

1994 BILL 4

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Second Session, 23rd Legislature, 43 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 4**

**EMPLOYMENT STANDARDS CODE  
AMENDMENT ACT, 1994**

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THE MINISTER OF LABOUR

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 4*

## **BILL 4**

1994

### **EMPLOYMENT STANDARDS CODE AMENDMENT ACT, 1994**

*(Assented to , 1994)*

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

*1 The Employment Standards Code is amended by this Act.*

*2 Section 1(1)(b) is repealed and the following is substituted:*

(b) "Director" means an employee within the meaning of the  
*Public Service Act* who is designated by the Minister as the  
Director for the purposes of this Act;

*3 The following heading is added before section 3:*

#### **PART 1**

#### **GENERAL**

*4 The heading "PART 1 COMMUNICATION AND  
EDUCATION" preceding section 5 is repealed.*

*5 The following is added after section 17:*

Services by  
others

**17.1** The Director may engage persons to perform services  
for and otherwise assist the Director and officers in  
administering this Part, and those persons are entitled to the  
fees established in or pursuant to regulations under section  
76(k).

## **Explanatory Notes**

- 1** Amends chapter E-10.2 of the Statutes of Alberta, 1988.
- 2** Section 1(1)(b) presently reads:  
*1(1) In this Act,*  
*(b) "Director" means the person appointed under the Public Service Act as the Director of Employment Standards;*
- 3** New heading.
- 4** Unnecessary heading struck out.
- 5** Services of experts.

6 *Section 76 is amended by adding the following after clause (g):*

(h) authorizing the Director to charge fees for the purpose of recovering all or part of the costs of the Government in administering this Part, including, without limitation, costs related to

- (i) conducting audits of employers' records,
- (ii) the filing of complaints, applications and appeals,
- (iii) the investigation and mediation of complaints,
- (iv) the processing of appeals,
- (v) the issuing of documents,
- (vi) the filing, registering and enforcing of orders, and
- (vii) the provision of other materials or services by the Government,

and respecting the circumstances under which such fees may be charged, who is liable to pay them, the amount of them or the manner in which the amount is to be determined, how and when they are to be paid and the manner in which they may be recovered;

(i) authorizing an umpire to make orders for the payment of the costs of an appeal and respecting the circumstances under which such an order may be made, the manner in which it may be made and the persons against whom it may be made, the costs that may be the subject of such an order, the amount of the costs or the manner in which the amount is to be determined and the manner in which costs may be recovered;

(j) authorizing a person (other than an employee or agent of the Crown) who, on behalf of an employee, collects money owing to the employee pursuant to an order that is filed in the Court of Queen's Bench under Part 2, Division 18 to recover the costs of collection from the employer against whom the order was made, including, without limitation, regulations respecting

- (i) the circumstances under which such costs may be recovered,
- (ii) the amount of the costs that may be recovered, or the manner in which the amount is to be determined, and

**6** Lieutenant Governor in Council may make regulations.

- (iii) the manner in which such costs may be recovered;
- (k) respecting the circumstances under which a person who is engaged by the Director under section 17.1 is entitled to fees, who is liable to pay the fees, the amount of such fees or the manner in which the amount is to be determined, how and when they are to be paid and the manner in which they may be recovered.

*7 Section 92 is repealed and the following is substituted:*

**Complaint**

**92(1)** An employee may make a written complaint to an officer that the employee is entitled to wages, overtime pay, entitlements, notice under section 26 or parental benefits.

**(2)** Where the employment of an employee is terminated after the coming into force of this section, a complaint under subsection (1) must be made within 6 months after the termination.

**(3)** Where the Director considers that there are extenuating circumstances that warrant doing so, the Director may extend the 6-month period referred to in subsection (2) before or after the expiry of that period.

**(4)** Notwithstanding anything in this Act, an officer may refuse to accept or investigate a complaint if

(a) the officer considers that

(i) the complaint is frivolous or vexatious,

(ii) there is insufficient evidence to substantiate the complaint, or

(iii) there are other means available to the employee to deal with the subject-matter of the complaint that should be pursued before the complaint is accepted or investigated,

or

(b) the employee is proceeding with another action in respect of the subject-matter of the complaint or has sought and obtained recourse before a court, tribunal, arbitrator or other form of adjudication in respect of the subject-matter of the complaint.

