



Gordon & McLeod LLP Newsletter

FOR OUR VALUED CLIENTS

APRIL 6, 2018

(NOT JUST) WORKIN' 9-5: New Rules for Farmers & Ranchers

by Toni L. McLeod

Have you thanked a farmer or rancher today? This thought occurs to me on a regular basis and I try to practice what I preach when it comes to expressing gratitude, but it is even more apparent today as I sit writing this newsletter from the comfort of my climate-controlled office while most of our clients are outside dealing with April snow and a frigid wind right in the middle of calving season. Just to add an extra layer of challenge to one of the busiest times of year.

On the topic of “challenges” associated with farming and ranching, we feel that it is important to take some time to address the recent changes to Alberta’s Employment Standards Code (“ESC”) and the impact these changes will have on those of our clients with waged, non-family workers, whether they be full-time, part-time or seasonal employees.

KEY CHANGES

- 1) **Wages:** As of January 1, 2018, the minimum wage for non-family workers is \$13.60 per hour, increasing to \$15 per hour on October 1, 2018.
- 2) **Unpaid, job-protected leaves of absence:** There are currently eleven (11) types of statutory leaves under the ESC and non-family workers will be entitled to all of them after passing their probationary period.
- 3) **Vacations and vacation pay:** Workers will be entitled to 2 weeks of paid vacation after working with the farm or ranch for one year. Vacation pay is 4% of wages earned during the previous year. If employees have worked on the farm for five consecutive years or more, they will be entitled to 3 weeks’ vacation and be paid 6% of wages earned during the previous year.
- 4) **Holiday Pay:** Farmers and ranchers will be required to give workers statutory holiday pay whether they work the holiday or not. If they don’t work the holiday, owners must pay the employee an amount that is at least 4.2% of their wage that was earned in the first 4 weeks before the holiday. If the employee works the holiday, owners must pay them their typical wage, the additional 4.2%, and give them a holiday that would typically be a work day.
- 5) **Payment of Earnings, Employment Records and Termination of Employment:** Farmers and ranchers must follow the rules regarding payment of wages and basic payroll practices, must adhere to deadlines for providing final pay and records of employment, and must provide notice or pay-in-lieu of notice of termination of employment to employees at the end of the employment relationship.
- 6) **Administration and Enforcement:** Waged, non-family workers are now able to file formal complaints with Employment Standards and farmers and ranchers will be subject to the enforcement provisions of the ESC.

IMPORTANT EXEMPTIONS

Notwithstanding the more onerous record-keeping and payroll requirements that farmers and ranchers will now be subject to, there are a few pieces of “good news” insofar as exemptions from the legislation that at least try to take into account the realities of life on the farm.

For example, daily hours of work are not limited for workers on farms and ranches, and owners don't have to pay overtime or provide regular, scheduled breaks, provided that workers receive at least 4 days of rest during every 28-day period. Those breaks can be applied as Mother Nature sees fits (ie. rain-out breaks during harvest).

YOUTH WORKERS

I am so proud to live in this rural community and to have the opportunity to interact regularly with polite, respectful, hard-working young adults who appreciate the value of an honest day's work and who share the pride of a family and community tradition of farming and ranching.

The good news is that the changes to youth employment rules will have no effect on youth activities such as 4-H or private/community brandings, and it won't stop neighbors and friends from lending a helping hand (as we have all done for generations). However, effective May 1, 2018 the following rules will apply to non-family, waged employees:

- Children aged 12 and under are prohibited from work, except for “artistic endeavors” approved by permit by Employment Standards;
- Youth aged 13-15 will be allowed to do “light work” only and no hazardous work. Jobs not on the light work list will require a permit.
- Youth aged 16-17 will be allowed to do “hazardous” work with a permit, proper training, and adequate supervision.

Now of the course the big question is: what will constitute “light work” and “hazardous work” in terms of work being performed by youth workers on a farm or ranch? There is continued consultation happening and we expect (hope) to receive some more clarity on this when the rules come into effect May 1st, but I am sure I'm not alone in guessing that there might be a big difference between what those raised in a rural setting view as “hazardous work” and our more urban counterparts.

“Hey Joe/Jill – I need you to get on ole' Leroy over there and bring in those ornery old mama cows from the far pasture. Don't worry, he's only cold-backed for the first mile or so”. I'll leave that topic alone for now, but you'll see where I'm headed with that line of thinking. More to follow.

SO WHAT NOW?

The most important advice we can give to our clients who are hiring new non-family, waged employees is to spend your time at the “front-end” of the employment relationship. Do your due diligence and make sure that you are hiring the right person for the job, and don't just turn them loose and hope for the best after you've welcomed them aboard. Make sure that you are overseeing them during the 90-day probationary period and carefully evaluate their performance. Once they roll over to Day 91, it is much more difficult (and costly) to terminate them, and they will be well on their way to becoming eligible for unpaid, job-protected leaves which can cause a significant disruption to your business and isn't something that most employers enjoy accommodating for an employee who isn't a good fit.

Secondly, you will want to review your payroll practices and make sure that you are correctly calculating general holiday pay and vacation pay in accordance with the new rules. Another reason to hug your accountant and ask for their help if the need arises.

Lastly, and this is never bad advice but even more important given the added protections for employees (and their

new ability to file a complaint with Employment Standards), we encourage you to implement well drafted and legally enforceable offers of employment and employee policy manuals which clearly set out employer and employee expectations and rights.

Clear communication is the foundation upon which all relationships are built, and the reality is that Employment Standards doesn't pay any heed to a “firm handshake and good intentions” and so it is extremely important that you spend the time drafting the appropriate paperwork to protect yourself should there be any issue in the future.

How We Can Help

We welcome the opportunity to be of assistance with the planning and drafting of suitable Offers of Employment and employment policies, and we are always happy to act as a resource for you when it comes to more general questions about employment-related issues. Contact us today to set up an appointment at 403-646-6111.

*The contents of these articles are intended to provide a general guide to the subject matter. Legal and financial advice should be sought about your specific circumstances.

FOR MORE INFORMATION

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