



Canadian
Council of
Grocery
Distributors

Conseil
canadien des
distributeurs en
alimentation

**Canadian Council of Grocery Distributors' Submission to the
Manitoba Ministry of Labour and Immigration's Consultation on
the Employment Standards Code**

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I Introduction

Please accept this submission on behalf of the Canadian Council of Grocery Distributors (CCGD), and its Manitoba based members, as stakeholder input to the consultation on Manitoba's Employment Standards Code.

The grocery retail and food distribution industry welcomes the opportunity to provide comments on the proposed changes and issues highlighted by the Manitoba Ministry of Labour and Immigration. Following an examination of the issues and the provided consultation material, CCGD recommends the following:

1. That the responsibility for granting work variances for hourly workers be shifted to the Director of Employment Standards with no change in criteria.
2. That the Code should contain specific provisions for non-managerial salaried staff regarding the eligibility for overtime. Specifically the Code should provide clear direction on who is eligible for overtime and who is not.
3. That the Code should include a clear definition of manager and those employees that meet that definition should continue to be exempted from the overtime provisions of the Employment Standards Code.
4. That the current Ministry of Labour and Immigration enforcement mechanisms function as required and implementing a new ticketing/enforcement structure to deal with a very small amount of repeat offenders is both unwarranted and unnecessary.
5. That the requirements for notice periods for terminations be aligned with other jurisdictions and a minimum notice period for employers be established at one week per employee's years of service to a maximum of eight weeks. In addition that the current ability of employer to equally hold an employee accountable should be maintained by including a minimum employee notice period of one pay period.

6. That the Code should extend statutory holiday pay to part-time employees provided they have worked a minimum amount of hours in a defined qualification period prior to the statutory holiday. In addition the amount of pay received should be commensurate with the hours worked during the qualification period.
7. That reasonable wage deductions should continue to be permitted provided they do not reduce the hourly wage to below the established minimum.
8. That Manitoba change the minimum employment age to 14 years of age for workplaces other than factory/industrial applications.

II Who is CCGD

CCGD is a not-for-profit national trade association representing the interests of the food distribution and retail grocery industry across Canada. Amongst its members are small and large grocery wholesalers, foodservice distributors, and retail operations. The Council's membership represents approximately 85% of the \$63 Billion total sales volume of grocery products distributed in Canada. In Manitoba CCGD members are responsible for in excess of \$ 2.4 billion in grocery and food sales, operate or supply 1,178 locations and employ approximately 14,500 Manitobans.

III Hourly Workers – Work Variance

Work variance from the standard 8 hours a day, 40 hours a week maximum, or hour averaging agreements, are not commonly used by the retail grocery or food distribution industry's in Manitoba. There are instances of some application of work variance in non-unionized members or for specific and narrowly defined purposes. As such, CCGD supports moving the responsibility for reviewing and granting work variance for hourly workers to the Director of the Employment Standards in order to simplify the application process and to provide for administrative efficiencies. In addition CCGD members believe that the current criteria for obtaining a work variance are sufficient and that no further changes are necessary.

IV Salaried Employees

Given the implications arising from the Nygard case, CCGD members believe that it is important that the Employment Standards Code contain specific provisions regarding

salaried employees and eligibility to overtime pay. In particular, the Code should provide clear direction on who is eligible for overtime and who is not. While it is the perspective of CCGD members that this can largely be achieved with a clear definition of manager (with managers being exempted from the overtime provision), the Code should also include provisions that exempt senior salaried staff, that do not meet the definition of manager, from the overtime provisions. These changes will acknowledge that in most workplaces there are senior salaried staff who are not technically managers, but who have but have discretion over their working hours and job functions, and as such should also be clearly exempted from the overtime provisions of the Code.

V Managers

As suggested by the consultation guide, CCGD members strongly recommend that the Employment Standards Code include a clear definition of manager. Employees who meet this definition should continue to be exempted from the overtime provisions of the Employment Standards Code provided the salary received exceeds the minimum wage for all the accumulated hours worked.

Criteria that should be incorporated within the definition of manager include:

- The employee should be salaried
- The employee should be involved in the hiring process and/or decisions, as well as the termination process and/or decisions
- The employee should be involved in the authorization and scheduling of hours
- The employee should have supervision and management responsibilities
- The employee should be involved in the performance appraisal/performance management process
- The employee should have access to confidential and/or personal employee information.

Given the wide degree of management roles and tasks within the grocery retail and food distribution industry, the test for the definition of manager must be flexible. In other words, the definition should be structured in such a way so that the employee must meet some, but not all the above-mentioned criteria in order to be considered a manager.