*8 Section 96(1) is amended*

**7** Section 92 presently reads:

*92 An employee may make a written complaint to the Director that the employee is entitled to wages, overtime pay, entitlements, notice under section 26 or parental benefits.*

**8** Section 96 presently reads in part:

- (a) *by adding “or has failed to make those records available to the officer for inspection” after “the employee”;*
- (b) *by adding the following after subsection (2):*

(2.1) An order under section 94 or 95 may also include an order ordering the employer to pay to the Director any fees that are payable to the Government pursuant to regulations under section 76(h) and are unpaid.

9 Section 97 is amended

- (a) *by repealing subsection (1) and substituting the following:*

Appeal to  
Director

**97(1) If an officer**

- (a) determines that an employee making a written complaint is not entitled to wages, overtime pay, entitlements, notice under section 26 or parental benefits, as the case may be, or
- (b) refuses to accept or investigate a complaint under the authority of section 92(4),

the officer shall serve the employee with notice of his decision.

- (b) *by repealing subsections (4) and (5) and substituting the following:*

(4) A decision of the Director or an officer to whom a matter is referred under subsection (3)(b)

- (a) that an employee is not entitled to wages, overtime pay, entitlements, notice under section 26 or parental benefits, or
- (b) that an officer was justified in refusing to accept or investigate a complaint under the authority of section 92(4)

is final and binding.

(5) The Director or the officer to whom a matter is referred under subsection (3)(b) may

- (a) make an order under section 94 or 95 if the Director or officer is of the opinion that the employee is entitled to wages, overtime pay,



*96(1) If an officer is unable to determine the amount of wages, overtime pay or entitlements that are due to an employee because the employer has not made or kept complete and accurate records under section 18 with respect to the employee, the officer may determine the amount in any manner he considers appropriate.*

*(2) An order under section 94 or 95 shall*

- (a) name the employer to whom the order is directed;*
- (b) name the one or more employees in respect of whom the order is made;*
- (c) specify the amount payable in respect of each employee named in the order or direct that an employee shall be reinstated, or both.*

**9 Section 97 presently reads:**

*97(1) If an officer has determined that an employee making a written complaint is not entitled to wages, overtime pay, entitlements, notice under section 26 or parental benefits, as the case may be, the officer shall serve the employee with notice of his decision accordingly.*

*(2) An employee served under subsection (1) may, within 15 days from the date of service of the notice under that subsection, appeal to the Director by serving on him a written notice of appeal specifying the reasons for it.*

*(3) On receipt of a notice of appeal under subsection (2), the Director may*

- (a) review the matter personally, or*
- (b) direct another officer to review the matter.*

*(4) A decision of the Director or an officer to whom a matter is referred under subsection (3)(b) that an employee is not entitled to wages, overtime pay, entitlements, notice under section 26 or parental benefits is final and binding.*

*(5) If the Director or an officer to whom a matter is referred under subsection (3)(b) is satisfied that the employee is entitled to wages, overtime pay, entitlements, notice under section 26 or parental benefits, the Director or the officer may make an order under section 94 or 95.*

entitlements, notice under section 26 or parental benefits, or

- (b) direct an officer to accept or investigate the complaint where the Director or officer is of the opinion that the officer referred to in section 92(4) was not justified in refusing to accept or investigate the complaint under the authority of that section.

*10 Section 102(1)(a) is amended by striking out “accept a complaint or to”.*

*11 Section 103(3) is repealed and the following is substituted:*

- (3) A notice of appeal must be accompanied by
  - (a) any fee that is payable pursuant to regulations under section 76(h), and
  - (b) in the case of an appeal by an employer of an order under section 94 or 95, a money order or certified cheque payable to the Director in an amount equal to the amount ordered to be paid under section 94 or 95.

(3.1) The Director may

- (a) waive or reduce an amount payable under subsection (3), or
- (b) accept security in a form and amount acceptable to the Director instead of a money order or certified cheque

where the Director considers that there are extenuating circumstances that warrant doing so.

