

## Executive summary

The Government of Alberta introduced Bill 17: The Fair and Family-friendly Workplaces Act on May 24, 2017. Bill 17 includes a number of wide-ranging provisions designed to modernize Alberta's employment standards and labour codes, including significant changes to job protected leaves and the unionization process. While the AgCoalition, and Alberta's agriculture industry, understands the importance and value of many of these legislative changes, there remain a number of distinct concerns about the bill's impact on farms and ranches.

One of the primary concerns is about process. Throughout 2016 and 2017, the Government of Alberta held consultations with Alberta's agriculture industry on the provisions outlined in the controversial Bill 6. These consultations were structured as technical working groups (TWGs), and saw Alberta's farmers and ranchers work in tandem with representatives from the government, labour groups, and a diverse array of other stakeholders to arrive at legislation that would both ensure on-farm safety and allow the industry to prosper. While the AgCoalition believes that, despite some inherent structural problems with the TWGs, the agriculture industry's voice was captured and reported accurately by the Government, a number of concerns have arisen in light of Bill 17.

The first of these is that many of the matters discussed at the TWGs are now irrelevant. Representatives from agriculture worked tirelessly to read and understand a series of complex legislative provisions for the workplace, and to demonstrate their impact on farmers and ranchers. These provisions have now changed significantly under Bill 17. Provisions that may have been appropriate for agriculture under the old legislation may no longer be manageable for farmers and ranchers. By way of example, the AgCoalition's TWG representatives found that provisions for job protected leaves were acceptable and could be applied to farms and ranches with minimal business disruption. Bill 17 made significant changes to these leaves, however, and so it is impossible to determine their current appropriateness and applicability to agriculture. Another round of consultations, focused on reviewing the new provisions, would be required to do so. This calls into question the utility of the original TWG process.

The second process related concern deals with the outcomes of the TWG consultations. At the closing of each TWG, a report outlining recommendations and strategic options was presented to the Government. These reports identified areas of consensus as well as contention, and highlighted ways in which workplace provisions could be modified to achieve harmony with the realities of agricultural operations. It is not clear that these recommendations were taken into serious consideration by the Government in their drafting of Bill 17. While some recommendations, such as the need for a Public Emergency Tribunal (PET) for resolving labour disputes in light of irreversible damage to crop and livestock, were adopted, others were simply ignored or overlooked. This again calls the utility of the TWG process into question.

Finally, the AgCoalition is concerned about the significant changes made to Alberta's labour laws under Bill 17, most specifically the inclusion of non-family employees on farms and ranches and the move to a hybrid certification process. As was clearly expressed in the TWG consultations, the AgCoalition and

other agricultural representatives do not feel that the application of the labour code to farms and ranches will result in more healthy, fair, or safe workplaces. In fact, unionization holds the potential to disrupt agriculture's unique culture of cooperation and family-style relationships between employees and employers. Furthermore, the AgCoalition feels that the move to a hybrid certification process robs employees of their democratic right to a secret ballot, and could result in undue pressure to unionize being pushed upon the employee, either by union representatives or peers. Research has consistently shown that unionization rates are higher when no secret ballot is held; this indicates that employees are more honest about their true desire for unionization when given the opportunity to make the decision privately.

The AgCoalition has several other concerns with the changes proposed in Bill 17, from first contract arbitration to the exclusion of greenhouses and nurseries from the definition of 'primary agriculture.' The changes included in Bill 17 have the potential to disrupt the agricultural industry in unnecessary and unwarranted ways.

The following report outlines areas of Bill 17 that are of concern to the AgCoalition, compares the provisions of Bill 17 to the recommendations made by the TWG reports and expressed through producer feedback, and highlights some of the changes to the Labour Relations Code and the Employment Standards Code that have the potential for far-reaching impacts in the agriculture sector.

