

Bill 6: Enhanced Protection for Farm and Ranch Workers Act

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What is Bill 6?

In November 2015, the Government of Alberta submitted Bill 6: *The Enhanced Protection for Farm and Ranch Workers Act*, for first reading. According to the government, the intention of Bill 6 is to ensure that workers on Alberta's farms and ranches are provided the same rights to a safe and fair workplace as those in other sectors.

Specifically, Bill 6 proposes alterations to four existing pieces of legislation to remove exemptions that were previously granted to the agriculture industry. The impacted legislation is:

- Occupational Health and Safety Act
- Workers' Compensation Act
- Employment Standards Code
- Labour Relations Code

Currently, the government has scheduled province-wide consultations, nearly all of which were filled immediately. There is concern that more consultations are needed, and the entire process is being rushed. In question period on November 26, 2015, the Minister of Jobs, Skills, Trainings and Labour alluded to additional consultations in the future which would extend into the New Year.

How Does Bill 6 Impact Existing Legislation?

Amend Occupational Health and Safety (OHS) Act (January 1, 2016) and develop OHS technical requirements (2017)

Overview of Changes

Part 3 of Bill 6 proposes making several amendments to the OHS Act, which provides rules governing health and safety in Alberta's workplaces.

Bill 6 proposes the following changes to the OHS Act:

- Repeal s.1(s)(i) – this section is among the definitions of terms at the beginning of the Act. S. 1(s)(i) is used to exempt “farming or ranching operation” from the definition of an occupation as used in the OHS Act. With s. 1(s)(i) repealed, farming and ranching would be considered an “occupation” in the Act.
- Repeal the *Farming and Ranch Exemption Regulation* made under the OHS Act – This regulation exempts any operations involved in the following from the OHS Act:
 - The production of crops, including fruits and vegetables, through the cultivation of land:
 - The raising and maintenance of birds and animals;
 - The keeping of bees

With the repeal of this regulation, the above operations would be included under the OHS Act.

- Amend the *Occupational Health and Safety Code 2009* to clarify that the code **does not** apply to the following operations:
 - The production of crops, including fruits and vegetables, through the cultivation of land;
 - The raising and maintenance of birds and animals;
 - The keeping of bees

This likely allows for agriculture-specific requirements to be included in the *Occupational Health and Safety Code 2009* at a later date (2017).

The amendment introduced on the December 1, 2015 clarify that OHS standards apply when a farm employs one or more paid employees at any time of the year.

Implications of Changes

At a high level, the OHS Act legislates employers to be responsible for “the health and safety of workers engaged in the work of that employer, and those workers not engaged in the work of that employer but present at the work site at which that work is being carried out” [s.2(1)(a)(i-ii)].

Implication – places a legislated liability on owners of agriculture operations to be responsible for safety of anyone working, or in the presence of a work site

The OHS Act also requires every work site (defined as “a location where a worker is, or is likely to be, engaged in any occupation and includes any vehicle or mobile equipment used by a worker in any occupation”) to have a “prime contractor” if there are two or more employees involved in work at the work site. The prime contractor must enter into an agreement with the owner of the work site to ensure that the work site complies with the Act. [s.3]

Implication – requires all work sites within an agriculture operation to have a designated “prime contractor” when two or more employees are engaged in work. This could create challenges on a farm, as it is likely that work sites change regularly and the number of employees present at a site change as well. May require multiple employees designated as “prime contractors.”

Question – What training/compensation is required for “prime contractors”?

The OHS Act allows an inspection officer to enter and inspect any work site at a reasonable hour. This includes requiring the production of any records, books, plans, etc. that relate to the health and safety of workers. They are also able to inspect and seize any tool or equipment being used at the work site. If the officer is of the opinion that work is being carried out in an unhealthy or unsafe manner, she/he may stop the work and take

measures to ensure the work is carried out safely. Similar powers are applied to the identification of a dangerous work site or the use of unsafe tools or equipment. [s.9-s.11]

Implications – depending on requirements for record-keeping, etc., this may create a major administrative burden on smaller farms.

