



ALBERTA

M.O. 18.2020

WHEREAS the Lieutenant Governor in Council made Order in Council 080/2020 under section 52.1(1) of the *Public Health Act* (PHA) on March 17, 2020 declaring a state of public health emergency in Alberta due to pandemic COVID-19 and the significant likelihood of pandemic influenza;

WHEREAS Order in Council 080/2020 has effect for 90 days following March 17, 2020 under section 52.8(1)(a) of the PHA;

WHEREAS section 52.1(3) of the PHA authorizes the Minister responsible for an enactment (Minister), to make an order without consultation, to:

- (a) suspend or modify the application or operation of all or part of an enactment, subject to the terms and conditions the Minister prescribes, or
- (b) specify or set out provisions that apply in addition to, or instead of, any provision of an enactment

if the Minister is satisfied that doing so is in the public interest; and

WHEREAS I am satisfied that it is in the public interest to make such an order in respect of the *Employment Standards Code* (Act) and the *Employment Standards Regulation* (Regulation) because such an order will:

- (a) allow employees to remain home when ill or caring for a family member who is ill and to protect the workplace from that exposure;
- (b) support the recommendations of the Chief Medical Officer that children not attend school and daycare;
- (c) allow employers to adjust their workforce, in order to implement measures as recommended or directed by the Chief Medical Officer to protect their employees and to limit and control the spread of the pandemic COVID-19; and
- (d) provide employers with flexibility to respond to workforce changes required as a result of the pandemic COVID-19;

THEREFORE, I, Jason Copping, Minister of Labour and Immigration responsible for the *Employment Standards Code* and the *Employment Standards Regulation*, pursuant to section 52.1(2) of the *Public Health Act*, do hereby order that:

1. The definitions from the *Employment Standards (COVID-19 Leave) Regulation* (AR 29/2020) apply to this Order.
2. Section 17(2) of the Act is amended by striking out “at least 24 hours’ written notice” and substituting “giving written notice as soon as is practicable in the circumstances”.
3. Notwithstanding section 53.982(1) of the Act, an employee is entitled to unpaid leave for the period of time recommended or directed by the Chief Medical Officer to meet the employee's responsibilities in relation to
 - (a) a family member who is under quarantine, and
 - (b) a child of the employee due to the closures of schools or daycares as a result of COVID-19 effective March 16, 2020.
4. Notwithstanding section 53.982(1) of the Act, an employee under clause 3 of this Order is exempt from the requirement to be employed for 90 days by the same employer.
5. Subject to clause 6 of this Order, if requested by an employer, an employee who takes a leave under clause 3 of this Order must provide the employer with documentation reasonable in the circumstances, at a time that is reasonable in the circumstances, that the employee is entitled to the leave.
6. For the purpose of clause 5 of this Order, an employer shall not require an employee to provide a medical certificate as documentation.
7. Clauses 3, 4, 5 and 6 of this Order are effective March 17, 2020.
8. Section 55(1)(a) of the Act is amended by striking out “a termination notice of at least the period of notice required under section 137(1) if that section applies, or in any other case,”.
9. Section 63(1) of the Act is amended by striking out “one or more periods exceeding, in total, 60 days within a 120-day period” and substituting “more than 120 consecutive days”.
10. Clause 9 of this Order applies to a layoff where the layoff notice is given to the employee on or after March 17, 2020.
11. Section 74 of the Act does not apply and is substituted with the following:

Director's variance or exemption

74(1) Subject to subsection (2), the Director may on application by an employer, a group of employers, or an employer association, issue a variance or exemption to vary or exempt the application of one or more provisions of this Act or the regulations

- (a) with respect to that employer or group of employers or employer association and the employees referred to in the application, or
- (b) with respect to a type of employment carried on by that employer or group of employers or employer association.

(2) The Director may issue a variance or exemption under this section only if

- (a) the provision to be varied or exempted and the extent to which it may be varied or exempted is authorized by the regulations to be varied or exempted under this section, and
- (b) the Director is satisfied that issuing the variance or exemption meets the criteria established by the regulations, if applicable.

(3) The Director must notify the employer or group of employers or employer association of the decision respecting the issuance of a variance or exemption.

(4) A variance or exemption must

- (a) specify the provisions of this Act or the regulations the application of which is varied or exempted and the extent to which the application of the provisions is varied or exempted,
- (b) identify the employer or group of employers or employer association and the employees to whom the variance or exemption applies or the employment to which the variance or exemption applies, as the case may be,
- (c) specify the date on which the variance or exemption commences and the date it expires,
- (d) include any terms or conditions that the Director considers appropriate, and
- (e) include any other information required by the regulations.

