

May 31, 2023

**BLOG**

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### **AMENDMENT TO THE *EMPLOYMENT STANDARDS ACT***

The *Employment Standards Act* (the "Act") was amended on May 11, 2023 to ensure unionized employees were entitled to the National Day for Truth and Reconciliation statutory holiday regardless of whether it was provided for in a collective agreement. Section 3 of the Act, which deals with collective agreements and minimum employment standards, underwent the change. As it stood previously, subsection 3(2) specified that if a collective agreement covers specific matters governed by the Act, such as statutory holidays and annual vacation, and meets or exceeds the Act's requirements, those provisions of the collective agreement replace the Act for those matters. In other words, if the collective agreement provides equal or greater benefits than the Act, it takes precedence over the minimum requirements of the Act.

The amendment introduces two changes. The first is an exception to the above arrangement specifically for the National Day for Truth and Reconciliation. According to the new subsection 3(2.1), a collective agreement cannot replace the standard for statutory holidays concerning this day. The second change was under section 3(6), and ensures that if a collective agreement is in effect, any disputes related to the National Day for Truth and Reconciliation will still be resolved according to the collective agreement's dispute resolution procedures.

Most local governments will not be affected by this change as their collective agreements already recognized any newly enacted provincial statutory holidays and provided their employees this statutory holiday. However, be sure to review your collective agreements as they pertain to statutory holidays, and know that employees will be entitled to the National Day for Truth and Reconciliation (September 30) regardless of whether it is expressly included in a collective agreement.

***Carolyn MacEachern & Nate Ruston***