

Submission to the Government of Manitoba

Employment Standards Review 2005
Submitted by the Canadian Federation of Students
January 2006

Canadian Federation of Students

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Regarding the Employment Standards Review 2005**

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INTRODUCTION

The Canadian Federation of Students is pleased to have this opportunity to make a submission for the Employment Standards Code review. We are equally pleased that the provincial government is tackling such a relevant and urgent set of issues in relation to the changing world of work. We want to fully acknowledge that the questions addressed in the Review discussion guide are difficult ones, and to thank the provincial Minister of Labour for undertaking this much-needed review, after what the government recognizes as thirty years of no substantial changes to the Employment Standards Code.

Made up of over half a million students from 80 colleges and universities, the Canadian Federation of Students (CFS) is Canada's national and provincial student movement. In Manitoba, CFS members from the Association des étudiant(e)s du Collège universitaire de Saint-Boniface, Brandon University Students' Union, University of Manitoba Graduate Students' Association, University of Manitoba Students' Union, and University of Winnipeg Students' Association number over 40,000. The mandate of the Canadian Federation of Students is to defend the interests of post-secondary students and to work towards the establishment of a high quality, universally accessible system of post-secondary education across Canada.

As the provincial government acknowledges, the nature of work has changed significantly in the past thirty years. Students are working more and more jobs and hours to finance their education, and many recent graduates have the expectation of non-standard work arrangements and multiple career changes. Yet one thing has not changed: generally, those most vulnerable to slipping below the poverty line are also the least likely to participate in post-secondary education. If the living standard of those that are in the workforce can be improved, partly through an Employment Standards Code that is

modernized to reflect the new dynamics of employment, the likelihood of their being able to pursue a post-secondary education also increases.

Although the Canadian Federation of Students does not have exhaustive policy on issues of employment standards, we do have policy with respect to students' rights as workers, economic justice, and the notion of a fair and just society. It is with this in mind that we provide a selection of responses to the topics raised in the Employment Standards Review 2005 Discussion Guide provide by the provincial government to guide the Review.

Generally, the Canadian Federation of Students notes the huge surge over the past three decades in non-standard work. As the Manitoba Federation of Labour argues in greater depth,¹ this development has been driven in large part by globalization and in smaller part by technological developments. Given that the trend towards a more contingent workforce has resulted in added to worker stress, lower incomes, more downloading of costs from employer to employee, less eligibility for benefits, and less predictability and stability at work, the Canadian Federation of Students advocates adding more protections for workers to the Code as an important part of a multi-faceted approach to protecting students' rights as workers and graduates, eliminating poverty, and increasing opportunity in Manitoba.

MINIMUM WAGE

As was detailed in our submission to the Province on minimum wage in December 2004, approximately 60% of minimum wage workers are adults², post-secondary students and youth make up an important sub-section of low-wage workers, and most young people are low-wage workers. The Canadian Federation of Students has long and often advocated a higher minimum wage, one that would be formulated based on a fair and realistic measure of decent standards of living, such as the Statistics Canada low-income cut-off (LICO) or the Acceptable Living Level of the Social Planning Council of Winnipeg. The minimum wage is not an indication of the value of work, but was

¹ Manitoba Federation of Labour. October 2003. *Perspectives*.

² Canadian Centre for Policy Alternatives Manitoba. December 2004. Submission to the Minister of Labour on the Minimum Wage.

designed to ensure that a full-time, full-year worker could survive on her wages. In addition to what we have stated in the past, we now urge the provincial government to recognize that more and more workers do not have one full-year, full-time job. Minimum wage is therefore less and less adequate to keep workers and their dependents at or above the low-income cut-off line. It is therefore imperative there be a significant increase to the minimum wage and that no exceptions to the minimum wage, no matter what class of worker, be maintained in the Code.

According to the National Anti-Poverty Organization (NAPO), the number of full-time jobs with benefits and stable hours has decreased while the prevalence of part-time jobs paying minimum wage with fewer hours has increased: “Minimum wage means people must live below the poverty line. These jobs also make it more difficult to gain the hours needed to qualify for Employment Insurance”³. NAPO identified sole-support parents, women, Aboriginal people, immigrants and refugees, the elderly, and youth as particularly vulnerable to slipping below the poverty line, and encourages governments to implement other measures besides minimum wage increases, including access to Employment Insurance benefits for more workers, ending the clawback of child benefits for those on social assistance, increasing social assistance amounts, and lowering tuition fees and increasing student grants. We appreciate that the provincial government has been implementing many of these measures. Further, The Canadian Federation of Students advocates that minimum wage immediately be increased to at least the LICO cut-off (about \$8.50-\$9.00 per hour according to the CCPA⁴), with subsequent, automatic, annual adjustments for inflation, based on the Consumer Price Index for Manitoba. Alternatively, the Government of Manitoba could increase minimum wage to about \$10 per hour and lobby for the reinstatement of a federal minimum wage, as recommended by the National Anti-Poverty Organization and the Manitoba Federation of Labour.

