

Submission to the Employment Standards Code Review

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1. Annual Leave: The Current Situation in Manitoba and Canada

- 1.1 Under Section 34 (1) of the Employment Standards Code, each employee is entitled to an annual vacation of “at least two weeks after each of the first four years of employment” and “three weeks after five consecutive years of employment and each year of employment after that.”
- 1.2 This is similar to the standards applied in other provinces. All other provinces except Saskatchewan require that employees be provided with at least two weeks annual leave, while some provinces (with some exceptions, such as Prince Edward Island and Ontario) require that more senior employees be provided with at least three weeks annual leave. Saskatchewan provincial law, however, provides employees with a minimum of three weeks annual leave.
- 1.3 Section 184 of the Canada Labour Code, which applies to about 10 percent of the national workforce, also requires that employees be given at least two weeks annual leave, rising to three weeks after six years continuous employment.
- 1.4 A review of the Canada Labour Code is currently underway. Upon announcing the creation of the Federal Labour Standards Review Commission in 2004, federal labour minister Joe Fontana indicated that he is personally in favour of increasing the Code’s minimum annual leave provisions.¹ The Commission is expected to table its final report by Jan. 31, 2006.

¹ “Ottawa Gets Set To Revamp National Labour Code”, CTV News web site (www.ctv.ca), Nov. 1, 2004

2. Defining “Normal”

- 2.1 Among the 20 most highly developed countries in the world², the statutory minimum annual leave period ranges from zero working days in the United States (which is the only advanced economy without a statutory minimum) to 25 working days in Austria, Denmark, France, Luxembourg and Sweden.
- 2.2 Among the world’s 20 most developed countries, the average minimum annual leave is 19.45 days. If one excludes the United States for its lack of a statutory minimum, the average statutory minimum rises slightly to 20.47 days.
- 2.3 Among those 19 advanced countries with a statutory minimum, there is a standard deviation from the 20.47-day average of +/- 4.46 days. Therefore, the “normal” statutory minimum annual leave for a country with a standard of living similar to Canada’s should be somewhere between 16 and 24 working days.
- 2.4 It becomes clear from the above that the 10 working day minimum that is prevalent in Canada is abnormally low for a country of such high living standards.
- 2.5 Notably, Manitoba’s 10-day minimum does not even meet ILO recommended standards, which state that: “[annual leave] shall in no case be less than three working weeks for one year of service.”³

² Based on the 2005 United Nations Human Development Index. These countries are, in alphabetical order: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom and the United States.

³ International Labour Organization (ILO), *Holidays with Pay Convention (Revised)*, 1970, Article 3, Paragraph 3. Canada declined to ratify this convention.

3. Trends in Annual Leave

- 3.1 The trend in recent years has been toward making 20 working days annual leave the minimum standard for an advanced economy.
- 3.2 In 1997, the Irish government amended Section 19 of the *Organisation of Working Time Act* to provide four weeks paid annual leave to those employees who work at least 1,365 hours in a working year.
- 3.3 Starting in November 1998, the British government raised minimum annual leave from three weeks to four weeks under Section 13 of the *Working Time Regulations*. Although employers may now count Bank Holidays (currently eight per year in England and Wales) toward the four-week minimum, the British government recently introduced the *Work and Families Bill 2005*, which will make the 20-day minimum exclusive of bank holidays.
- 3.4 In December 2003, the New Zealand parliament passed the *Holidays Act 2003*, which will raise minimum annual leave from 15 to 20 working days as of April 1, 2007. Reasons for raising the minimum included the fact that New Zealand's 15-day minimum (five days greater than Manitoba's) was relatively low in comparison to other highly developed nations, and that a rise would help stem New Zealand's "brain drain" to Australia (which has a 20-day minimum) and make New Zealand more competitive with its larger neighbour in attracting skilled immigrants.
- 3.5 In a sweeping reform of its labour laws, South Korea began phasing in three weeks annual leave as the statutory minimum beginning on July 1, 2003. The Commission that recommended this change reported that its goal was to bring South Korean annual leave provisions "in line with internationally recognized standards". (Presumably this would mean that Manitoba is *not* in line with those standards.)
- 3.6 The Australian government is currently making extensive changes to its labour laws. In spite of this, the government has repeatedly emphasized that four weeks paid annual leave (in place nationwide since 1974) will continue to be guaranteed.

