

# Significant Amendments to Alberta's Employment Standards Code

## FRANK MOLNAR

Many employers are likely unaware that amendments to Alberta's Employment Standards Code (the "Code") came into effect on November 1, 1994.

The time period for filing a complaint has been significantly reduced. For those employees who had their employment terminated after November 1, 1994, any complaint seeking outstanding wages, overtime pay, entitlements or parental benefits, must now be made within six months after the date of termination. Where there are extenuating circumstances, the Director of Employment Standards is empowered to extend this limitation period.

More importantly, an Employment Standards officer now has the power to refuse to accept or investigate a complaint where the officer considers that the complaint is frivolous or vexatious, there is insufficient evidence to substantiate the complaint, or there are other means available to the employee to deal with the subject-matter of the complaint. In addition, where the employee is proceeding with another action or has sought and obtained recourse in another forum (e.g. court, tribunal, arbitrator etc.) in respect of the subject-matter of the complaint, the Employment Standards Officer may refuse to accept or investigate the complaint.

The clear objective behind this amendment is to control the "double jeopardy" or "forum shopping" frequently faced by employers where an employee has simultaneously initiated a civil action and filed a complaint with the Employment Standards Branch relating to the same subject matter.

The increased discretion of Employment Standards officers to refuse to accept or investigate complaints means that employers can be more aggressive in responding to a complaint. For example, in the event the employer provides an internal appeal

process, it is now possible to request that the Employment Standards Branch refuse to accept the complaint until the individual has exhausted that internal process.

The Code now contains an explicit framework for the charging of fees by the Employment Standards Branch for certain services. Fees may now be charged for, amongst other services, the filing of complaints, applications and appeals, the auditing of employer records, and the filing, registering or enforcing of orders. In addition, when launching appeals from orders to pay wages, overtime or other entitlements, an employer is now required to file a money order or certified cheque payable to the Director of Employment Standards in the amount of the order that is being appealed.

Appeals from an order to pay are still made to the Provincial Court judges which have been appointed to sit as Umpires. Of particular note to employers contemplating an appeal, Umpires now have the power to order any of the parties to the appeal to pay any or all of the government's direct or indirect costs of the appeal (including research and preparation costs, fees or salaries paid to those persons involved in the hearing including their travel and accommodation costs, and other expenses incidental to the hearing). Not surprisingly, the Umpire does not have jurisdiction to make an order for costs against the Director of Employment Standards.



2000, 10235 - 101 STREET  
EDMONTON, AB T5J 3G1  
PH: 780.423.3003

400 THE LOUGHEED BUILDING  
604 1 STREET SW  
CALGARY, AB T2P 1M7  
PH: 403.260.8500

201, 5120 - 49TH STREET  
YELLOWKNIFE, NT X1A 1P8  
PH: 867.920.4542

[www.fieldlaw.com](http://www.fieldlaw.com)

The powers of the Umpire on appeal have also been expanded to permit the Umpire to order the employer's attendance at an educational program in employment standards and to determine who will bear the cost of that attendance.

The most significant amendments pertain to liability and penalty for violation of the Code.

Directors or officers of a corporation may now specifically be prosecuted whether or not the corporation has been prosecuted or convicted. Previously, prosecution of an officer or director was contingent upon the corporation being found guilty of the offence. Furthermore, the maximum fine which can be imposed on a corporation has been increased from \$10,000 to \$100,000 and in the case of an individual (including a director or officer) has been increased from \$5,000 to \$50,000. The limitation period for prosecution of an offence under the Code remains one year from the date of occurrence of the alleged offence.

In addition to the increased penalties, a corporation or a director or officer of a corporation may still be found liable for outstanding wages, pay in lieu of notice of termination under the Code, overtime pay, vacation pay, general holiday pay, or lost wages where an employee has been suspended or discharged or in the event of failure to reinstate in violation of the Code. Directors and officers are not liable under the Code for unpaid damages for wrongful dismissal.

Lastly, it is now possible for reciprocal agreements to be entered into with jurisdictions outside of Canada to collect funds from defaulting employers who have left Alberta.

The amendments outlined reflect the Legislature's objective that users of government services shoulder a portion of the costs of providing those services. Employers and directors and officers of corporations need to take note of the tenfold increase in the maximum fines. In addition, the expansion of director and officer liability and the additional costs and potential consequences of an appeal to an Umpire are significant amendments. Also, it is clear that employers and employees will need to be particularly alert to the changes in the limitation period for filing complaints and the increased discretion to refuse to accept or investigate a complaint.

<b>DISCLAIMER</b>	this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:
The Labour and Employment Group Edmonton 780-423-3003 Calgary 403-260-8500	
<b>REPRINTS</b>	
Our policy is that readers may reprint an article or articles on the condition that credit is given to the author and the firm. Please advise us, by telephone or e-mail, of your intention to do so.	