

2023 Bill 5

First Session, 31st Legislature, 2 Charles III

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 5

PUBLIC SECTOR EMPLOYERS AMENDMENT ACT, 2023

THE PRESIDENT OF TREASURY BOARD AND MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 5

2023

PUBLIC SECTOR EMPLOYERS AMENDMENT ACT, 2023

(Assented to _____, 2023)

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

Amends SA 2019 cP-40.7

1 The *Public Sector Employers Act* is amended by this Act.

**2 The preamble is amended by repealing the 2nd, 3rd and 4th
recitals and substituting the following:**

WHEREAS the Government of Alberta is committed to
preserving and protecting public services for Albertans, and
fiscal restraint in compensation is key to achieving this
objective; and

WHEREAS the Government of Alberta is committed to
achieving a balance between the autonomy of public sector
employers and the Province's accountability for fiscal oversight
and the effectiveness and efficiency of public services:

3 Section 1(1) is amended

(a) by repealing clause (a) and substituting the following:

Explanatory Notes

1 Amends chapter P-40.7 of the Statutes of Alberta, 2019.

2 The preamble presently reads:

WHEREAS public sector compensation is the largest government expenditure, constituting over half of the Government of Alberta's operating expense;

WHEREAS the Government of Alberta is committed to preserving and protecting public services for Albertans, and fiscal restraint in public sector collective bargaining is key to achieving this objective;

WHEREAS the Government of Alberta is committed to ensuring that the costs of collective agreements bargained by public sector employers are aligned with the Province's fiscal realities; and

WHEREAS the Government of Alberta is also committed to respecting the autonomy of public sector employers and the importance of the collective bargaining process:

3 Section 1(1) presently reads in part:

1(1) In this Act,

- (a) “chief executive officer” means the highest ranking executive of an employer or employer association who has primary responsibility for overseeing the day-to-day operations of the employer or employer association;
- (a.1) “compensation” means any consideration or remuneration, regardless of its nature or form, including, without limitation, salary, retainers, benefits, bonuses, allowances, travelling and living expenses, honorariums and severance pay, paid or payable or provided, directly or indirectly, to or for the benefit of a person who performs duties and functions that entitle the person to be paid;
- (a.2) “employer” means any of the following entities or a subsidiary of the following entities:
 - (i) a public post-secondary institution as defined in the *Post-secondary Learning Act*;
 - (ii) a board as defined in the *Education Act*;
 - (iii) a board as defined in the *Northland School Division Act*;
 - (iv) a Francophone regional authority as defined in the *Education Act*;
 - (v) a society or company that operates a charter school as defined in the *Education Act*;
 - (vi) a regional health authority established under the *Regional Health Authorities Act*;
 - (vii) a public agency as defined in the *Alberta Public Agencies Governance Act*;
 - (viii) an entity that receives funding from the Crown to provide a public service as prescribed by the regulations;
- (a.3) “employer association” means an association of employers established under section 3.4;

- (a) *“employer” means any of the following entities or a subsidiary of the following entities if the entity or subsidiary of the entity engages in collective bargaining or a related process:*
- (i) *an institution that forms part of the publicly funded post-secondary system other than an independent academic institution within the meaning of the Post-secondary Learning Act;*
 - (ii) *a board as defined in the Education Act;*
 - (iii) *a board as defined in the Northland School Division Act;*
 - (iv) *a Francophone regional authority as defined in the Education Act;*
 - (v) *a regional health authority established under the Regional Health Authorities Act;*
 - (vi) *an entity set out in the Schedule;*
- (c) *“publicly funded post-secondary system” means the system described in section 102.2 of the Post-secondary Learning Act;*

- (a.4) “employer committee” means an association of employers established under section 3.3;
- (a.5) “member” means
 - (i) in respect of a public agency that is a corporation, a member of the public agency or its board, council or other governing body, and
 - (ii) in respect of a public agency that is an unincorporated body, a member of the public agency;

(b) by repealing clause (c).

