

# **Manitoba Employment Standards Review**

## **Submission of the United Steelworkers**

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**INTRODUCTION**

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "United Steelworkers") is an international union with over 700,000 members throughout Canada and the United States. More than 10,000 of those members are in Manitoba. Steelworkers are men and women of every social, cultural and ethnic background in every industry and job, including steel production, mining, manufacturing, security guards, hospitals, university staff, transportation and communication, and the retail and service sector.

The United Steelworkers is committed to ensuring that its members, as well as workers generally, are treated with dignity, respect and equality in their workplaces and in their communities. This commitment is reflected in Article 2 of the United Steelworkers' Constitution that states that it is one of the objects of the Union to "perpetuate and extend social and economic justice in Canada and the world community."

The United Steelworkers believes that strong and effective minimum standards legislation is central to the struggle for social and economic justice. Through collective bargaining and political action, the United Steelworkers has been in the forefront of the struggle to improve terms and conditions of employment for both organized and unorganized workers. Over the last decade, the United Steelworkers has made numerous representations to the Federal and Provincial governments about reforms to employment standards legislation.

A review of Manitoba's *Employment Standards Code* is long overdue. The law must be revised to better protect workers from the negative effects of changes in the organization of work in the 21<sup>st</sup> century. We are pleased to have this opportunity to make this submission on behalf of the members of the United Steelworkers in Manitoba.

In this brief, we respond to the questions raised in the Manitoba Government's *Employment Standards Review 2005: Discussion Guide*. In addition, we propose changes which we believe will advance the struggle for dignity, respect and equality for all working people in Manitoba and make the enforcement of employment standards more effective and meaningful.

## **The Changing Workplace of the 21<sup>st</sup> Century and the Importance of Strong Employment Standards Laws**

As noted in the Government's *Discussion Guide*, the nature of work has changed significantly over the last thirty years. As a result of economic and other pressures, workplaces in Manitoba are reshaping the nature and structure of economic activity. These pressures to change workplace organization are felt in the province and around the world.

The business community and governments claim that prosperity-for-all will be the payoff for working leaner and harder. They say that if workplaces and workers are more efficient and "flexible," everyone will benefit. These claims have proven to be false. In the Steelworkers experience workplace changes are having a profoundly detrimental effect on the lives of working people.

The business community says that flexibility around work-time, and other terms and conditions of employment, is the central organizing principle of the new global work order. In response to market deregulation, free trade and increased international competitiveness, employers demand increased flexibility around labour and labour time. They rely more and more on part-time workers, contingent workers, shift workers, weekend workers and overtime to meet "just-in-time" demand. They trim production costs by downsizing of workers and speeding-up production. Our 24-hour service economy demands that workers be

available to work at times and in rhythms increasingly dependent on a market-driven logic.

The new work order is creating a paradox in terms of the distribution of working time and opportunities for working people. Mass unemployment and underemployment for some workers coexists simultaneously with excess overtime and "time famine" for others. For many full-time workers, working hours remain long and are getting longer. Rates of overtime use are growing, together with the rate of overtime being performed without pay. Homework is becoming an increasingly common feature of work-life. At the same time, over one million Canadians remain unemployed.

The rapid growth of part-time, contingent and contract work has resulted in the erosion of the standard workweek. Employer demands for employees to work irregular shift-work and erratic and unsociable hours are increasingly commonplace. Contingent workers consistently have reduced pay, benefits and opportunities for advancement. Women, young and visible minority workers disproportionately experience the disadvantages of contingent work.

For workers, the new work order contributes to a continuing decline in their quality of life. The mal-distribution of working hours is the key factor in the increasing inequality of income and opportunity in Canadian society.<sup>1</sup> Long working hours, as well as unemployment and under-employment are undermining the physical and mental health of workers. Production speed-up contributes to workplace stress. This leads to illness, workplace accidents and absenteeism. Long and erratic working hours make it difficult for working men and women to balance work and family commitments.

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<sup>1</sup> Centre for Social Justice, *The Growing Gap: A Report on Growing Inequality Between the Rich and Poor in Canada*, (Toronto: Centre for Social Justice, 1998) at 26.

The need for “flexibility” in the new global work order is driven by the needs of employers and the drive to maximize profits. It is contrary to the needs of working people for better jobs, better incomes and for working conditions and schedules that enable them to better balance their lives in and outside of paid employment.

