

1994 BILL 220

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 220

**EMPLOYMENT STANDARDS CODE
AMENDMENT ACT, 1994**

MS. LEIBOVICI

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 220
Ms. Leibovici

BILL 220

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- 2 Section 8 is repealed.*

- 3 Section 11 is repealed and the following is substituted:*

11 Except as otherwise provided by Division 1.1, for the
purposes of this Act the employment of employees shall be

Explanatory Notes

1 This Bill will amend chapter E 10.2 of the Statutes of Alberta, 1988.

2 Section 8 presently reads:

8(1) If an employer intends to terminate the employment of 50 or more employees at a single location within a 4-week period, the employer shall give to the Minister 4 weeks' written notice of intention to terminate employment specifying the number of employees whose employment will be terminated and the effective date of the terminations.

(2) Subsection (1) does not apply if

(a) the employees are employed on a seasonal basis or for a definite term or task,

(b) the termination of employment is the result of unforeseeable or unpreventable cause beyond the control of the employer, or

(c) it would be unreasonable under the circumstances for the employer to give the notice referred to in that subsection.

3 Section 11 presently reads:

11 For the purposes of this Act, the employment of employees shall be deemed to be continuous and uninterrupted and this Act, including,

deemed to be continuous and uninterrupted and this Act, including, without limitation, Divisions 7, 8, 9 and 10, applies to the benefit of the employees when a business, undertaking or other activity or a part thereof is sold, leased, transferred or merged, or continues to operate under a receiver or receiver-manager.

4 The following is added after section 11:

Division 1.1

Successor Employers

Definitions

11.1 In this Division,

"previous employer" means the employer who ceases to operate premises;

"successor employer" means the employer who begins to operate premises substantially similar to the premises operated by the previous employer.

Application

11.2 This Division applies if one employer ceases to operate premises after the first day of February 1994, and another employer begins to provide substantially similar services at the premises.

11.3(1) The owner or manager, as the case may be, shall notify the employees and any bargaining agent, if appropriate, of the date on which the previous employer will cease to operate the premises.

(2) The notice referred to in subsection (1) must be given in writing at least fifteen days before the date on which the previous employer ceases to operate the premises.

Mandatory job offer

11.4(1) A successor employer shall make reasonable offers of available positions to those employees,

(a) who are in a continuing or a recurring and cyclical employment relationship with the previous employer immediately before the successor employer begins providing the services at the premises; and

without limitation, Divisions 7, 8, 9 and 10, applies to the benefit of the employees when a business, undertaking or other activity or part thereof is sold, leased, transferred or merged, or continues to operate under a receiver or receiver-manager.

(b) whose principal place of work with the previous employer is the premises affected by the change in the employer providing the services.

(2) The successor employer shall make offers to the employees employed by the previous employer in descending order of each such employee's seniority with the previous employer until all positions are filled.

(3) The successor employer is not required to offer positions to employees who

(a) are not qualified to perform the services required of them, or

(b) would not become qualified to do so with a reasonable period of training.

(4) The successor employer shall use every reasonable effort to fill all positions at the premises with employees who were employed by the previous employer before the successor employer offers a position to any other person.

(5) The position offered must consist of performing, at the same premises, the same work that the employee did for the previous employer, if such a position is available.

(6) If a position described in subsection (5) is not available, the position offered must consist of alternative work that is comparable having regard to compensation, hours and schedule of work, perquisites, quality of working environment, degree of responsibility, job security and possibility of advancement.

Acceptance of
offer

11.5 (1) Subject to subsection (2), for the purposes of this Act, a person employed by the previous employer who accepts a position offered by the successor employer is deemed to have been employed by the successor employer for the aggregate period during which he was employed by successive previous employers.

(2) In subsection (1), "previous employers" means only those employers who are a previous employer to the successor employer or to another previous employer, commencing from the later of:

(a) June 4, 1994, or

(b) the day on which the employee last commenced employment with the previous employer or any previous employer to that employer.