4 Section 3 is amended

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

Directives to employers

3(1) The Minister may issue directives

- (a) that an employer must follow before, during and after engaging in collective bargaining or a related process,
- (b) that an employer must follow respecting compensation for employees who are not subject to collective agreements,
- (c) that an employer or the Crown must follow respecting compensation for members,
- (d) that an employer committee must follow in respect of its purposes under section 3.3, and
- (e) that an employer association must follow in respect of its purposes under section 3.4.

(b) in subsection (2) by adding the following after clause (b):

- (b.1) respecting compensation provided to an employee not subject to a collective agreement,
- (b.2) respecting compensation provided to a member,

4 Section 3 presently reads in part:

3(1) The Minister may issue directives that an employer must follow before, during and after engaging in collective bargaining or a related process.

(2) Directives issued by the Minister under this section may include directives

(b) respecting fiscal limits the employer must operate within when engaging in collective bargaining or a related process,

(4) A directive may provide for

(a) the form and manner in which the directive is to be complied with, and

(b) the time within which the directive is to be complied with.

(c) by adding the following after subsection (4):

(4.1) A directive is effective as of the date or dates specified in the directive.

5 The following is added after section 3:

Compensation policies

3.1(1) The Minister, by order, may establish public sector compensation policies that an employer must follow with respect to employees who are not subject to collective agreements.

(2) The Minister, by order, may establish public sector compensation policies that an employer or the Crown must follow with respect to members.

(3) Public sector compensation policies may be general or specific and may apply to one or more employers.

(4) A public sector compensation policy is effective as of the date or dates specified in the policy.

Compensation plans

3.2(1) The Minister, by order, may require an employer to submit compensation plans respecting the compensation of employees who are not subject to a collective agreement for approval in a form and on the timelines determined by the Minister.

(2) The Minister, by order, may require an employer committee or employer association to submit compensation plans respecting the compensation of employees who are not subject to a collective agreement, applicable to 2 or more of the employers represented by the employer committee or employer association, in a form and on the timelines determined by the Minister.

(3) The Minister may make regulations respecting compensation plans, including respecting the information to be included in compensation plans, and the relationship between compensation plans submitted by an employer and compensation plans submitted by an employer committee or employer association that are applicable to the same employer.

5 Compensation policies; compensation plans; employer committees; employer associations; Public Sector Employers' Council; compliance reports; audit; overpayments by employers; non-compliant contract provisions; prohibitions, offences and penalties.

(4) Where compensation plans are not approved, the Minister may make directives for the amendment of the plan and for its resubmission to the Minister for approval.

(5) Approved compensation plans submitted by an employer are binding on the employer, approved compensation plans submitted by an employer committee or employer association are binding on the employer to which the compensation plan is applicable and neither plan may be amended without the Minister's approval.

(6) An approved compensation plan is effective as of the date or dates specified in the plan.

Employer committees

3.3(1) The Minister, by order, may establish one or more employer committees.

(2) The Minister, by order, may

- (a) designate the employers represented by the employer committee,
- (b) designate the method by which members of the employer committee are to be determined,
- (c) designate the method for selecting a chair, vice-chair and other executive members of the employer committee,
- (d) set a deadline within which the employer committee must hold its first meeting, and
- (e) provide for a government representative on the committee.

(3) The purposes of an employer committee, with respect to the employers represented by the committee, are to

- (a) collect and share compensation data or information related to collective bargaining,
- (b) coordinate collective bargaining, and
- (c) develop, support and monitor the implementation of compensation and bargaining strategies.

(4) The *Financial Administration Act*, the *Alberta Public Agencies Governance Act*, the *Sustainable Fiscal Planning and Reporting Act* and the *Auditor General Act* do not apply to employer committees.

Employer associations

3.4(1) The Minister, by order, may establish one or more employer associations.

(2) An employer association is a corporation.