## Labour Relations

In the Labour Relations Technical Working Group (TWG) report, a number of strategic options were presented to Government concerning the application of the Labour Relations Code to agricultural operations. Many of these strategic options, when presented to industry members as a part of the AgCoalition's producer consultations, received unanimous support. These strategic options were:

- Add the agriculture exemption back into the Labour Relations Code
- If no exemption is achieved, adopt the Ontario Agriculture Employees Protection Act (OAEPA) Model in Alberta
- Remove the right to strike/lock-out for agriculture workers
- Make five (5) employees the minimum number of employees required to unionize

Despite strong support for these recommendations at the TWG tables, as well as throughout the agriculture industry, the Government of Alberta has not chosen to incorporate any of these strategic options in Bill 17.

The strategic options and recommendations made by the TWG and supported by the industry that were adopted are:

- Exempt immediate family members from application of the Code
- Allow for the formation of a Public Emergency Tribunal (PET) in the event of imminent and irreversible damage to crops and/or livestock welfare in primary agriculture

While the adoption of these recommendations is positive, they are seen as the bare minimum in terms of making the labour code applicable to agriculture. Their inclusion in Bill 17 does not mitigate in any significant way the impact that the application of the Labour Code will have on the industry. For example, while the ability to form a PET is important to protect crops and livestock, removing the right to strike/lockout would be much more effective. PETs could take long periods of time to form and make decisions, thus potentially allowing damage to crops and livestock to occur. Removal of the right to strike/lockout would avoid this situation altogether.

One strategic option that was included in the TWG report, but which garnered strong opposition from industry members, is the introduction of first contract arbitration. It was strongly expressed that this type of legislation would damage the industry's employer-employee relationships and would exclude the farming/ranching community from participating in the resolution process.

Other recommendations made in the TWG report concerning the composition of the labour board, agricultural representation, and education programs were not addressed in Bill 17.

## Labour Relations: Changes

Bill 17 contains a number of changes to the Labour Relations Code that will make the unionization process substantially easier, and thus possibly more frequent. An overview of these changes and their impact on agriculture is included below.

### The Unionization Process:

The maximum duration of a union drive has been expanded from 90 to 180 days, giving employees and union representatives a much longer period of time to organize and recruit membership into the union.

A hybrid certification process has been introduced. If 65% or more of employees in a bargaining unit sign union cards, a union will automatically be formed without the need for a secret ballot vote. If greater than 40% but less than 65% of employees in a bargaining unit sign union cards, a secret ballot vote will be called by the Labour Relations Board to determine whether or not the employees want to unionize.

These changes are concerning to the agricultural industry for a number of reasons. Firstly, it was clearly expressed in the TWG consultations that the industry strongly opposed unionization of farming and ranching operations. These changes make it much more likely that this will occur. Secondly, the 65% threshold, combined with the lack of a minimum number of employees required to form a union, could put smaller operations at a particular disadvantage. An operation with 3 employees, for example, could unionize almost immediately and without the knowledge of all employees nor the employer, should 2 employees sign a union card. Finally, the removal of the secret ballot process diminishes the democratic rights of employees. It opens them up to pressure from union organizers or peers, and does not allow for a true expression of their desire to form a union. Research has consistently shown that unionization rates are higher when no secret ballot is held; this indicates that employees are more honest about their true desire for unionization when given the opportunity to make the decision privately.<sup>1</sup>

### Breaches of the Labour Code

The onus for establishing that an employer has breached the labour code now rests with the employer, rather than the employee. This means that an employer is required to demonstrate that they have not violated the code, rather than an employee or union representative demonstrating that they have. Essentially, the burden of proof now lies with the employer. This change is a clear departure from the legal principal of natural justice. Employees may now be encouraged to bring forward unfounded complaints, since they are not required to prove them, and employers could be burdened with having to prove their innocence to offences or infractions they did not commit.

### First Contract Arbitration

First contract arbitration provision force employers and unions into dispute resolution (arbitration) if negotiations for the first collective bargaining agreement take longer than 90 days to resolve. First

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<sup>1</sup> See the Manning Center Policy Brief: A Closer Look at Secret Ballot Union Certification Votes.  
<https://www.manningcentre.ca/sites/default/files/Policy%20Brief-A%20Closer%20Look%20at%20Secret%20Ballot%20Union%20Certification%20Votes.pdf>

contract arbitration was strongly opposed by agricultural representatives in the TWG sessions, and by producers surveyed by the AgCoaliton.

