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## New Essential Services Legislation Now In Force



By [Dana Adams](#)

On May 27, 2016, Alberta's new Essential Services legislation came into force.

Bill 4 – An Act to Implement a Supreme Court Ruling Governing Essential Services is the Alberta Government's answer to the Supreme Court's 2015 decision in *Saskatchewan Federation of Labour v. Saskatchewan*, which recognized a constitutional right to strike. Prior to that decision, public sector unionized employees in Alberta and elsewhere across the country had been prohibited from striking or being locked out.

The new legislation applies to all Government of Alberta employees; employees of agencies, boards and commissions; non-academic staff at post-secondary institutions; Alberta Health Services employees; and employees of other approved hospitals. At its most basic level, the new legislation is meant to prevent only those who are employed in providing "essential services" from striking or being locked out.

The legislation aims to do this by defining "essential services" as those services, which, if interrupted, "would endanger the life, personal safety or health of the public" or those services "that are necessary to the maintenance and administration of the rule of law or public security."

In addition, the legislation tasks employers and unions with creating "essential services agreements" before proceeding to collective bargaining. These agreements must include: the essential services that must be maintained during a strike or lockout; the classification and number of employees required to perform those essential services; the methods by which employees will be assigned to perform essential services during a strike or lockout; any changes to the terms and conditions of employment; and the identity of "umpires" or decision-makers to resolve disputes concerning essential services agreements when they arise.

The new legislation also provides for the appointment of a Commissioner, who has relatively wide-ranging

powers under the legislation to decide disputes over which employees should be considered "essential." The Commissioner also has the power to refuse essential services agreements, change the terms of the agreements in emergency situations, appoint umpires, and resolve complaints alleging bad-faith bargaining. Following the coming into force of the new legislation, the government appointed Edmonton lawyer Gwen Gray, who also holds the title of vice chair of the Alberta Labour Relations Board, as Commissioner to fulfill this role.

Now that this new legislation is in force in Alberta, employers covered by the Act will be required to negotiate essential services agreements and must therefore consider, and be able to justify, which of its employees perform essential services and what and who will be required to maintain those essential services during a strike or lockout, including whether any out-of-scope employees can be used. Even with the definition of "essential services" in the legislation (as compared to Saskatchewan, which has also enacted new essential services legislation that does not contain such a definition), there will undoubtedly be much debate to come over what precisely is "essential" and what is not.

Field Law is well-placed to help employers navigate the issues and disputes that will arise under this new legislation.

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