(3) The Minister, by order, may

- (a) determine the capacity and, subject to this Act, the rights, powers and privileges of an employer association,
- (b) designate the employers represented by the employer association,
- (c) designate the method by which members of the board of directors of the employer association are to be determined, which may include designating the members of the board of directors and providing for representation of the government on the board of directors,
- (d) designate the method for selecting a chair, vice-chair and other executive members of the board of directors,
- (e) set a timeline within which the board of directors must
 - (i) hold its first meeting, and
 - (ii) forward proposed bylaws to the Minister for approval, in accordance with subsection (7),

and

- (f) determine any additional governance requirements for the employer association or the method by which such governance requirements are to be determined, which may include requirements or rules with respect to
 - (i) conflicts of interest,
 - (ii) remuneration for members of the board of directors,

- (iii) term limits for members of the board of directors,
- (iv) the management of vacancies on the board of directors,
- (v) reporting and audit requirements, and
- (vi) the committee structure for the board of directors.

(4) The purposes of an employer association are

- (a) to coordinate, with respect to the employers it represents,
 - (i) compensation for employees who are not subject to collective agreements or members,
 - (ii) collective bargaining,
 - (iii) human resource practices, and
 - (iv) other matters related to labour relations or human resources that the employers consider appropriate,
- (b) to consult with representatives of employees of employers the employer association represents, and
- (c) to assist the employers it represents in carrying out any directives or compensation policies established by the Minister applicable to those employers.

(5) Every employer association must

- (a) have a properly constituted board of directors and bylaws for the governance of the employer association and policies for the administration and management of the employer association,
- (b) make provision for the representation of the government on the board of directors of the association, subject to an order referred to in section 3.4(3)(c),
- (c) make provision to levy fees and assessments from its members for the purposes referred to in subsection (4),
- (d) determine the fiscal year for the association,

- (e) comply with any directives made by the Minister, and
- (f) provide to the Minister, on request, copies of contracts of employment relating to persons who are employed by the association and who are not subject to a collective agreement.

(6) An employer association may bargain collectively on behalf of an employer in accordance with the *Labour Relations Code* if authorized to do so by the employer.

(7) Despite any other Act, bylaws of the employer association are not effective until approved by the Minister.

(8) If there is a conflict between this Act or the order establishing an employer association and the bylaws of the employer association, this Act and the order prevail.

(9) The *Financial Administration Act*, the *Alberta Public Agencies Governance Act*, the *Sustainable Fiscal Planning and Reporting Act* and the *Auditor General Act* do not apply to employer associations.

(10) Employer associations shall not borrow money for any purpose.

Public Sector Employers' Council

3.5(1) The Minister, by order, may establish a Public Sector Employers' Council consisting of representatives from government and from employers, employer committees or employer associations, as determined by the Minister.

(2) The Public Sector Employers' Council shall

- (a) at the Minister's request, advise the Minister or consult with the Minister respecting any matter determined by the Minister, and
- (b) perform any duty or function assigned to the council by the Minister.

Compliance reports

3.6(1) The Minister may issue directives

- (a) requiring employers, employer committees or employer associations to submit to the Minister reports concerning compliance with directives, compensation policies or approved compensation plans, and
- (b) providing for the information, including personal information, to be contained in those reports.

(2) Each report submitted

- (a) by an employer must include a statement signed by the chief executive officer attesting to whether the employer has complied with any applicable directive, compensation policy or approved compensation plan, and
- (b) by an employer committee or association must include a statement signed by the chair of the employer committee or association attesting to whether the employer committee or association has complied with any applicable directive.

Audit

3.7(1) The Minister may audit or appoint an auditor to audit the records of an employer to determine whether the employer is complying with this Act.

(2) An employer shall

- (a) cooperate fully with the person performing an audit under this section, and
- (b) disclose to the person performing the audit information, including personal information, required for the purpose of determining whether the employer is complying with this Act.

(3) An auditor appointed under subsection (1) shall submit the results of the audit to the Minister within the time specified by the Minister in the appointment.

Overpayments by employers

3.8(1) Any compensation provided by an employer to an employee or member in excess of what is authorized under this Act is an overpayment.

(2) The Minister may give an employer notice in writing stating that it has been determined that the employer has made an overpayment and requiring the employer to pay an amount not exceeding the amount of the overpayment to the Crown within the time specified in the notice.

(3) If an employer fails to pay to the Crown the amount specified in the notice under subsection (2) within the time specified in the notice, the amount is deemed to be a debt due to the Crown.