11.6 (1) Where an employee declines a position offered by the successor employer under section 11.4 and who ceases to be employed by the previous employer, the previous employer will comply with Division 9.

(2) If the successor employer offers to an employee of the previous employer employment that does not begin immediately after his or her employment with the previous employer ends and the employee declines the offer, the employee is not deemed to have resigned his or her employment with the previous employer and the successor employer shall comply with Division 9.

Offer declined

11.7 (1) If the successor employer does not offer a position to an employee employed by the previous employer, the successor employer shall comply with Division 9.

(2) For the purposes of section 11.8 and Division 9, the successor employer, and not the previous employer, is deemed to have been the employer of the person.

No offer made

11.8 If an employee of a previous employer does not receive a reasonable job offer from the successor employer, the employee may make a written complaint under Division 16.

Information

11.9 The previous employer shall give the successor employer the following information about the employees:

(a) a job description for each of the positions held by the employees;

(b) the wage rates for each position;

(c) the number of employees in each position at the premises;

(d) a list of employees employed in each position, each person's seniority, and their hours and schedule of work;

(e) the name of each employee and his address as it appears in the employer's records.

11.10(1) If any employer fails to comply with the provisions of this Division, an officer may order what action, if any, the employer shall take or refrain from taking in order to constitute compliance with this Division and may order what compensation shall be paid to the employee.

(2) An order under subsection (1) may be appealed by any person who is subject to the order to an umpire in accordance with Division 17.

5 The following is added after section 24:

24.1 No employer shall, for the sole reason that the employee normally works fewer hours per week than other employees, pay an employee at a lower rate of compensation, overtime pay or entitlements than that paid to other employees performing the same tasks in the same establishment.

6 The following is added after section 27:

27.1(1) An employee who works only when requested by the employer to attend the place of work shall, in respect of each occasion on which the employee attends his place of employment for the purpose of work, be paid an amount at least equal to 2 hours' wages.

(2) For the purposes of subsection (1), where an employee is requested by the employer to work for a period which commences more than 1 hour after his period of work at the same location ceased, the second period shall be deemed to be an occasion of attendance which is separate from the prior occasion of attendance and subject, without regard to the prior occasion of attendance, to the minimum compensation required under subsection (1).

7 The following is added after section 39:

39.1 No employer shall reduce the annual vacation of an employee or change the way in which the pay pertaining to such vacation is calculated in comparison with that given to other employees performing the same tasks in the same

establishment for the sole reason that the employee normally works less hours each week.

8 The following is added after section 55:

55.1(1) An employer intending to terminate the employment of 50 or more employees in any period of 4 weeks or less shall give notice to the Minister in the manner prescribed in the regulations and to each employee according to section 57.

(2) An employer who is required by subsection (1) to give notice,

(a) shall provide to the Minister, in the prescribed form, such information as may be prescribed; and

(b) shall, on the first day of the statutory notice period, post in the employer's establishment, in the prescribed form, such information as may be prescribed.

(3) The employer shall post the information required by clause (2)(b) in one or more conspicuous places in the employer's establishment where it is most likely to come to the attention of the affected employees and the employer shall keep the information posted throughout the statutory notice period.

(4) The information required under subsection (2) may include,

(a) the economic circumstances surrounding the intended terminations;

(b) any consultations which have been or are proposed to take place with local communities or with the affected employees or their agent in connection with the terminations;

(c) proposed adjustment measures and the number of employees expected to benefit from each;

(d) a statistical profile of the affected employees; and

(e) the effective date of each termination.

(5) The notice required under subsection (1) shall be deemed not to have been given until the date the completed form required under clause (2)(a) is received by the Minister.

(6) Where the completed form required under clause (2)(a) has been received, the Minister shall cause a notice to that effect to be sent to the employer within two business days of such receipt.

(7) Subsection (1) does not apply to an employee covered by section 58.

