conduct intended to prevent, interfere with or break up lawful activities or likely to induce a breach of the peace in respect of a strike or lockout." The day-to-day management of a unionized workplace will in large part depend on the language of a collective agreement that is in force (subject of course to the legislative limits previously discussed). Note that to the extent they are not restricted by the agreement, management retains rights vis-à-vis hiring, hours of work, contracting out, and other appropriate matters).

Finally, it is important to note that there may be some restrictions with respect to management's rights during periods of collective bargaining by virtue of what is called a "statutory freeze" pursuant to s. 147 of the Labour Code. Subject to the bargaining agent's consent, an established practice of the employer or in accordance with an existing collective agreement, if a notice to commence collective bargaining has been served, an employer is prohibited from altering the rates of pay, a term or condition of employment or a right or privilege of any employee represented

by the bargaining agent or of the bargaining agent. These statutory freezes apply for the first 120 days following service of a notice to commence bargaining of a first collective agreement, and in the case of renewal negotiations until the bargaining concludes, or there is a strike or lockout. Employers are still able to make certain changes to terms and conditions of employment during these freeze periods but will need to do so diligently and ought to seek legal advice.

Recent updates to the Labour Code give the ALRB the ability to better address situations where prohibited practices resulted in a representational vote by employees in a proposed bargaining unit that did not reflect the true wishes of those employees. The ALRB can refuse to grant a certification in such circumstances and order another vote take place or can order that the Union be certified if no other remedy would sufficiently address the prohibited practice.

## Picketing

The Labour Code provides the ALRB with the authority to restrict picketing activity. In order to picket in Alberta, the picketing must be peaceful and take place only at the affected employees' place of employment or that of an ally employer. An employee's union needs permission to picket somewhere other than their workplace.

Picketing is statutorily permitted at:

- locations where work normally done by the striking or locked-out employees is being done during a strike or lockout;
- locations that the employer uses to further a lockout or resist a strike; and,
- locations where a third-party is assisting the employer in furthering a lockout or resisting a strike by performing services for the employer that it would not normally otherwise.

It is important to note that leafleting is not picketing, but rather has been recognized as a protected form of expression under the *Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c.11.There are however restrictions in place on the extent to where those activities can take place, and what is considered permissible leafletting.

The rules regarding strikes, lockouts and picketing are generally located at Divisions 13 and 14 of Part 2 of the Labour Code. Those provisions include information concerning when a strike or a lockout can occur, and concerning when an application can be made to the ALRB to regulate conduct during either form of work stoppage.

While the majority of the provisions regarding strikes and lockouts are located in the aforementioned parts of the Labour Code, it is worth noting that there are also relevant provisions located in other sections. For example, section 154 defines conduct that would constitute dispute-related misconduct. This provision is often cited by both unions and employers in relation to illegal activity during a labour dispute that does not fall within the definition of unlawful picketing.

Unlike in a number of other Canadian jurisdictions, Alberta does not have a rule barring an employer from retaining replacement workers for strikes and lockouts.

There are certain rules that exist with respect to the maintenance of services deemed essential. These rules apply to a particular set of industries identified in the Labour Code. Unlike other employers who have the choice of whether or not to continue operations during a strike or lockout, employers who provide essential services are obligated to maintain those portions of their operations that are essential during a strike or lockout.

Employers in Alberta have the option of providing essential services through replacement workers, or through their own employees during a strike or lockout. In the former situation, the employer is required to make an election within a reasonable time after required to begin negotiations for an essential services agreement (i.e., when they are served with notice by a party to commence bargaining). They are not required to make this election if:

- Employees in the bargaining unit do not perform essential services; or
- The employer intends to use "other capable and qualified persons who are neither members of the bargaining unit nor replacement workers" to maintain essential services during a strike or lockout.

Following the election, there is an application process that must be undertaken with the Essential Services Commissioner.

If the employer uses its own employees to provide the essential services, then the parties are required to negotiate an essential services agreement. This is an agreement that among other matters will address issues surrounding how the services will be provided during a strike or lockout.

Recent changes to the Labour Code which change how picketing operates during a strike. Notably, obstructing or impeding a person who wishes to cross a picket line from crossing the picket line is now considered to be a wrongful act. This means that picketers will no longer be allowed to stop individuals and vehicles from entering employer premises if they choose not to stop, as is currently the case in many strikes. Furthermore, a person or a trade union is not permitted to picket at a secondary work site without an order of the ALRB.

## PART XIV – Immigration/Labor Migration

There are no laws or statutes pertaining to Immigration/Labor Migration in Alberta

## PART XV – ADDITIONAL INFORMATION

Contact Information

For more information regarding labour and employment law in Alberta, please contact:

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