(4) The Minister may recover the debt due to the Crown created by subsection (3) from the employer

- (a) by reducing the amount of any future grant or transfer payment from the Crown to the employer or reducing the amount payable under any other funding arrangement between the Crown and the employer, or
- (b) by any remedy or procedure available to the Crown by law to enforce the payment of a debt.

(5) An employer shall endeavour to minimize any impact of the application of this section on its provision of services to the public.

Non-compliant contract provisions

3.9 Any provision in a contract between an employer or the Crown and an employee not subject to a collective agreement or a member that authorizes or requires an amount to be paid that is greater than the amount authorized under this Act, or that is otherwise inconsistent with a directive, approved compensation plan or compensation policy issued or approved under this Act, is void and unenforceable to the extent that it is not in accordance with the relevant directive, compensation plan or compensation policy.

Prohibitions, offences and penalties

3.91(1) No person who is required under this Act to provide a report or statement shall

- (a) fail to provide a report or statement, or
- (b) make a false report or statement.

(2) No person shall interfere or attempt to interfere with a person performing an audit under section 3.7.

(3) No person shall authorize the provision of compensation to an employee or member that is inconsistent with this Act.

(4) Every person, other than a person referred to in subsection (5), who contravenes subsection (1) or (2) is guilty of an offence and liable,

(a) in the case of an individual, to a fine not exceeding \$5000, or

(b) in the case of a corporation, to a fine not exceeding \$25 000.

(5) Every person who wilfully contravenes subsection (1), (2) or (3) is guilty of an offence and liable,

(a) in the case of an individual, to a fine not exceeding \$10 000, or

(b) in the case of a corporation, to a fine not exceeding \$50 000.

6 Section 5 is repealed and the following is substituted:

Paramountcy

5(1) The provisions of this Act prevail to the extent of any inconsistency or conflict with one or more provisions of any other enactment except the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act*.

(2) Without limiting the generality of subsection (1), any enactment that authorizes an employer to prescribe, set, approve or otherwise fix compensation, by regulation or otherwise, in respect of an employee or member is subject to this Act.

7 The following is added after section 6:

Existing employee or member

6.1(1) In this section and section 6.2,

(a) “compensation arrangement” means the provisions, however established, for the determination and

6 Section 5 presently reads:

5 If there is a conflict or inconsistency between

(a) this Act or the regulations under this Act,

(b) the Labour Relations Code or the regulations made under the Labour Relations Code, and

(c) the Public Service Employee Relations Act,

this Act or the regulations under this Act apply.

7 Existing employee or member; new appointment, change in position or renewal or extension; no constructive dismissal or breach of contract; no cause of action; no entitlement to compensation.

administration of compensation for employees who are not subject to a collective agreement;

- (b) “relevant date” means, with respect to an employee or member, the date referred to in subsection (2)(a) or (b) that pertains to the employee or member.

(2) Where a person

- (a) is an employee or member on the effective date of an applicable compensation policy, directive or approved compensation plan, or
- (b) is an employee or member on the date that an existing compensation policy, directive or approved compensation plan becomes applicable to the employee or member,

and continues in the same position under the same contract, agreement or appointment, the following applies:

- (c) subject to clause (d), the employee’s or member’s compensation arrangement that is in effect immediately before the relevant date remains in effect, even if an element of compensation is greater than that authorized under, or is otherwise inconsistent with, the applicable compensation policy, directive or approved compensation plan;
- (d) any increase in an element of compensation that is provided for in the compensation arrangement but that has not been implemented on or before the relevant date is not valid or payable to the extent that it is inconsistent with the applicable compensation policy, directive or approved compensation plan.

(3) Despite subsection (2)(c), on and after the 2nd anniversary of the relevant date, any element of compensation in the compensation arrangement of an employee or member described in subsection (2) that is greater than that authorized under or that is otherwise inconsistent with the applicable compensation policy, directive or approved compensation plan is not valid or payable to the extent that it is inconsistent with the applicable compensation policy, directive or approved compensation plan.