(8) An employer who has terminated or who proposes to terminate the employment of employees shall, if ordered to do so by the Minister,

- (a) participate in such actions or measures as the Minister may require for the purpose of considering alternatives to the terminations and facilitating the adjustment process;

- (b) participate in the establishment and work of a committee for the purposes described in clause (a) upon such terms as the Minister considers necessary; and

- (c) contribute to the reasonable cost or expense of the committee in such amount or proportion as the Minister requires.

(9) A committee established pursuant to subsection (8) shall consist of representatives of

- (a) the employer,

- (b) the employees,

- (c) the union to which any employees belong,

and may also include representatives of the Government and the Government of Canada.

9 Section 63 is amended

(a) by repealing subsection (c) and substituting:

9 Section 63 presently reads:

63 *In this Division,*

(c) "parental leave" means leave under section 70;

(b) *by adding the following after clause (c):*

(d) "parent" includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own.

10 Section 64 is repealed and the following is substituted:

64(1) A pregnant employee who has been employed by an employer for a continuous period of at least 6 months before the earlier of the date of delivery or the beginning of leave is entitled to maternity leave without pay.

(2) A pregnant employee referred to in subsection (1) is entitled to maternity leave of a period not exceeding 17 weeks commencing at any time during the period of 17 weeks immediately preceding the estimated date of delivery.

(3) Subject to sections 66 and 72(1), the maternity leave of an employee who is not entitled to parental leave shall end on the later of

(a) the day that is 17 weeks after the commencement of maternity leave, or

(b) the day that is 6 weeks after the birth, still birth or miscarriage.

11 Section 66 is repealed and the following is substituted:

66 Subject to section 72(1), an employee may return to work within the 6-week period following the actual date of delivery, still birth or miscarriage by providing her employer with a medical certificate indicating that resumption of work by the employee will not endanger her health.

12 Section 68 is repealed.

- (a) *"date of delivery" means the date when the pregnancy of an employee terminates with the birth of a child or when the pregnancy otherwise terminates;*
- (b) *"medical certificate" includes a written statement for the purpose of this Division containing the signature of a physician;*
- (c) *"parental leave" means maternity leave or adoption leave under this Division.*

10 Section 64 presently reads:

64(1) A pregnant employee who has been employed by an employer for a continuous period of at least 12 months is entitled to maternity leave without pay.

(2) A pregnant employee referred to in subsection (1) is entitled to maternity leave of

- (a) a period not exceeding 18 weeks commencing at any time during the period of 12 weeks immediately preceding the estimated date of delivery, and*
- (b) if the actual date of delivery is after the estimated date of delivery, an additional period consisting of the time between the estimated date of delivery and the actual date of delivery.*

(3) Subject to section 66, the maternity leave shall include a period of at least 6 weeks immediately following the actual date of delivery.

11 Section 66 presently reads:

66 An employee, with the agreement of her employer, may shorten the duration of the 6-week period following the actual date of delivery by providing her employer with a medical certificate indicating that resumption of work by the employee will not endanger her health.

12 Section 68 presently reads:

68 When an employee takes maternity leave under this Division and is unable to return to work after the expiration of the period referred to in section 64(2) by reason of a medical condition of the employee

13 Section 70 is repealed and the following is substituted:

70(1) An employer shall grant parental leave, in accordance with subsection (2), to an employee who is the parent of a child and who

(a) has been in the employment of the employer for a continuous period of at least 6 months before the date on which leave is to begin, and

(b) submits a written notice of leave to the employer at least 2 weeks before the leave is to begin.

(2) Parental leave consists of a period of not more than 18 weeks of leave without pay commencing no later than 35 weeks after the day the child is born or comes into custody of the parent for the first time.

(3) Notwithstanding subsection (2), the parental leave of an employee who takes maternity leave must begin when the maternity leave ends unless the child has not yet come into the custody of a parent for the first time.

(4) Where an employee is unable to comply with subsection (1)(b), because the child comes into the custody of a parent for the first time sooner than expected, the employee shall give notice to the employer forthwith after receiving notice of the date that the child will come into the employee's custody.