VI Promoting Compliance

As indicated during our verbal presentation in December 2005, CCGD questions the need to introduce new and enhanced compliance mechanisms within the Employment Standards Code. The current system is complaints based, with adequate compliance options available to the Ministry of Labour and Immigration, under both the Employment Standards Code and the Labour Relations Act. In addition, under these Acts the employee that chooses to bring forward a complaint, or provide information to an investigation, is also afforded considerable protections (protections that under the Code were recently enhanced).

The Ministry of Labour and Immigration has indicated to CCGD that it requires these enhanced compliance mechanisms to deal with a very limited number of persistent and ongoing violators. CCGD has grave concerns that the Ministry is planning to establish a completely new, fines based, compliance mechanism to deal with a very limited number problem employers, when the current system, with its attendant costs (legal and otherwise), potential awards and financial penalties are more than adequate for the vast majority of employers. As such we would either recommend that the Ministry develop a focused strategy to address the specific issue of persistent and ongoing violators to the Employment Standards Code, or utilize the existing tools at its disposal and not adopt any change the Code in this area.

In terms of other means of promoting compliance:

- CCGD does not support the publishing of the names of violators of the Employment Standards Code, or any form of public shaming, as a mechanism for promoting compliance.
- CCGD and its members are very supportive of educating employees to their rights under the Code. As such, in absence of a collective agreement, CCGD members support the concept of requiring employers to post a summary of key elements of the Employment Standards Code in a prominent location of a workplace.

VII Termination Notice

CCGD and its members are supportive of introducing modification to the provisions regarding termination notice in the Employment Standards Code. This is clearly an area where Manitoba lags behind other jurisdictions.

As such, CCGD members would recommend that an amended Employment Standards Code include a graduate notice provision (which could be given either as working notice or pay in lieu of notice). Under this provision the employer would be required to give an employee one weeks notice per year of service to a maximum of eight weeks. In addition, in recognition that employees also have a responsibility to their employers, CCGD recommends that Manitoba retain the requirement for employees to provide their employers a minimum notice period of one pay period.

VIII Statutory Holiday Pay

CCGD agrees with the consultation document and with the Ministry of Labour and Immigration that the Code should extend statutory holiday pay to part-time employees provided they have worked a minimum amount of hours in a defined qualification period prior to the statutory holiday. CCGD recommends:

- That in order to be eligible to receive statutory holiday pay an employee must work at least 50% of the full time hours in the 4 weeks prior to a statutory holiday. (i.e. an average of 20 hours per week)
- Once that threshold is reached an employee will receive holiday pay commensurate with the percentage of hours worked relative to full-time. (i.e. if an employee works 64% of full time hours they receive 64% of the full time holiday pay)

In addition, whatever system or formula is adopted by the Ministry of Labour and Immigration, it is imperative for it to be administratively simple and structured in such a way that calculations of entitlement and amount can be automated.

It is vital for the Ministry of Labour and Immigration to recognize that that the part-time statutory holiday pay mechanism outlined above could prove to be troublesome if a collective agreement is in place. The prospect of having to evaluate and pay the higher

of individual sections of agreements compared to sections of ESA would create a problem (and huge administrative burden) for most unionized employers. CCGD therefore recommends that the amended Employment Standards Code be allowed to defer to the collective agreement where in whole the agreement is superior to the Act.

IX Wage Deductions

Non-tax or non-government related wage deductions are used relatively frequently in the retail grocery industry to cover a variety of employee related cost at source. These cost can include uniform cost, union dues, and costs for voluntary social clubs or program. CCGD support the Employment Standards Code continuing to permit these deductions provided:

1. The employee agrees to pay these cost as a condition of employment (i.e. union dues or uniform costs) or as a condition of participation (i.e. social club), and
2. That the agreed to costs do not reduce the hourly wage to below the established minimum.

In addition the Code must also continue to support allowing employers to make final payroll adjustments/deductions upon termination of employment, in order to recoup monies owed by an employee (this can occur for a variety of reasons but is used predominantly to recoup holiday pay for an employee that has taken more vacation that they are entitled to).

X Employment of Children

The employment of individuals below the age of 16 is a reality in the modern Canadian economy. Youths aged 14 to 16 want to participate in the work force on a part-time basis in order to earn money, and many service sector (retail grocery included) make use of their labour. As such, it is imperative that the Ministry of Labour and Immigration recognize the need to introduce changes to make it simpler for this segment of the population to work. CCGD recommends that Manitoba change the minimum employment threshold age to 14 years of age for all non- factory/industrial applications. In addition, the Employment Standards Code should include provisions that limit the hours of workers below the age of 16 to four hour per day on school days.

XI Conclusion

CCGD and its Manitoba based members thank you in advance for your consideration of our input.

Please do not hesitate to contact Justin Sherwood at (403) 250-6608 with any questions.