The OHS Act allows a worker to refuse work if she/he believes it presents an imminent danger to their health and safety or to that of another worker. “Imminent danger” is defined as a danger not normal for that occupation, or a danger under which a person engaged in that occupation would not normally carry out the person’s work. If the worker identifies an imminent danger, the employer is required to investigate and eliminate the imminent danger, and may temporarily assign the worker to another task until the imminent danger is eliminated. If, in the worker’s opinion, the imminent danger has not been eliminated, the worker may file a complaint with an OHS officer, which may trigger a review and subsequent requirement to eliminate the imminent danger if it is so judged [s.35].

Implications – workers would have the ability to refuse work if they feel that the work represents imminent danger. Should there be a disagreement between the worker and the employer about whether imminent danger exists, complaints with an OHS officer could consume time and resources.

Question – is the definition of “imminent danger” applicable to farms, where work responsibilities may vary significantly on a seasonal basis?

The OHS Act allows for the development of Ministerial orders and codes respecting specific health and safety matters related to particular occupations. For the farm and ranch industry, this is expected to occur in 2017. Currently, farming and ranching are exempted from the existing OHS codes, but this will likely be amended in 2017. The development of the codes may present the best opportunity for stakeholders to have a say in how OHS requirements could be customized to accommodate the agriculture industry.

Amend Employment Standards Code (Spring 2016)

Overview of Changes

Part 3 of Bill 6 proposes making several amendments to the *Employment Standards Code*, which provides rules governing health and safety in Alberta’s workplaces.

Bill 6 proposes the following changes to the *Employment Standards Code*:

- Repeal s.2(3) and (4) – these sections exempt the agriculture industry (primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, diversified livestock animals under the *Livestock Industry Diversification Act* poultry, or bees) from sections of the *Employment Standards Code* relating to hours of work, overtime and overtime pay, general holidays and general holiday pay, vacations and vacation pay, restrictions on employment of children, and regulations relating to vacation pay and minimum wage.

With the repeal of these sections, the agriculture industry will be subject to regulation in all of the above areas.

- Repeal s. 138(1)(l) – this section allows the Lieutenant Governor in Council to designate an operation as a “primary agricultural operation” for the purposes of exempting it from the areas of regulation listed in the section above. Currently, s.138(1)(l) has been applied to operations that produce cultured fish within the meaning of the *Fisheries (Alberta) Act*. Therefore this exemption simply means that as designated agriculture operations will no longer be exempt from employment standards regulations, there is no need to allow the Lieutenant Governor in Council to make such a designation, and no need to allow cultured fish operations to remain as primary agricultural operations.

Implications of Changes

Bill 6 will require the agriculture industry to abide by section 2, division 3 of the *Employment Standards Code*, which regulates hours of work. The *Code* requires that hours of work must be confined to 12 consecutive hours in one working day, unless an accident occurs or “urgent work is necessary to a plant or machinery or other unforeseeable or unpreventable circumstances occur.” The *Code* also requires employers to provide standardized rest periods and days of rest, although there is some flexibility in these requirements to account for urgent situations as well.

Implications: On the surface, these requirements could significantly hamper agriculture operations. However, the flexibility already in the legislations could perhaps be expanded to include harvest as “urgent work,” particularly if stakeholders and the government can work together to define this as a specific time period.

The *Employment Standards Regulation* (as enacted through the *Employment Standards Code*) requires employers to pay employees a minimum wage of \$11.20 per hour. There are currently a number of exceptions to this requirement, including for servers (\$10.20/hour) and for many salespersons (\$446/week).

Implications: Due to the seasonal nature of agriculture and the often unpredictable hours, it may be unreasonable to pay all farm workers an hourly minimum wage. As there are exceptions and alternatives to minimum wage requirements in other professions, there may be a possibility to develop a fair alternative in the agriculture industry. This section do not apply to un-paid/volunteer work.

