



THE SASKATCHEWAN EMPLOYMENT ACT

ESSENTIAL SERVICES

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OVERVIEW

- In 2014, the Government amended *The Public Service Essential Services Act*, after extensive consultations with stakeholders (Bill 128 – *The Saskatchewan Employment Amendment Act, 2014*).
 - These amendments were not proclaimed into force at that time as the Government waited for the decision of the Supreme Court.
- On January 30, 2015, the Supreme Court of Canada found *The Public Service Essential Services Act* unconstitutional. It noted that while it is reasonable to maintain essential services, the right to strike is constitutionally protected because of its crucial role in a meaningful process of collective bargaining.
 - In rendering its decision, the Supreme Court has suspended the application of this decision for one year.
- In May 2015, consultations commenced on how to address the Supreme Court's decision. These consultations concluded on September 30, 2015.
- As a result of these consultations, meetings were held with 39 organizations and 17 responses were received (one multi-employer response).

PART III

OCCUPATIONAL HEALTH AND SAFETY

AMENDMENTS TO PART III

- Amendments are being made to sections 3-47 to 3-51 to adopt a national standard for Workplace Hazardous Materials Information System.
- Each jurisdiction in Canada is in the process of adopting these standards.
- Adoption will mean that the same labelling and training requirements for the transportation and handling of hazardous materials will exist in each province and territory.
- This will reduce/eliminate the requirement to re-label products when chemicals are moved between jurisdictions.

PART VI – LABOUR RELATIONS

Amendments to Part VI

Notice of Impasse – Section 6-33

- Clarify that the employer or union can serve a notice of impasse when they are of the opinion that an impasse has been reached in bargaining a collective agreement.
- A notice of impasse must identify whether there are essential services that would have to be maintained in the event of a strike or lockout.
- The party receiving the notice can also submit a notice of impasse within 3 days of receiving the original notice, identifying the essential services that would have to be maintained in the event of a strike or lockout.

Mandatory Mediation/Conciliation

- Establish a maximum time period for the mediation/conciliation process at 60 days from the appointment of a labour relations officer, special mediator or conciliation board. The time period can be extended if the parties agree.
- Currently, no such time period exists.

Cooling Off Period

- In the case where there are essential services identified in the notice of impasse, the cooling off period would be reduced from 14 days to seven days, since the requirement to negotiate an essential services agreement will take additional time.

PART VII – ESSENTIAL SERVICES

Amendments to Essential Services Process

Definition of “Essential Services”

- The definition of “essential services” is repealed.
- The parties will be required to negotiate the essential services appropriate for their organization, so as to ensure the public interest is met.

Content of Essential Services Agreement

- The content of an essential services agreement remains the same as Bill 128:
 - Essential services
 - Classifications of employees
 - Number of positions in each classification
 - Locations where work will occur
 - Process to identify and inform employees
 - Process to respond to:
 - unanticipated change in need for essential services; and
 - emergencies
 - Dispute resolution process

Amendments to Essential Services Process

Bargaining an Essential Services Agreement

- The parties are required to negotiate an essential services agreement no later than the point where a collective agreement could not be negotiated and a report of a labour relations officer, special mediator or conciliation board is presented to the parties and the Minister.
- No strike or lockout can occur until an essential services agreement is in place.
- Same as Bill 128.

Determining Who Works

- The employer is required to consider qualified employees who are not members of the bargaining unit when negotiating the numbers and classifications of employees to work during a work stoppage.
- The employer provides the union with the schedule of the essential services, numbers and classifications of positions required per the essential services agreement.
- The union is to identify the qualified union members required to fill any vacancies identified in the essential services work schedule.
- The employee identified by the union is to perform those duties required to ensure that the essential services are maintained during a work stoppage.

Amendments to Essential Services Process

Independent Dispute Resolution Tribunal - No Essential Services Agreement Negotiated

- Where, in the opinion of the public employer or the union, an impasse is reached in negotiating an essential services agreement, a notice must be made to the Chairperson of the Labour Relations Board, the Minister as well as the other party.
- The notice is to include the name of the person appointed to represent the party on the Essential Services Tribunal.
- The party receiving the notice will have three days to inform the Chairperson, the Minister and the other party of the name of the person to represent them on the Tribunal.
- Once the representatives are appointed, the Chairperson of the Board will appoint himself or the Vice-Chairperson to sit as the Chair of the Essential Services Tribunal.
- This is not a Labour Relations Board matter.