## Salting

Anti-salting provisions have been repealed. Salting occurs when a union plants an employee at a workplace with the intention of having that employee initiate or aid in the unionization process. The repealing of anti-salting provisions is troubling, and allows unions to use underhanded and unfair practices.

## Dependent Contractors

Dependent contractors, or contractors who are 'in a position of economic dependence on, or under an obligation to perform duties for, that person who more closely resembles the relationship of an employee than that of an independent contractor' can now be included in existing collective agreements. The definition of independent contractor, included in the Labour Relations Code, is open to interpretation (as seen in the above quote). Thus this could result in some contractors being included in collective agreements where they were not, or would not have been, previously. As some farming and ranching operations utilize contractors for specific tasks or at certain times of year, this could be of concern to the industry should the definition loosely interpreted.

## Check-off Dues

Upon request of a union, the collective agreement will have to provide for Rand Formula (automatic check-off) union dues. This means that any employee, regardless of their union membership status, will have to pay union dues in a unionized workplace. This can encourage employees, who may not desire to join a union, to join the union simply because they are already required to pay the dues.

## Other Changes

Other changes made to the Labour relations code include:

- Allowing the Labour Relations Board to facilitate a union's ability to communicate with employees working in remote or inaccessible locations. This may expand a union's ability to contact and influence remote farming and ranching operations.
- Giving the Board authority to refer disputes to arbitration when it determines that 'egregious' unfair labour practices have occurred.
- Changes to the classification of essential services (to include continuing care and health laboratory facilities)
- New powers for the Labour Relations Board, including the ability to defer a case, decide when and how to publish decisions, and review arbitration awards. Appeals to arbitration will now be taken to the Labour Board rather than to the courts.

## **Employment Standards**

The following section contains an overview of important changes to the Employment Standards Code included in Bill 17. These changes are compared to the information presented in the TWG report and gathered through AgCoalition's producer consultation efforts, to determine the Government's level of consideration for its own TWG sessions as well as the potential impact of these changes on the industry.

Family members, as defined in Bill 6, are exempt from all Employment Standards Code provisions.

## **Greenhouses and Nurseries**

The TWG report on the Employment Standards Code, as well as producer feedback collected by the AgCoalition, strongly supported the inclusion of greenhouses and nurseries in the definition of 'primary production' and thus supported applying the same standards that apply to all other farming and ranching operations to these businesses. The Government, however, has chosen to look past the recommendations resulting from their consultation sessions, as well as the opinion of agricultural stakeholders, and has continued to exclude these businesses from the definition of 'primary production' in Bill 17.

As these businesses are involved in the production of primary agricultural goods, it is not clear why they are subject to different rules than the rest of agriculture. In fact, out of 18 governmental departments and agencies, including Alberta Agriculture and Forestry and Agriculture Canada, Alberta Labour is the only one that does not consider these operations to be included in the definition of 'primary production.' This deviation is not only confusing and unfair, but also puts greenhouse and nursery operations at an unfair disadvantage relative to importers of similar products.

Staying true to the intent and results of the TWG consultation sessions, and considering the opinion of agricultural stakeholders, the Government of Alberta, and Alberta Labour, should include greenhouses, nurseries, and mushroom farms in the definition of 'primary production.'

## **Job Protected Leaves:**

The AgCoalition recognizes that the provisions for job-protected leaves outlined in Bill 17 are important changes designed to enhance work-life balance and protect employees in the event of unforeseen life circumstances arising. While we take no issue with the Government providing these protections to employees, doing so without proper consultation with agricultural stakeholders and without including relief or support mechanisms for adversely affected employers could result in some farming and ranching operations not being able to meet these requirements and in parallel maintaining a healthy business operation. As outlined in the TWG reports on this subject, the Government should provide mechanisms or programs, such as training or temporary labour pools, designed to alleviate the burden that these leaves have the potential to place on farming and ranching operations. Small operations, with few employees, face the largest risk, and are in the greatest need of such mechanisms. A summary of the changes to job protected leaves can be found in the appendix.