4. Effects of Increasing Annual Leave

- 4.1 Increasing annual leave would, first and foremost, encourage a higher level of consumer spending. This was one of the reasons why the Inbound Tour Operators Council of New Zealand supported increasing annual leave from three to four weeks per year in that country. In their words: *“Our industry in general supported this increase, as TIANZ’ assessment of these proposals suggested tourism activity would increase as New Zealanders have more days to take as holidays. This should serve to improve the overall profitability of the industry, and help raise activity in the industry particularly during the quiet months.”*⁴
- 4.2 Further to the above, an undated communiqué prepared by the Ontario Ministry of Tourism and Recreation estimated that raising vacation time by 10% in Canada would lead to a 1.5% increase in related expenditures. It also found that about 22-23% of the cost of providing additional paid leave can be recovered through resulting productivity gains.⁵
- 4.3 The effects of longer paid annual leave periods can be seen by comparing spending on domestic tourism among Canadians (who have a two-week minimum) and Australians (who have a four-week minimum). In the year ending June 30, 2002, Australians spent an average of C\$44.5 billion⁶ on domestic tourism. In the 2002 calendar year, Canadians spent C\$35.3 billion on domestic tourism. Since Canada’s population is somewhat larger than Australia’s (33 million versus 20 million), this means that per capita spending on domestic tourism is about twice as high among Australians as it is among Canadians. Even taking other factors into account, such as Australia’s lack of land borders with other countries, this is still a significant difference.
- 4.4 The introduction of four weeks paid annual leave in Ireland in 1997 and Britain in 1998 caused no economic hardship for either country. In fact for the years 1994-2004 (taking in several years before and after the introduction of four weeks annual leave), both the Irish and British economies grew at a faster rate than the OECD average.⁷ This is backed up by the fact that the British economy grew by 15 percent in real terms from 1995 through 1999, while output per hour worked grew by more than seven percent in the same period.

⁴ ITOC Update, March 9, 2004, p. 7

⁵ Sport and Recreation Research Communiqué No. 14, cited in the Tourism Industry Association of New Zealand’s (TIANZ) parliamentary submission on the Holidays (4 Weeks Annual Leave) Bill.

⁶ Based on OECD purchasing power parity estimates. Using June 2002 exchange rates instead of PPP, total Australian spending would only drop slightly to C\$43.6 billion.

⁷ OECD In Figures, 2005 Edition, pp. 14-15

- 4.5 It is interesting to note that Andrew Sharpe, a leading Canadian expert on productivity and executive director of the Ottawa-based Centre for the Study of Living Standards (CSLS) went out of his way to note the potential positive effects of longer annual leave allowances in a presentation given to the Senate Standing Committee on Banking, Trade and Commerce in May 2005:

“[A]ctions that reduce working time through longer vacations and more public holidays...can have two positive effects. First, such policies contribute to economic well-being by increasing leisure. Second, while there is some output and income loss, this is offset somewhat by workers becoming more productive on an hourly basis, the true measure of productivity.”⁸

⁸ An edited version of Mr. Sharpe’s testimony is available online at <http://www.csls.ca/news/presentations/productivity.asp> (Google keyword search: “Six Policies to Improve Productivity Growth in Canada”)

5. Recommendations

- 5.1 The Employment Standards Code should be amended to conform to ILO recommended standards by providing each employee with an annual vacation of not less than three weeks (preferably four weeks) after each year of employment.
- 5.2 Legislating longer vacations for those with five years service or more with the same employer is an idea originating from a time when there was far less job mobility than there is today. In order to prevent the potential loss of vacation time from interfering with job mobility, the emphasis should be on setting a single statutory minimum that is fair, reasonable and in line with international standards, rather than having different minimums for different kinds of employees.
- 5.3 The fact that Manitoba does not comply with the minimum standards for annual leave recommended by the International Labour Organization (ILO) is reprehensible. Under no circumstances should this situation be allowed to continue indefinitely.

Appendix A: Statutory Minimums Among The World's 20 Most Highly Developed Countries

Country	Statutory Minimum Annual Leave (working days)
Austria	25 days
Denmark	25 days
France	25 days
Luxembourg	25 days
Sweden	25 days
Finland	24 days
Iceland	24 days
Norway	21 days
Australia	20 days
Belgium	20 days
Germany	20 days
Ireland	20 days
Italy	20 days
Netherlands	20 days
Switzerland	20 days
United Kingdom	20 days
New Zealand	15 days (20 days from April 1, 2007)
Canada	10 days (15 days in Saskatchewan)
Japan	10 days
United States	(No minimum)

Appendix B: ILO Holidays with Pay Convention (Revised), 1970

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-fourth Session on 3 June 1970, and

Having decided upon the adoption of certain proposals with regard to holidays with pay, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fourth day of June of the year one thousand nine hundred and seventy the following Convention, which may be cited as the Holidays with Pay Convention (Revised), 1970:

Article 1

The provisions of this Convention, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards, court decisions, statutory wage fixing machinery, or in such other manner consistent with national practice as may be appropriate under national conditions, shall be given effect by national laws or regulations.

Article 2

1. This Convention applies to all employed persons, with the exception of seafarers.
2. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention limited categories of employed persons in respect of whose employment special problems of a substantial nature, relating to enforcement or to legislative or constitutional matters, arise.
3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 2 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

1. Every person to whom this Convention applies shall be entitled to an annual paid holiday of a specified minimum length.
2. Each Member which ratifies this Convention shall specify the length of the holiday in a declaration appended to its ratification.
3. The holiday shall in no case be less than three working weeks for one year of service.
4. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a further declaration, that it specifies a holiday longer than that specified at the time of ratification.

