

**Submission of the Brandon Chamber of
Commerce Regarding the Employment
Standards Review of 2005-06**

**January 16, 2005
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Section A - Introduction

The Brandon Chamber of Commerce is an independent, membership funded, non-profit organization that represents Brandon business from the grassroots level. Our mission is to encourage growth in the Brandon community by fostering a progressive business environment, favourable to enhancing existing and attracting new business.

Employment Standards in our province have a profound effect on our members and how they do business. While we understand the need for some regulation in this area, we firmly believe that if not carefully managed, employment standards that are too restrictive and costly for employers could be a deterrent to business investment and growth in our Manitoba communities. For this reason, we ask that all employment standards be considered in the light of how it will affect businesses, and their future in our communities, to ensure that the employees these standards aim to protect have sustained employment in our province.

We are pleased to have this opportunity to provide our comments on the subjects indicated by the Employment Standards Review Discussion Guide, and welcome any other opportunity to discuss this subject with our government. We wish to raise our concern, however, with the process and timeline established for the entire Manitoba Employment Standards Code review process.

Concerns abound that the provincial government has set this review on a course that is not enlightened and informed, and deprives Manitobans of the appropriate opportunity to learn about the issues, and provide knowledgeable opinions in their submissions to this review. The short timeline, the apparent lack of involvement of a business/labour panel, and the lack of opportunity to review information presented in the Federal Labour Code Review process all put into question the value placed on public feedback and research, and the validity of the entire review process.

We sincerely hope that with such a short time for Manitobans to make submissions, that our provincial government will take the time to consider the results of the federal labour code review before making any possible changes to our provincial labour laws. Perhaps the additional information presented through that review can assist in remedying the shortcomings of this provincial process and aim to keep us in step with the rest of the country.

Section B – Reflecting the Realities of the Modern Economy: Flexibility, Protection, Coverage and Compliance

1 – Hours of Work and Overtime

1A) Hourly Workers

Hourly workers are the primary level on which our entire workforce is based. Flexibility at this level provides many necessary options for hourly workers, and allows them to find work that suits their personal preferences and family needs. The process of issuing an hours of work variance ensures that new situations will not be forced on employees, which can increase the positive working relationship between an hourly worker and their employer, and is a valid process. Any administrative burden that can be lifted from the employer through this process, such as dealing with the Director of Employment Standards on the majority of issues as opposed to the Manitoba Labour Board, would be greatly appreciated and would also speed the process thereby allowing both the employer and the worker to reach a decision as quickly as possible.

With regards to the criteria for determining whether or not to issue the variance, we believe the consideration could be quite simple. Of course, the acceptance by employees should be evaluated, and would certainly be considered by the employer before even making the application. However, we believe that demonstration of business need should be a predominant determining factor in the decision of whether to approve the variance. Often, businesses reap productivity gains, economies of scale, and a general increase in business success when work schedules can better reflect the work cycles of their industry, therefore the needs of the employer should be considered as well.

1B) Salaried Employees

We believe that there should be specific provisions for salaried employees. These employees are moved from hourly work to salaried arrangements with the expectation that they take on a greater degree of responsibility for their work in exchange for their commonly increased salary, and consequently are expected to achieve the goals set before them to assist in the business' success. It is reasonable then that salaried employees should be compensated for the results they deliver to their employer. Interpreted, this means that the employee should then work whatever hours are required to achieve the results asked for from their employer. If both the parties agree that the above is acceptable, then there is no reason that this type of agreement should not be acceptable to our government.

The existing Employment Code clearly mandates that the terms and conditions of a salaried employee's requirement to work overtime hours without additional pay be set forth specifically in the contract of employment. In our view, there is a need to amend the legislation so that a clear intention expressed by the parties that the salary of the employee is intended to cover all hours worked is given effect so long as the employee does not fall below the minimum wage for either standard hours or overtime hours.

1C) Incentive-Based Workers

We do not believe that the Code should contain specific provisions regarding incentive-based workers. This type of payment schedule is commonly set in order to motivate employees to a higher level of accomplishment, and any forced changes to these systems could all but eliminate any incentive to achieve that is created by them. Incentive-based workers are paid for their results, whether they are achieved by working days, evenings, less than 40 hours per week or more. Therefore it is not appropriate that overtime provisions apply to incentive-based workers.

The best system for ensuring that incentive-based workers are adequately protected under the hours of work and overtime is the market system. In our current labour shortage, which is indicated by our very low rate of unemployment, it becomes obvious that only the jobs that provide adequate pay and reasonable hours of work will be selected by the in-demand labour force. Any employment opportunity that does not create realistic hours of work or an appropriate rate of pay will not attract or retain employees, and therefore, employers will create employment that provides reasonable pay.