Amendments to Essential Services Process

Essential Services Tribunal

- The Tribunal has the same powers and authorities as an arbitration board established pursuant to Part VI of the Act.
- The Tribunal is to commence a hearing within 7 days of the appointment of the Chair.
- The hearings are to conclude within 60 days, but can extend.
- The decision of the Tribunal is to be rendered within 14 days of concluding the hearings.
- The Tribunal is to determine:
 - The essential services;
 - The classifications of employees that must work during a work stoppage;
 - The number of positions in each classification;
 - Locations where the work is to be performed; and
 - Procedures for responding to an emergency.
- A Tribunal will be re-constituted to hear any subsequent applications.
- The parties can change their representative on the Tribunal (i.e., unavailable).
- A decision of the Tribunal comes into effect 48 hours after the employer and union are served with the decision.

Amendments to Essential Services Process

100% Designated Essential

- Where 100 per cent of the bargaining unit are determined to be essential, the Tribunal can declare that the decision substantially interferes with the exercise of a strike or lockout and the parties would enter into binding mediation-arbitration of the terms and conditions of the collective agreement.

Change in Circumstance

- Where there is a change in circumstance, and the employer and union are unable to negotiate an amendment to the agreement, an application can be made by the employer or union to the Tribunal to amend the essential services agreement.
- A hearing must commence within two days of receipt of the application.
- The hearings must be concluded within 14 days of commencing, or longer if the Tribunal determines additional time is required.
- If there is a change to the essential services agreement, the employer is to revise the work schedule and provide to the union. The union is to identify the employees that are to provide the essential duties.

Amendments to Essential Services Process

Substantial Interference with a Strike/Lockout

- An application can be made at any time by either party to the Chair of the Tribunal for a determination as to whether the essential services agreement substantially interferes in the exercise of a strike or lockout.
- The time periods for hearings are consistent with those of an initial hearing.
- The parties can agree that the level of designation in an essential services agreement is such that the exercise of a strike or lockout would be substantially interfered with.
- Where a Tribunal has determined, or the parties have agreed, that the level of designation in an essential services agreement substantially interferes with the exercise of a strike or lockout, the parties are required to enter into binding mediation-arbitration.

Amendments to Essential Services Process

Binding Mediation-Arbitration – Collective Agreement

- The binding mediation-arbitration process will be conducted by a three-person board unless the parties agree to a single mediator/arbitrator.
- The members of the panel include:
 - Representative of the employer;
 - Representative of the union; and
 - A mutually agreed to chairperson.
- If agreement cannot be reached on the chair within three days, the Minister will name a chair.
- The mediation is to commence within 7 days of chair's appointment.
- If mediation does not achieve a collective agreement, notice will be given to the employer, union and Minister.
- Within 3 days of this notice, the parties are required to submit lists of matters in dispute, and are able to provide a response to other party's list within a further 3 days.
- The board/mediator-arbitrator must make an award within 60 days of appointment, with the ability to extend if necessary.
- The board/mediator-arbitrator is to consider the same criteria as was included in Bill 128 when making an award.
- No strike or lockout can occur during this process.

Amendments to Essential Services Process

Unfair Labour Practices

- Same unfair labour practices as included in Bill 128.
 - Must bargain in good faith to conclude an essential services agreement.
 - Employer must consider qualified persons who are not members of the bargaining unit when determining number of positions in a classification.
 - Union must identify qualified members of the bargaining unit to work during a work stoppage.

Copies of Essential Services Agreements

- Copies to be filed with Minister, same as Bill 128.

Termination of Essential Services Agreement

- Essential services agreement continues until terminated by one of the parties.
- Agreement can be terminated at least 120 days before the expiry of a collective agreement.

Fines

- Fines same as Bill 128
 - Union or Employer - \$100,000
 - Employees \$1,000
 - The fine for the continuation of an offence is \$10,000 per day for employers and \$400 per day for employees.

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