Article 4

1. A person whose length of service in any year is less than that required for the full entitlement prescribed in the preceding Article shall be entitled in respect of that year to a holiday with pay proportionate to his length of service during that year.
2. The expression year in paragraph 1 of this Article shall mean the calendar year or any other period of the same length determined by the competent authority or through the appropriate machinery in the country concerned.

Article 5

1. A minimum period of service may be required for entitlement to any annual holiday with pay.
2. The length of any such qualifying period shall be determined by the competent authority or through the appropriate machinery in the country concerned but shall not exceed six months.
3. The manner in which length of service is calculated for the purpose of holiday entitlement shall be determined by the competent authority or through the appropriate machinery in each country.
4. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, absence from work for such reasons beyond the control of the employed person concerned as illness, injury or maternity shall be counted as part of the period of service.

Article 6

1. Public and customary holidays, whether or not they fall during the annual holiday, shall not be counted as part of the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention.
2. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, periods of incapacity for work resulting from sickness or injury may not be counted as part of the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention.

Article 7

1. Every person taking the holiday envisaged in this Convention shall receive in respect of the full period of that holiday at least his normal or average remuneration (including the cash equivalent of any part of that remuneration which is paid in kind and which is not a permanent benefit continuing whether or not the person concerned is on holiday), calculated in a manner to be determined by the competent authority or through the appropriate machinery in each country.
2. The amounts due in pursuance of paragraph 1 of this Article shall be paid to the person concerned in advance of the holiday, unless otherwise provided in an agreement applicable to him and the employer.

Article 8

1. The division of the annual holiday with pay into parts may be authorised by the competent authority or through the appropriate machinery in each country.

2. Unless otherwise provided in an agreement applicable to the employer and the employed person concerned, and on condition that the length of service of the person concerned entitles him to such a period, one of the parts shall consist of at least two uninterrupted working weeks.

Article 9

1. The uninterrupted part of the annual holiday with pay referred to in Article 8, paragraph 2, of this Convention shall be granted and taken no later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen.

2. Any part of the annual holiday which exceeds a stated minimum may be postponed, with the consent of the employed person concerned, beyond the period specified in paragraph 1 of this Article and up to a further specified time limit.

3. The minimum and the time limit referred to in paragraph 2 of this Article shall be determined by the competent authority after consultation with the organisations of employers and workers concerned, or through collective bargaining, or in such other manner consistent with national practice as may be appropriate under national conditions.

Article 10

1. The time at which the holiday is to be taken shall, unless it is fixed by regulation, collective agreement, arbitration award or other means consistent with national practice, be determined by the employer after consultation with the employed person concerned or his representatives.

2. In fixing the time at which the holiday is to be taken, work requirements and the opportunities for rest and relaxation available to the employed person shall be taken into account.

Article 11

An employed person who has completed a minimum period of service corresponding to that which may be required under Article 5, paragraph 1, of this Convention shall receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.

Article 12

Agreements to relinquish the right to the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention or to forgo such a holiday, for compensation or otherwise, shall, as appropriate to national conditions, be null and void or be prohibited.

Article 13

Special rules may be laid down by the competent authority or through the appropriate machinery in each country in respect of cases in which the employed person engages, during the holiday, in a gainful activity conflicting with the purpose of the holiday.

Article 14

Effective measures appropriate to the manner in which effect is given to the provisions of this Convention shall be taken to ensure the proper application and enforcement of regulations or provisions concerning holidays with pay, by means of adequate inspection or otherwise.

Article 15

1. Each Member may accept the obligations of this Convention separately--

(a) in respect of employed persons in economic sectors other than agriculture; (b) in respect of employed persons in agriculture.

2. Each Member shall specify in its ratification whether it accepts the obligations of the Convention in respect of the persons covered by subparagraph (a) of paragraph 1 of this Article, in respect of the persons covered by subparagraph (b) of paragraph 1 of this Article, or in respect of both.

3. Each Member which has on ratification accepted the obligations of this Convention only in respect either of the persons covered by subparagraph (a) of paragraph 1 of this Article or of the persons covered by subparagraph (b) of paragraph 1 of this Article may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of all persons to whom this Convention applies.

Article 16

This Convention revises the Holidays with Pay Convention, 1936, and the Holidays with Pay (Agriculture) Convention, 1952, on the following terms:

(a) acceptance of the obligations of this Convention in respect of employed persons in economic sectors other than agriculture by a Member which is a party to the Holidays with Pay Convention, 1936, shall ipso jure involve the immediate denunciation of that Convention;

(b) acceptance of the obligations of this Convention in respect of employed persons in agriculture by a Member which is a party to the Holidays with Pay (Agriculture) Convention, 1952, shall ipso jure involve the immediate denunciation of that Convention;

(c) the coming into force of this Convention shall not close the Holidays with Pay (Agriculture) Convention, 1952, to further ratification.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the

Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.