## **Hours of Work, Days of Rest, Rest Periods, and Overtime.**

Employees who are employed in a farming or ranching operation are exempt from employment standards related to hours of work (part 2, S.16), rest periods (part 2, S.18), and overtime and overtime pay (part 2, division 4). Therefore the changes to these sections will have no impact on the agricultural sector. These exemptions closely follow the recommendations outlined in the final TWG report, and are positive for the industry.

New regulations around days of rest will apply to all non-family, waged employees working on a farm or ranch. Employees are entitled to 4 days of rest in every 28, at the employers discretion should the employee and employer not be able to reach an agreement.

Other changes to days of rest center on the rescission of compressed work weeks, and the introduction of “Averaging Arrangements.” Compressed work weeks permitted employers to require or allow employees to work fewer days in the week and more hours per day, up to a maximum of 12 hours per day and 44 hours per week. “Averaging Arrangements” will allow employers and employees to agree to average hours of work over a period of 1-12 weeks for the purpose of determining overtime eligibility. These changes are not likely to have a significant impact on the agriculture industry, as farm and ranch operations are exempt from overtime related employment standards and the changes still allow for flexibility of hours.

## **Vacation and Vacation Pay**

Farming and ranching operations and their employees are no longer exempt from vacation and vacation pay employment standards. The removal of this exemption was recommended in the TWG report, and received a high level of support from the industry. In Bill 17 the employment standards code will be clarified to show that employees must be paid 4% of their total wages as vacation pay until they have been employed for 5 years, after which they are entitled to at least 6%. Additionally, half day increments are now allowed for vacation, down from a previous minimum of one day.

These changes are not likely to have significant impacts on the agricultural industry, and it was found that these sections of the code received wide support from both members of the TWG and the agricultural industry at large, and the changes made in Bill 17 are minimal.

## **General Holidays and Holiday Pay**

Bill 17 removes agriculture’s exemption from employment standards related to general holidays and holiday pay. The removal of this exemption was recommended in the TWG report, and received a high level of support from producers.

The changes made to this standard in Bill 17 include making all employees eligible for general holiday pay, removing the regular and non-regular day of work distinction, and changing the way holiday pay is calculated (5% of wages from the previous 4 weeks worked).

## **Administration and Enforcement**

Bill 17 awards employment standards officers with new enforcement powers, including the ability to direct employers to perform a self-directed audit. Additionally, penalties for contraventions of the code

will be up to \$10,000, and industry/group permits will be repealed and replaced by regulations. A number of other changes related to timelines, collections, and appeals processes are included as well.

The TWG report, as well as producer feedback, indicated that the old provisions for administration and enforcement included in the Employment Standards Code were suitable for agriculture. However, it was also stressed that a strong educational component was required before enforcement of these standards begins.

In light of the changes made to administration and enforcement under Bill 17, it is even more vital that the government begins providing education and training programs for members of the agricultural industry. Doing so is important, as it assists producers in understanding what is required of them and thus helps them avoid an unintentional contravention of the code. As well, with the possibility of a mandated self-audit, it is imperative that producers understand the code robustly enough that they are able to perform such an audit without undue hardship. Finally, potential penalties of up to \$10,000 could seriously harm a farming or ranching operation, and so it would be responsible for the Government to help producers avoid such a situation, for the betterment of Alberta's employees, economy, and agriculture industry.

## Youth Employment

New restrictions on the employment of persons below the age of 18 are included in Bill 17, but it is important to note that these changes will not take effect immediately following royal assent. Instead, they will come into effect once the Ministry has conducted consultations on lists of light work and hazardous jobs (date TBD).

Youth under the age of 13 are not allowed to work under any circumstances other than employment in artistic endeavours such as theater production. Youth aged 13-15 will be allowed only to work at jobs classified as 'light work' or at jobs for which they have obtained a permit to work. Those youth aged 16 and 17 are allowed to work in any type of job, however for jobs classified as including hazardous work they would be required to obtain a permit and have proper training and supervision. Lists of light and hazardous work are to be updated and reviewed every three (3) years.

The Government has stressed in its public releases on the matter that these changes will have no impact on youth activities such as 4-H or branding parties, and will not stop friends and neighbours from helping each other.