One of the most common concerns heard from stakeholders is that requiring the agriculture industry to follow the *Employment Standards Code* may result in a requirement that work days be no longer than eight hours, when in reality farming can be a twenty-four hour job during certain times of the year. While the *Employment Standards Code* requires overtime be paid to employees after an eight hour work day or 44 hour work week, the *Employment Standards Regulation* includes special provisions relating to work

hours for a number of industries. For example, ambulance attendants begin to receive overtime after working ten hours in a single day OR in excess of 60 hours in a week. Oilwell service employees receive overtime after 12 hours of work in a single day OR in excess of 191 hours in a single month. Additionally, employers and employees are able to enter into an overtime agreement that allows for time off to be taken in lieu of the employee being paid at a 1.5 rate during overtime hours. This may work well for the agriculture industry, as work demands tend to ebb and flow and time off may be easily granted during certain times of the year.

Implications; Agriculture is certainly unique in working hours required, seasonal variations, etc. It is highly likely that the Government of Alberta will develop special provisions for the industry to address this uniqueness.

Under Bill 6, agriculture operators will be required to provide vacations and vacation pay to their employees. Employees are entitled to two weeks of annual paid vacation days per year for their first four years of employment. This will accrue monthly. However, under s. 138(1)(d) the Lieutenant Governor in Council may make a regulation allowing for extra wages to be paid to employees instead of providing them with vacation time or general holidays. This could potentially be applied to the agriculture industry.

Implications: Other than the increased costs of paying for employees vacations, the Employment Standards Code does provide some flexibility in ensuring that an employee does not take vacation at an inopportune time (ex. harvest). S. 38 indicates that if an employer and employee are unable to agree on vacation dates, the employer can give the employee two days' notice of when their annual vacation must start, and the employee must take their vacation on that date. S. 138(1)(d) may also provide for financial compensation as an alternative to the provision of vacation/holiday time.

Through Bill 6, Section 9 of the *Employment Standards Code*, which restricts the employment of children, will now be applicable to agriculture operations. This section states that no individual may allow an individual required to attend school to work on their premises during school hours, and no individual under age 15 may be employed without the written consent of the individual's parent or guardian and the approval of the Director (of Employment Standards).

Implications: There is widespread fear that this section will result in children no longer being able to perform farm chores of any kind. The language used in the Employment Standards Code is quite broad, and is silent on the role of children working/helping on small-scale family businesses such as farms. It will likely require that government address this directly, as the definition of work is only listed as "providing a service" in the Code, which does not necessarily apply to farm chores. Further clarification of the legislation will likely be required to address this issue.

Include Farm Workers Under Workers Compensation Board coverage (January 1, 2016)

Overview of Changes

Part 4 of Bill 6 proposes removing the exemption within the *Workers Compensation Regulation* for the following industries:

- agrolology and agronomy services, provision of;
- apiary, operation of;
- artificial breeding services, provision of;
- breeding of animals, birds, fish or reptiles;
- collection of urine from pregnant mares;,,
- dude ranch, operation of;
- egg producer, commercial, carrying on business as;
- farming, carrying on business of
- farming contracting, including haying and threshing, carrying on business of
- feed lot, commercial, operation of;
- fertilizer spreading services, provision of;
- fruit grower, commercial, carrying on business as;
- game farm, operation of;
- horse exercising, training or racing, carrying on business of;
- poultry producer, commercial, carrying on business as;
- rabbit producer, commercial, carrying on business as;
- ranching;
- riding academy or horse stable, operation of;
- and vegetable grower, commercial, carrying on business as

These changes come into force January 1, 2016.

Implications of Changes

The *Workers Compensation Regulation* is the regulation that outlines the roles and responsibility of the Workers Compensation Board (WCB). Previously, much of the agriculture industry was exempt from mandatory workers' compensation coverage but could apply for voluntary coverage whereby the employer and workers would be eligible for all the benefits of workers' compensation insurance.

The amendments introduced to Bill 6 on December 1, 2015 clarify that WCB coverage would be required only for paid employees. Farmers would have the option to extend coverage to unpaid workers like family, friends, or neighbors.

