

**Employment Standards Review
December 2005**

**Submission
Of
Merit Contractors Association**

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The Merit Contractors Association of Manitoba was established in 1994 to provide services, training programs and employee benefits to the open shop contractors of Manitoba and to represent our members on government boards and committees. The association has approximately 70 member companies representing both General Contractors and Trade Contractors.

The Merit Contractors Association of Manitoba is pleased to offer comments, opinion, and discussion on topics in the Employment Standards Code that would come to bear on the construction industry.

Hours of Work & Overtime

The construction industry in Manitoba is governed by both the Employment Standards (ES) Code and the Construction Industry Wages Act (CIWA). Both statutes provide parameters of labour standard to the construction sector and can result in some areas of confusion or uncertainty in terms of application. The CIWA regulations have recently been reviewed and updated in terms of minimum hourly wage rates, overtime, and ratios of skilled to unskilled workers in the Code. **In order to ensure clarity in application of these statutes, it is recommended that sections in the Employment Standards Code that addresses issues included in the CIWA regulation are cross referenced.** This would greatly aid the reader in knowing which legislation applies.

We would support change in the process for issuing an hours of work variance.

There is provision referenced in the CIWA for variances in some circumstances that involve both the Director of Employment Standards and the Labour Board. A change to the Code to permit the Director of Employment Standards to adjudicate variances would streamline the process. There should however be opportunity to have disagreements to these decisions taken to the Manitoba Labour Board.

Salaried Employees

We do not see any benefit to make changes to the Code for salaried employees. The ES Code is sufficiently flexible to protect the interests of both employees and employers. Although there is the odd exception where an employee has been taken advantage, these exceptions have been managed by the Labour Board favorably for employees.

Incentive Based Workers

Incentive based employment relationships are reflected in the current Code and appear to be in line with other jurisdictional regulations in Canada. **We do not recommend any change in this area of the Code.**

The Merit Contractors Association supports the right of individuals to work on their own and to perform piece work as independent contractors. The current exemption of independent contractors under the regulation is supported. However we do not in any way support avoidance of taxes or provisions of the Worker's Compensation Act.

Managers

In the construction industry as elsewhere there is a hierarchy of employment. For the construction industry we do not recommend new provisions in the ES Code to define the hierarchy of staff positions. **It is recommended that the terms and conditions that describe a job be left to the employer and that other provisions of the code would apply such as entitlement to maternity leave etc.**

Compliance

Currently enforcement of the Code is managed on a complaints based model. This method along with the protection afforded employees in Manitoba who bring a complaint forward serve some degree of compliance. However, more needs to be done to ensure that the Employment Standards Code and the CIWA regulation are understood. More knowledge and better understanding of these statutes will serve to establish an environment of compliance. Most employers strive to meet the requirements of regulations and would demonstrate an enhanced level of compliance with the provisions of the Code if they more fully understand the expectations.

The Merit Contractors Association recommends that The Employment Standards Office provide more education in the form of clear language written material regarding Employment Standards Code and information sessions for employers and employees. Summary documents in respect to hours, overtime and workers rights published and posted at work sites could ensure greater compliance.

Enforcement

It is recommended that any changes in respect to enforcement and penalties be written and given a good hearing from industry. There are enforcement provisions in the current statutes that may work as a deterrent if they too were better understood.

Termination Notice

Based on the nature of work in the construction industry the provisions set out in the Employment Standards regulations for construction have served the industry well. **We do not recommend any changes to the sections dealing with termination notice currently in the CIWA.**

Individuals working within the industry but not in construction jobs could benefit from some type of graduated notice. **We would support amendments in the Code in respect to these individuals as other jurisdictions have done.**

Statutory Holiday Pay for Part –Time Workers

In our view it would be reasonable to extend this benefit to part time workers by calculating statutory holiday pay as a percentage of the worker's gross earnings in the four-week period leading up to the holiday.

Wage Deductions

Wage deductions are not an issue in the construction industry. **We do not recommend any changes to the code in respect to wage deductions** as the current code requires that employees authorize any deductions from their pay which provides adequate protection for employees.

Employment of Children

Manitoba Employment Standards Code has provisions that provide for the safety and health of children in the work place. Children under 16 years require a permit from the Director of Employment Standards to work which are issued based on Branch policy. **We do not recommend change to the code but would suggest that the Director may wish to establish guidelines that are made available to industry regarding issuance of permits for the various sectors.**

Unpaid Leaves and Work -Life Balance

Our experience is that most employers recognize the need of work life balance for their employees and currently provide bereavement leave although it is not stipulated in the Employment Standards Code.

As bereavement leave is almost universally provided it should be included in the code in this instance the code would be catching up to general practice.

There is however caution on length of leave as any leave provides hardships for those who are left to cover for those away.