(5) If the Director grants a variance or exemption, an employer of employees affected by the variance or exemption must notify the employees by

- (a) personally giving a copy of the variance or exemption to the employees,

- (b) posting a copy of the variance or exemption in the employees' workplace,
- (c) posting a copy of the variance or exemption online on a secure website to which the employees have access, or
- (d) providing a copy of the variance or exemption in any other manner that informs the employees of the variance or exemption.

(6) An employer and an employee affected by the variance or exemption must comply with the variance or exemption and any terms and conditions of the variance or exemption.

(7) The Director may, at any time, amend or revoke a variance or exemption issued under this section.

(8) A decision by the Director respecting the amendment or revocation of a variance or exemption must be given to the employer or group of employers or employer association.

(9) An employer of an employee affected by the variance or exemption must provide notice of the amendment or revocation of the variance or exemption to the employee by

- (a) personally giving it to the employee,
- (b) posting it in the employee's workplace,
- (c) posting it online on a secure website to which the employee has access, or
- (d) providing it in any other manner that informs the employee of the notice.

12. Section 74.1 of the Act does not apply and is substituted with the following:

Minister's variance or exemption

74.1(1) Subject to the regulations, the Minister may, by order, on application by an employer, a group of employers, or an employer association, vary or exempt the application of one or more provisions of this Act or the regulations with respect to

- (a) the employer or employers, and the employees, referred to in the application, or
- (b) a type of employment carried on by the employer or employers.

(2) An order made under subsection (1) must

- (a) specify the provisions of this Act or the regulations the application of which is varied or exempted and the extent to which the application of the provisions is varied or exempted,
- (b) identify the employer or employers and the employees to whom the order applies or the employment to which the order applies, as the case may be,
- (c) specify the term of the order, which must not exceed 2 years,
- (d) include any terms or conditions that the Minister considers appropriate, and
- (e) include any other information required by the regulations.

(3) An order made under subsection (1) shall not be renewed.

(4) An employer and an employee affected by an order made under subsection (1) must comply with the order and any terms and conditions of the order.

(5) The Minister may, at any time, amend or revoke an order made under this section.

(6) A copy of an order made under subsection (1) or an amendment or revocation made under subsection (5) must be given to the affected employers and employees in accordance with the regulations.

13. Section 137 of the Act does not apply and is substituted with the following:

137(1) An employer who intends to terminate the employment of 50 or more employees at a single location must, as soon as is practicable in the circumstances, give the Minister written notice specifying:

- (a) the number of employees whose employment will be terminated, and
- (b) the effective date of the terminations.

(2) Subsection (1) does not apply in respect of the termination of employees who are employed on a seasonal basis or for a definite term or task.

14. Section 13.33(1) of the Regulation is amended by striking out "with at least 2 weeks' notice" and substituting "by giving notice as soon as is practicable in the circumstances".

15. Section 43.86(1) of the Regulation does not apply and is substituted with the following:

43.86(1) The Director may issue a variance or exemption with respect to any of the following:

- (a) sections 16, 17, 18, and 19 of the Act;
- (b) section 23.1 of the Act by extending the averaging period to no longer than 26 weeks;
- (c) section 11(1) of this Regulation by reducing the minimum hours of pay to not less than 30 minutes but not more than 2.5 hours.

16. Section 43.86(3) of the Regulation does not apply with respect to an application by an employer, a group of employers, or an employer association impacted by COVID-19 for a variance or exemption under section 74 of the Act, as amended by clause 11 of this Order.


17. Section 43.87(1) of the Regulation does not apply with respect to an application by an employer, a group of employers, or an employer association impacted by COVID-19 for an order made under section 74.1 of the Act, as amended by clause 12 of this Order.

This Order comes into effect on the date set out below.

This Order lapses, unless it is sooner continued by an order of the Lieutenant Governor in Council under section 52.811(3) of the PHA, at the earliest of the following:

- (a) August 14, 2020;
- (b) 60 days after Order in Council 080/2020 is terminated by the Lieutenant Governor in Council, if Order in Council 080/2020 is terminated before June 15, 2020;
- (c) when this Order is terminated by the Minister under section 52.811(2) of the PHA because the Minister is satisfied that this Order is no longer in the public interest; or
- (d) when this Order is terminated by the Lieutenant Governor in Council under section 52.811(1)(c) of the PHA.

DATED at Edmonton, Alberta this 6th day of April, 2020.


Jason Copping
Minister of Labour and Immigration