The TWG report and the AgCoalition's producer feedback indicated that the previous standards for youth employment were suitable for the agriculture industry. Additionally, the TWG report included a number of recommendations for the government, such as:

- For youth under 16, work must not negatively impact schooling, parental consent must be obtained, and the work must not be detrimental to health, schooling, or the welfare of youth.
- For youth aged 12-13, there should be a 20 hours/week limit.



The government appears to have taken the first of these recommendations into consideration in drafting Bill 17, for there are restrictions on the type of work that can be done by youth of this age, such that they will not be exposed hazards to their health or welfare. The second of these recommendations is no longer required, since under the new legislation youth of this age will not be allowed to work.

It is difficult to determine the impact that this will have on the agriculture industry, as much will depend on the nature and content of the lists of hazardous and light work. It is important that the Government consults agricultural stakeholders in making these lists for on farm activities, work, and jobs, so that these lists accurately reflect the realities of on farm work.

### Appendix: Changes to Job Protected Leaves

Proposed Change	Description	Topic discussed at TWG?	Aligns with TWG recommendations?	Potential impact on agriculture
Reduce the qualifying period for job-protected leaves.	The minimum qualifying period will be reduced from 52 weeks to 90 days of consecutive employment.	While maternity and compassionate care leaves were discussed at the TWG consultations, they were discussed in their original forms (15 weeks maternity, 8 weeks compassionate care) and with the original qualification period (52 weeks)	The TWG found that the provisions for job protected leaves were acceptable, but recommended that the government explore mechanisms for reducing the burden that job-protected leaves can place on small businesses in the agriculture industry. <b>No such mechanisms have been provided.</b>	Reducing the qualifying period for job-protected leaves without providing employers with a relief mechanism could significantly increase the likelihood that small operations with seasonal employees could be burdened by a potentially unmanageable loss of working capacity due to job protected leaves.
Extend maternity leave	Maternity leave will be extended from 15 to 16 weeks.			See next Page

<b>Proposed Change</b>	<b>Description</b>	<b>Topic discussed at TWG?</b>	<b>Aligns with TWG recommendations?</b>	<b>Potential impact on agriculture</b>
Extend the compassionate care leave	Compassionate care leave will be extended from 8 weeks to up to 27 weeks. Employees do not need to be the primary caregiver. Only 48hrs notice of return required.	See previous Page	See previous Page	Extending the period of existing job protected leaves without providing employers with a relief mechanism as recommended in the TWG puts small farming and ranching operations at risk of being overburdened by loss of work, an inability to find replacement workers, and the costs associated with holding a position.
Introduce a long-term illness and injury leave	Up to 16 weeks of job protection per year for a medically certified long-term illness or injury.	None of the provisions for new job protected leaves were discussed at the TWG tables. Agricultural representatives were not consulted on the applicability of these leaves to the agriculture sector, nor were they asked about potential relief mechanisms or support for employers struggling to uphold these requirements.	While no TWG recommendations exist for these specific leaves, since they were not discussed at the consultations, the recommendations made for other (maternity, compassionate care) leaves should be applied. It is doubly important that the Government provides support mechanisms to employers for job protected leaves given the expansion in both depth and scope of the provisions for these leaves included in Bill 17.	Creating new job-protected leaves without providing employers with a relief mechanism as recommended in the TWG puts small farming and ranching operations at risk of being overburdened by loss of work, an inability to find replacement workers, and the costs associated with holding a position.
Introduce a personal and family responsibility leave	Up to 5 days per year of job protection for personal sickness or short term care of an immediate family member.			
Introduce a bereavement leave	Up to 3 days per year for bereavement of an immediate family member			
Introduce a domestic violence leave	Up to 10 days per year for employees dealing with this			
Introduce a citizenship ceremony leave	Up to a half day for employees attending such a ceremony			

<b>Proposed Change</b>	<b>Description</b>	<b>Topic discussed at TWG?</b>	<b>Aligns with TWG recommendations?</b>	<b>Potential impact on agriculture</b>
Introduce a leave for critical illness of a child	Up to 36 weeks of job protection for parents of critically ill or injured children.	See previous Page	See previous Page	See previous Page
Introduce a leave for death or disappearance of a child	Up to 52 weeks for parents whose children disappeared as a result of crime and 104 weeks for parents of children who died as a result of crime.			