(4) If a compensation policy, directive or approved compensation plan that applies to an employee or member is amended to reduce an element of compensation provided for in a compensation arrangement that is in effect on the effective date of the amendment and the employee or member continues in the same position under the same contract, agreement or appointment, that amendment does not apply to the employee or member until the 2nd anniversary of the effective date of that amendment, but any increase in an element of compensation that is provided for in the compensation arrangement that has not been implemented on or before the effective date of that amendment is not valid or payable to the extent that it is inconsistent with the amended compensation policy, directive or approved compensation plan.

New appointment, change in position or renewal or extension

6.2 For greater certainty, a person's compensation arrangement must not provide for compensation greater than that authorized in the applicable compensation policy, directive or approved compensation plan if

- (a) the person begins a position to which a compensation policy, directive or approved compensation plan applies after the effective date of that compensation policy, directive or approved compensation plan, or
- (b) the person's contract, agreement or appointment is extended or renewed effective after the effective date of the applicable compensation policy, directive or approved compensation plan or, in the case of an existing compensation policy, directive or approved compensation plan becoming applicable to that person, after the date on which the compensation policy, directive or approved compensation plan becomes applicable to that person.

No constructive dismissal or breach of contract

6.3 Neither the application of this Act nor changes to the compensation that is payable to an employee or member because of this Act shall be considered constructive dismissal or breach of contract.

No cause of action

6.4(1) No cause of action or proceeding, either in law or in equity, lies or shall be commenced against the Crown or any of its ministers, agents, appointees or employees, against an employer or any of its officers, employees or members, against an employer association or any of its officers, employees or members or against an employer committee or any of its officers or members

- (a) as a direct or indirect result of the enacting, amending or repealing of any provision of this Act, or
- (b) as a direct or indirect result of anything done or omitted to be done in order to comply with this Act, including any denial or reduction of compensation that would otherwise have been payable to any person.

(2) Without limiting the generality of subsection (1), that subsection applies to an action or proceeding in contract, restitution, tort, trust, fiduciary obligation or otherwise claiming any remedy or relief, including

- (a) specific performance, injunction or declaratory relief, and
- (b) any form of damages or a claim to be compensated for any losses, including loss of earnings, loss of revenue or loss of profit.

No entitlement to compensation

6.5 Despite any other Act or law, no person is entitled to be compensated for any loss or damages, including loss of expected earnings or denial or reduction of compensation that would otherwise have been payable to any person, arising from the application of this Act or anything done in accordance with this Act.

8 Section 7 is repealed.

8 Section 7 presently reads:

7(1) The Lieutenant Governor in Council may by regulation amend the name of an entity or the description of an entity prescribed as an employer in the Schedule.

(2) The Lieutenant Governor in Council may by regulation amend the Schedule by prescribing additional entities as employers.

9 Section 8 is amended

(a) by renumbering it as section 8(1);

(b) in subsection (1) by adding the following after clause (a):

- (a.1) prescribing entities as employers for the purposes of this Act;
- (a.2) amending the name or the description of an entity prescribed under clause (a.1);
- (a.3) exempting an employer, in whole or in part, from all or any part of this Act;

(c) by adding the following after subsection (1):

(2) For the purposes of a regulation made under subsection (1)(a.1), the Lieutenant Governor in Council may only prescribe an entity that receives funding from the Crown to provide a public service as an employer.

(3) The Lieutenant Governor in Council may make regulations respecting the transition to this Act of anything in force under the *Reform of Agencies, Boards and Commissions Compensation Act* immediately before this section comes into force.

(4) The *Regulations Act* does not apply with respect to

- (a) a directive issued to an employer under section 3,

(3) For the purposes of a regulation made under subsection (2), the Lieutenant Governor in Council may only prescribe any of the following entities as employers:

- (a) a public agency to which the Alberta Public Agencies Governance Act applies;*
- (b) an entity that receives funding from the Crown to provide a public service.*

(4) The Lieutenant Governor in Council may by regulation exempt an employer, in whole or in part, from all or part of this Act.