*12 Section 106(1) is repealed and the following is substituted:*

**10** Section 102(1) presently reads:

*102(1) Notwithstanding anything contained in this Act, the Director may*

- (a) refuse to accept a complaint or to institute or continue any proceeding or prosecution for the failure of an employer or employee to comply with this Act, or*
- (b) settle or compromise any difference between an employer and an employee under this Act and receive money on behalf of the employee in settlement of the difference.*

**11** Section 103(3) presently reads:

*(3) In the case of an appeal by an employer, the notice of appeal of an order under section 94 or 95 shall be accompanied by a money order or certified cheque payable to the Director in an amount equal to*

- (a) the amount ordered to be paid under section 94 or 95, or*
- (b) \$300,*

*whichever is less, for each employee in respect of whom the order was made.*

**12** Section 106(1) presently reads:

Umpire's  
powers on  
appeal

**106(1)** After hearing an appeal from an order of an officer under section 94 or of the Director under section 95, the umpire may

- (a) confirm, vary or revoke the order of the officer or Director or revoke the order of the officer or Director and substitute for it any order that the officer or Director could have made,
- (b) order the employer, the employee or any of the other employees of the employer, as the umpire considers necessary, to attend an educational program in employment standards specified by the umpire, and
- (c) make an order determining responsibility for the payment of the costs of attending an educational program referred to in clause (b).

*13 Section 112 is amended by striking out "province" wherever it occurs and substituting "jurisdiction".*

*106(1) After hearing an appeal from an order of an officer under section 94 or of the Director under section 95, the umpire may*

- (a) confirm, vary or revoke the order of the officer or Director, or*
- (b) revoke the order of the officer or Director and substitute for it any order that the officer or Director could have made.*

**13** Section 112 presently reads:

*112(1) If the Lieutenant Governor in Council is satisfied that reciprocal provisions will be made by another province for the enforcement of orders of the Director, officers or umpires issued under this Act, he may, by order,*

- (a) declare the province to be a reciprocating province for the purpose of enforcing orders, certificates or judgments for the payment of wages, overtime pay or entitlements made under an enactment of that province, and*
- (b) designate an authority within that province as the authority who may make applications or certificates under this section.*

*(2) If an order, certificate or judgment for the payment of wages, overtime pay or entitlements has been obtained under an enactment of a reciprocating province, the designated authority may apply to the Director to enforce the order, certificate or judgment.*

*(3) On receiving a copy of the order, certificate or judgment for the payment of wages, overtime pay or entitlements*

- (a) certified to be a true copy by the court in which the order, certificate or judgment is registered, or*
- (b) if there is no provision in the reciprocating province for registration of the order, certificate or judgment in a court, certified to be a true copy by the designated authority.*

14 *Section 114(2) is repealed.*

15 *Section 121(1) is repealed and the following is substituted:*

Offence and  
penalty

**121(1)** When a corporation commits an offence under this Act, every director or officer of the corporation who directed, authorized, assented to, permitted, participated in or acquiesced in the offence is guilty of the offence, whether or not the corporation has been prosecuted or convicted.

16 *Section 122 is amended*

(a) *in clause (a) by striking out “\$10 000” and substituting “\$100 000”;*

(b) *in clause (b) by striking out “\$5 000” and substituting “\$50 000”.*

*and on being satisfied that the wages, overtime pay, entitlements or an amount payable under section 95 is still owing, the Director shall file the copy of the order, certificate or judgment with the clerk of the Court of Queen's Bench and the order is then enforceable as an order of the Director, an officer or an umpire.*

**14** Unnecessary subsection deleted. Section 114 presently reads in part:

*114(1) The Director may file in a land titles office an order of the Director, an officer or an umpire respecting wages, overtime pay, vacation pay, general holiday pay or an amount payable under section 95.*

*(2) The secured charge referred to in section 113(2) does not attach to real property until the order referred to in subsection (1) is registered in a land titles office.*

**15** Section 121(1) presently reads:

*121(1) When a corporation is guilty of an offence, every director or officer of the corporation who directed, authorized, assented to, permitted, participated in or acquiesced in the offence is also guilty of an offence.*

**16** Section 122 presently reads:

*122 An employer, employee, director, officer or other person who is guilty of an offence under this Act is liable,*

*(a) in the case of a corporation, to a fine of not more than \$10 000, and*

*(b) in the case of an individual, to a fine of not more than \$5000.*