14 Section 71 is repealed and the following is substituted:

71 Subject to section 73, no employer shall terminate the employment of or lay off an employee who has commenced maternity leave, or parental leave, under this Division.

or the child arising after the date of delivery, her employer shall grant the employee a further period of maternity leave without pay of not more than 3 weeks if she provides her employer with a medical certificate indicating that owing to a medical condition arising following the date of delivery she is not able to return to work at that time.

13 Section 70 presently reads:

70(1) An employer shall grant adoption leave, in accordance with subsection (2), to an employee who is the adoptive parent of a child under the age of 3 years and who

- (a) has been in the employment of the employer for a continuous period of at least 12 months, and*
- (b) submits a written notice of leave to the employer at least 2 weeks before the employee can reasonably expect to first obtain custody of the child being adopted.*

(2) Adoption leave consists of a period of not more than 8 weeks of leave without pay commencing on the date on which the adoptive parent first obtains custody of the child being adopted.

(3) Where an employee is unable to comply with subsection (1)(b), the employee shall give notice to the employer forthwith after receiving notice of the adoption.

(4) Only 1 parent of a child referred to in subsection (2) shall be granted adoption leave under this section.

14 Section 71 presently reads:

71 Subject to section 73, no employer shall terminate the employment of or lay off an employee who

- (a) has commenced maternity leave, or*
- (b) is entitled to or has commenced adoption leave,*

under this Division.

15 Section 72 is repealed and the following is substituted:

72(1) An employee who wishes to resume working prior to the expiration of maternity leave or parental leave under this Division shall give the employer 4 weeks' notice in writing of the day on which the employee intends to resume working for the employer and the employer shall

(a) reinstate the employee in the position occupied at the time that parental leave commenced, or

(b) provide the employee with alternative work of a comparable nature,

at not less than the same wages, entitlements and other benefits that had accrued to the employee to the date that parental leave commenced.

(2) No employer is required to allow an employee to whom maternity or parental leave has been granted under this Division to resume employment with the employer after the date of delivery or the date of first obtaining custody until after the expiration of 4 weeks from the date on which the employee notifies the employer of the employee's intention to resume working.

(3) If the employee does not otherwise notify the employer, the employee will be presumed to return to employment on the normal working day immediately following the expiry of the leave period.

16 In sections 73 and 74, "parental leave" is struck out wherever it occurs and "maternity or parental leave" is substituted:

15 Section 72 presently reads:

72(1) An employee who wishes to resume working on the expiration of parental leave under this Division shall give the employer 2 weeks' notice in writing of the day on which the employee intends to resume working for the employer and the employer shall

(a) reinstate the employee in the position occupied at the time that parental leave commenced, or

(b) provide the employee with alternative work of a comparable nature,

at not less than the same wages, entitlements and other benefits that had accrued to the employee to the date that parental leave commenced.

(2) No employer is required to allow an employee to whom parental leave has been granted under this Division to resume employment with the employer after the date of delivery or the date of first obtaining custody until after the expiration of 2 weeks from the date on which the employee notifies the employer of the employee's intention to resume working.

16 Sections 73 and 74 presently read:

73(1) If an employer has suspended or discontinued his business, undertaking or other activity wholly or partly during the period of an employee's parental leave under this Division and the employer has not resumed operations on the expiration of the employee's parental leave, the employer shall, on resumption of the business, undertaking or other activity,

(a) reinstate the employee in the position occupied at the time that parental leave commenced at not less than the same wages and entitlements and other benefits that had accrued to the employee to the date that parental leave commenced,

17 Section 92 is repealed and the following is substituted:

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, parental benefits, or a reasonable job offer or other remedies under Division 16.

18 This Act comes into force on Proclamation.

or

- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's parental leave commenced, with no loss of seniority or other benefits accrued to the employee to the date that the employee commenced parental leave.*

(2) The requirement for an employer to reinstate or provide an employee with alternative work under subsection (1) extends for a period of 12 months from the date of expiration of the employee's parental leave.

74 An employee who does not wish to resume employment on the expiration of parental leave under this Division shall give the employer at least 2 weeks' written notice of the employee's intent to terminate employment.

17 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.*