The change to the regulation will require compulsory coverage and those employers operating in that field must open a WCB account if they have regular, causal, or contract employees.

Implications: WCB coverage requires employers to purchase insurance on behalf of their employees. WCB rates vary between industries and there are no rates developed for the farm sector as they are currently exempt; however, the

average small employer pays approximately \$1,090 per year in premiums. Employers can, however, apply for discounted rates if they have no claims filed over a certain period of time.

For employees, workers' compensation is a type of no-fault disability insurance which means compensation is provided regardless of how the injury occurs. Employees who are injured at work receive compensation for lost income (90% up to a maximum), health care, and other related costs. WCB covers these costs as part of the insurance policy that the employer pays for.

When covered under the *Workers Compensation Regulation*, the farming sector will be required to abide by the conditions of the *Workers Compensation Regulation*; however, the regulations largely guide the processes and operations of the WCB.

Implications: Coverage under the Workers Compensation Regulation requires employers and employees to follow the WCB process for:

- *Providing notice of an accident by the worker (injuries 72 hours, fatalities immediately)*
- *Providing notice of an accident by the employer*
- *Recording the details of the accident*
- *Allowing for legal representation*
- *Interest on premiums*
- *Occupation diseases (eg. Asbestos)*
- *Coverage of legal costs*
- *Payroll estimates*

The WCB process can be administratively cumbersome which may occupy time and costs of both employers and employees. However, the regulation provides legal rights in front of the WCB in disputed cases.

Amend Labour Relations Code (Spring 2016)

Overview of Changes

Part 2 of Bill 6 proposes making several amendments to the *Labour Relations Code*, which provides rules governing the rights of most employers, workers and unions.

Bill 6 proposes the following changes to the *Labour Relations Code*:

- Repeal section 4(2)(e) – this section exempts farm and ranch employees from the *Labour Relations Code*. Specifically, it applies to “employees employed on a farm or ranch whose primary employment is directly related to:
 - The primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, diversified livestock animals within the meaning of the *Livestock Industry Diversification Act*, poultry or bees, or

- Any other primary agricultural operation specified in the regulations under the *Employment Standards Code*

With the repeal of this section employees in the above operation would be subject to the *Labour Relations Code*.

Implications of Changes

Basically, the repeal of s. 4(2)(e) places the vast majority of agriculture operations under the *Labour Relations Code*. At a high level, the *Labour Relations Code* standardizes the relationship between employer and employee, and legislates certain rights for employees and obligations for employers. Some of the more significant rights and responsibilities for the agriculture industry are as follows:

The agriculture industry will be under the jurisdiction of the Labour Relations Board.

Implications: The Labour Relations Board has the ability to investigate and act on complaints made by an employer, employers' organization, employee, or trade union regarding any claim that a party is failing to comply with any provision of the Labour Relations Code. This means that if any farming operators contravene the Code, they may be subject to investigation by the Labour Relations Board.

Employees in positions regulated under the *Labour Relations Code* have the right to become members of a trade union and bargain collectively with their employer through a bargaining agent. All employees regulated under the *Labour Relations Code* have the right to become a member of an employers' organization and bargain collectively as well.

Implications: Some agriculture workers in other Canadian provinces (B.C., Manitoba and Quebec) have collective agreements in place, so there is potential that this right may be acted upon in Alberta. Not surprisingly, the implications of this change could potentially be serious in the agriculture industry, as the seasonal and unpredictable nature of agriculture may make it difficult for some farms, particularly those that are small, to consistently meet bargained requirements. On the other hand, this change has the potential to improve quality of life for many farm workers, who are also residents of rural Alberta.

Obviously there are a large number of requirements that a union must meet to form and that an employer must meet in bargaining that are beyond the scope of this briefing.

The *Labour Relations Code* includes specific provisions regarding regional health authorities and the construction industry.

Implications: There may be an opportunity to include special provisions for the agriculture industry that address its unique characteristics.