³ National Anti-Poverty Organization. 2004. NAPO <http://www.napo-onap.ca/en/youth/Intro%20to%20Youth%20Poverty.html>

⁴ Canadian Centre for Policy Alternatives Manitoba. December 2004. Submission to the Minister of Labour on the Minimum Wage.

Although it is true that employers and employees alike increasingly desire more flexible working conditions, this flexibility should not come at the expense of fair pay and working conditions.

BENEFITS, LEAVE, VACATION AND HOLIDAYS, HOURS OF WORK AND OVERTIME

Given that most households are now sustained by two incomes, we urge the provincial government to extend leave provisions to include access for all workers to short-term leave for family business, illness, bereavement, and compassionate reasons.

All workers should also be entitled to access long term Employment Insurance funded leave. The provincial Code should also anticipate the extension of compassionate leave in the federal Employment Insurance Act. Further, in order to promote stability and fairness, seniority should continue to accrue to workers taking any leave authorized by the Code.

Breaks are inadequate and should be improved: a paid 15 minute break every three hours should be provided. In addition, a paid 30 minute lunch break should be considered.

Part-time, contingent, casual, and “independent contractors” should have access to pro-rated benefits, vacations-with-pay, statutory and general holiday entitlements.

As mentioned elsewhere in this submission, the Code was devised with the assumption that a household budget could be sustained by one worker in one job from youth until retirement. This is no longer the case, and hours of work rules need to reflect

Overtime is becoming an increasingly difficult issue. Many workers do not realize or feel they are entitled to overtime pay, and many employers, especially in small and non-standard workplaces, do not feel compelled to pay it. Also, the wide use of technology such as mobile phones, pagers, home computers, email, and just-in-time management tools means that workers are often not informed with sufficient notice of their shifts, are pressured into working overtime, are not paid for three hour “call-ins”, etc.

The Code should also extend to all workers, salaried or hourly-paid, fair compensation for hours worked beyond eight hours a day and forty hours a week. The Code should include protections for all workers against the assignment of excessive amounts of overtime. These could take the form of limits on overtime hours, or, perhaps more practical, a graduated overtime rate, in which the rate rises to twice the basic rate of pay after a certain point.

EXEMPTIONS FROM THE CODE

Agricultural workers should not be subject to blanket exclusion from the provisions of the Code, especially minimum wage and overtime. Employers in agricultural sectors and other sectors with seasonal employment should have to make applications to the Labour Board or at least the Director of Employment Standards in order to be granted specific exclusions.

With respect to the question of the exclusion from the Code of “managers”, the distinction between a manager and a supervisor should be included. A supervisor, who has no real decision-making power in the workplace should not be excluded from the Code. Also, the definition of “independent contractor” should not be so broad: it should be crafted so as to reflect the notion of a genuinely independent contractor, not simply a worker who has multiple employers or erratic hours of work.

TERMINATION AND JOB LOSSES

Graduate termination based on seniority should be implemented. More importantly for new workers and women, provisions for just cause for termination must be included in the Code. As well, we agree with the Manitoba Federation of Labour that the group terminations policy should be amended to include a mandatory termination procedure for employers of units of twenty or more employees to include one year’s notice of closure, a labour-employee-management committee, one week of severance pay for every year of service, the institution of a closure tax (to be paid to a provincial fund), and employer contribution to retraining, job searches, relocation, and counseling.

PAY EQUITY

The principle of equal pay for work of equal value, or pay equity, must be extended into the private sector through the Code. The intent and basic provisions of the Pay Equity Act should be included in the Code.

ENFORCEMENT

This Review provides an excellent opportunity to improve enforcement of the Code. For young workers who are unsure of their rights, enforcement of the code becomes even more important. Enforcement should probably include penalties, provisions for investigations triggered by third-party complaints, more investigations and monitoring of non-traditional workplaces, especially where workforce transition is high and language barriers exist. The bottom line is that workers fearing job loss are not likely to take on employers that are breaking the Code: a proactive approach to enforcement is required.

GUIDES AND LEGISLATION

We encourage the provincial government to produce a variety of different plain language, accessible guides, in official languages as well as targeted languages, In particular, there is a need for a plain language guide for young workers, contract and self-employed workers, and recent graduates in first-time career jobs, as they may be unsure of their rights as workers. In addition to such a guide, youth and worker friendly help services should be further developed. Such services provided by labour unions may provide useful models.

CONCLUSION

The Canadian Federation of Students salutes the Minister of Labour for undertaking this much-needed Employment Standards Review. We urge the provincial government to use the Review as an opportunity to create a better balance between the need for flexible workers and work arrangements and the rights of workers. We believe that, in the absence of a Code that addresses new and emerging issues, the balance has been tipped in favour of employers.

Young people, who make up a large portion of the membership of the Canadian Federation of Students, are very vulnerable workers. As unionization, which adds a

crucial layer of protection for workers, becomes less common, as the Minister states, the onus falls more squarely on the Code to offer the protections needed for safe, fairly remunerated and dignified work. Although there are several gray areas, we want to see a modernization of the Code that provides for pay equity among women and men, less exclusions from the standards, more benefits and entitlements for part-time and salaried workers and contractors, and better provisions in the case of job loss.