1D) Managers

We suggest that a new definition of a manager should be adopted, in order to prevent disputes such as the most recent one involving Nygard International. This definition should reference the fact that managers not only have control over people, but often their control is over resources, and the terms of their own employment. Managers' responsibilities can include managing or supervising people either directly or indirectly, and can also include those who work in a confidential capacity and those who have control over information.

The new definition of manager should include the exact wording which appears in the Manitoba Labour Relations Act. This would allow the substantial body of jurisprudence which has been developed by the Labour Board to be used in determining whether an individual is a "Manager" for the purposes of the Code, thus avoiding uncertainty and fresh rounds of litigation.

2 – Exclusions from the Code – Agricultural Workers

Our belief is that when the code was enacted, this particular sector of the workforce was not included due to industry requirements and the distinct nature of employment in the agricultural sector. Although there have been many changes in agriculture over the years, it is still a very distinct sector of our economy which does not fall into any category with any other employment in the province.

For this reason, agricultural workers should still be considered separately from the rest of the working population. This particular sector should be studied individually in detail to determine if there is any need for coverage, which type of workers should be covered if any, and if so, how workers could be covered without putting into jeopardy the lifeblood of our economy. Agricultural employers must be confident that their operations will not be compromised and that they will not be placed in any financial hardship by a change in coverage.

3 – Promoting Compliance

Our belief is that there is no change needed in Manitoba's enforcement tools. The mere existence of the offences and penalties division, as well as the possibility of persecution for certain offences, already serve as deterrents to committing offences.

Section C – Reflecting the Changing Face of Today's Labour Force and the Demands on Today's Families

4 – Termination Notice

It seems that Manitoba has fallen behind in this area of employment standards, and a move to come in line with other province's policies would be sensible. It must be considered though that this move should put our province in similar position to the other provinces, and not ahead or behind them.

5 – Statutory Holiday Pay for Part-Time Workers

It is reasonable that permanent part-time workers should be compensated for statutory holidays. This type of employment generally includes a regular amount of working hours to be provided for the employee in a given week. Graduated pay based on the proportion of hours worked each week, in relation to full-time hours, would be a simple calculation and would provide some support for part-time workers.

By definition, casual workers are those that do not have a regular work schedule or regular amount of work hours. In this type of work relationship, it can not be said whether or not that employee likely would or would not have worked on any given day, and so compensation for holidays is not reasonable and should not be provided.

6 – Wage Deductions

Our belief is that the Code should not specify what deductions should and should not be allowed. It is reasonable that if the employee agrees to a wage deduction, and signs an authorization for those deductions, they should be responsible for the result of that situation. Any situation that is created as a result of the deductions, including their pay being lower than minimum wage on any given pay cheque, would then be the responsibility of the employee, who has already agreed to accept that responsibility. Government intervention is not required.

7 – Employment of Children

Our belief is that the current provisions governing the employment of children are more than adequate. The Director of Employment Standards has the discretion to grant or deny any application on the basis of effect on the child, working conditions, or any such matter. This approach includes protection for children, as well as flexibility within the system and has struck a reasonable balance between the two.

8 – Unpaid Leaves and Work-Life Balance

It is our belief that the Code should not provide for more unpaid leaves. The current combination of available leaves provides many options for employees to accommodate their life needs and also provides flexibility not previously allowed in the code.

Our resistance to adding more unpaid leaves lies in the effects that an employees leave of absence could have on the employer. While it is necessary to consider the life needs of employees, they are hired to fill a specific role and to perform necessary duties for the employer. Being without a key employee (paid or unpaid at the time), places the employer in significant difficulty to fulfill responsibilities and commitments to clients and other staff persons, and needs to be considered in this discussion as well. Every staff person plays a role in the success of an organization, and without being able to count on every person, the organization's success is in jeopardy.

In addition, we believe that before any more unpaid leaves are even considered, the province should provide its residents with an evaluation of the recently adopted Compassionate Care Leave legislation and its effect on employers and employees. The Province and its residents must be absolutely sure that this provision is working for employees and employers before making any additions of this type of leave to provincial employment standards. Without a firm base of knowledge that the legislation absolutely works, then additions could just create difficulties and confusion for our residents and employers, and lead to litigation to clarify its requirements.

Section D – Conclusions

Manitoba's Employment Standards provide a significant degree of protection for employees in our province, but more consideration needs to be given to the rights of employers in similar situations. Both sides of every situation must be considered when guidelines are set in order to guarantee fairness for all parties and reasonable protection for all involved.

This review and the language used in it signal a significant shift in the province's view of the nature of relationship between an employee and their employer. It seems to indicate a shift towards the logic that employees should be paid for time, and not for the work they complete. A shift in the other direction to employees producing value for employers in order to earn their wage would be most welcome, and would also increase the value of employees to their employers, thereby putting every employer in a position to provide for their employees more than what these minimum standards require.