9 Section 8 presently reads:

8 The Lieutenant Governor in Council may make regulations

- (a) defining, for the purposes of this Act, any word or expression used but not defined in this Act;*
- (b) respecting the collection, use and disclosure of information, including personal information;*
- (c) respecting any other matter necessary to carry out the purpose of this Act.*

- (b) an order issued under section 3.1(1) or (2) establishing a public sector compensation policy,
- (c) an order issued under section 3.2(1) or (2) or a directive issued under section 3.2(4) respecting a compensation plan, or
- (d) a directive issued under section 3.6(1) respecting a compliance report.

10 The Schedule is repealed.

Amends SA 2019 cA-26.3

11(1) The *Alberta Indigenous Opportunities Corporation Act* is amended by this section.

(2) Section 7(2) is amended by striking out “any applicable regulations under this Act or the *Reform of Agencies, Boards and Commissions Compensation Act*” **and substituting** “the *Public Sector Employers Act* and any applicable regulations under that Act or this Act”.

Amends SA 2020 cA-26.4

12(1) The *Alberta Investment Attraction Act* is amended by this section.

10 The Schedule presently reads:

For the purpose of section 1(1)(a)(vi) of this Act, each of the following entities is an “employer”:

- (a) Alberta Gaming, Liquor and Cannabis Commission;*
- (b) Alberta Innovates;*
- (c) Alberta Pensions Services Corporation;*
- (d) ATB Financial;*
- (e) Covenant Health;*
- (f) Lamont Health Care Centre;*
- (g) Travel Alberta;*
- (h) The Workers’ Compensation Board.*

11(1) Amends chapter A-26.3 of the Statutes of Alberta, 2019.

(2) Section 7(2) presently reads:

(2) The board shall determine the remuneration to be paid to the chief executive officer in accordance with any applicable regulations under this Act or the Reform of Agencies, Boards and Commissions Compensation Act.

12(1) Amends chapter A-26.4 of the Statutes of Alberta, 2020.

(2) Section 7(2) is amended by striking out “Reform of Agencies, Boards and Commissions Compensation Act” and substituting “Public Sector Employers Act”.

Amends SA 2009 cA-31.5

13(1) The *Alberta Public Agencies Governance Act* is amended by this section.

(2) Section 2(1) is amended by striking out “Reform of Agencies, Boards and Commissions Compensation Act” and substituting “Public Sector Employers Act”.

Amends SA 2011 cH-7.2

14(1) The *Health Quality Council of Alberta Act* is amended by this section.

(2) Section 4(4) is amended by striking out “Reform of Agencies, Boards and Commissions Compensation Act” and substituting “Public Sector Employers Act”.

(3) Section 8(2) is amended by striking out “Reform of Agencies, Boards and Commissions Compensation Act” and substituting “Public Sector Employers Act”.

15 The *Reform of Agencies, Boards and Commissions Compensation Act* is repealed.

16 This Act comes into force on Proclamation.

(2) Section 7(2) presently reads:

(2) The board shall determine the remuneration to be paid to the chief executive officer in accordance with the Reform of Agencies, Boards and Commissions Compensation Act and any applicable regulations under that Act or this Act.

13(1) Amends chapter A-31.5 of the Statutes of Alberta, 2009.

(2) Section 2(1) presently reads:

2(1) Except where this Act or the regulations provide otherwise, the provisions of this Act and the regulations under this Act prevail to the extent of any inconsistency or conflict with one or more provisions of any other enactment except the Freedom of Information and Protection of Privacy Act, the Health Information Act and the Reform of Agencies, Boards and Commissions Compensation Act.

14(1) Amends chapter H-7.2 of the Statutes of Alberta, 2011.

(2) Section 4(4) presently reads:

(4) The Minister may provide for the payment of expenses and remuneration of members of the board in accordance with the Reform of Agencies, Boards and Commissions Compensation Act and any applicable regulations under that Act.

(3) Section 8(2) presently reads:

(2) The board shall set the compensation to be paid to the Chief Executive Officer in accordance with the Reform of Agencies, Boards and Commissions Compensation Act and any applicable regulations under that Act or under this Act.

15 Repeals chapter R-8.5 of the Statutes of Alberta, 2016.

16 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To