Working people are rightly suspicious of employer demands for greater “flexibility” in their workplaces. Flexible working hours often come at the expense of worker's health and social and community life. As the International Confederation of Free Trade Unions noted in its report on globalization and social justice:

...most workers and their unions see flexibility as a one way concept, pushed by employers and their allies. It has come to mean flexible workers, flexible jobs, flexible wages, flexible working conditions, flexible fairness, and flexible justice.<sup>2</sup>

Given the scope and nature of these changes and their enormous impact on the quality of the social and economic life of working people, Manitoba needs more-than-ever strong laws to protect and advance the dignity, respect, and equality of working people in Manitoba. Employment standards laws arose and developed because governments recognized that nonunion workers are unable to negotiate acceptable terms and conditions of employment. An employer's power to unilaterally fire a worker gives rise to an enormous inequality of bargaining power in the employment relationship, for which workers have little countervailing power.

The Manitoba *Employment Standards Code* has for many years provided a floor of rights for working people in Manitoba. It strives to ensure that all

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<sup>2</sup> International Confederation of Free Trade Unions, *Globalising Social Justice: Trade Unionism in the 21<sup>st</sup> Century* (27 March 2000) at 77.

workers and especially those that are the most vulnerable - young workers, women workers, immigrant workers and workers of colour - are not exploited.

Minimum employment standards limit the employer's unilateral exercise of power which can harm employees. Employment standards laws prevent unscrupulous employers from exploiting vulnerable workers in the labour market. They help prevent employers from gaining an unfair market advantage against their competitors by requiring universal compliance. Strong employment standards laws are needed to protect employees from their employers and to help ameliorate the inequality in bargaining power in the employment relationship. It is more important than ever that the historical role of employment standards laws in the protection and advancement of the dignity, respect and equality of working people must be protected and maintained.

## **Discussion Guide Questions**

### **Hours of Work and Overtime**

The Discussion Guide states that "employers and/or workers may want greater flexibility in their hours of work arrangements." In the United Steelworkers' experience, such flexibility is sought and obtained at the expense of employees. As discussed above, "flexibility" typically means erratic and unpredictable schedules, fluctuating hours of work and last minute demands for overtime or shift changes. None of these so-called "flexible" work rules benefit employees, rather they cause significant stress and adversely affect workers' personal lives and their health and safety.

The United Steelworkers recognizes that in certain circumstances it may be appropriate for employers to have a limited amount of flexibility to respond to unique circumstances in a workplace or an emergency situation that justifies exceeding normal daily or weekly hours of work for a specified duration, a limited time and a defined purpose. This is already reflected in sections 19 and 20 of the *Code*; however, the sections should be amended to set a maximum amount of overtime hours in emergency situations.

The United Steelworkers submits that the important factor in regulating hours of work and overtime and for permitting narrow exceptions to the “normal” hours of work set out in the *Code*, is that the body with the authority to permit deviations from the minimum standards imposed is giving due consideration to all of the relevant factors on a case by case basis. An adjudicative body like the Labour Relations Board is best placed to hear and consider all of the relevant factors in such a case. The process for determining this important issue must be transparent and fair to all concerned.

The “agreement” of a majority of employees should not be among the criteria for determining whether a variance order should be issued. In our experience, particularly in non-union operations, employees are naturally inclined to ally themselves with what they perceive to be their employer’s wishes. This is not surprising. After all, their employer wields absolute control over their

working lives. Accordingly, if an employer makes it clear to its employees that it wishes to have more “flexibility,” the employees are likely to “support” such a position because they fear repercussions if they do not.

In any case, the criteria for determining whether overtime rules or working hours should be changed must include as the first and most important factor, consideration of any effect the order could have on the safety, health, and welfare of the employees affected, particularly any negative effects the order could have on the affected employees’ family and social commitments. In a unionized workplace, the United Steelworkers submits that no permit for variance of hours of work or overtime should issue unless the bargaining agent has agreed in writing to the employer’s request, and the other criteria, including health and safety, have been satisfied.

Finally, the *Code* must make it clear that any permit which authorizes excess hours of work or overtime is permissive, that is, it entitles any employee who wishes to work excess hours or over time (or who may be required to work such hours under a collective agreement) to do so. But the law must be clear that such a permit does not entitle an employer to compel an employee to work such hours.

The United Steelworkers endorse the Manitoba Federation of Labour’s submission that all workers, whether hourly or salaried, should be entitled to fair



compensation for hours worked in excess of eight hours a day and forty hours a week.<sup>3</sup> Further, part-time workers should enjoy complete recognition and protection under the *Code*, particularly in relation to pay equity and benefits entitlement.

### **Exclusions from the *Code*: Agricultural Workers**

Employment standards were developed in order to provide a basic floor of rights for all workers in the province and to address the inequality in bargaining power between workers and employers. Workers with more bargaining power can negotiate for greater rights with their employers. Providing exemptions from the *Code* undermines the universality of basic worker's rights.

Agricultural workers are among the most vulnerable workers in Canada. Many workers in the agricultural sector are migrant workers. They are typically subject to deplorable working conditions, including long hours without overtime pay and substandard wages and living conditions.

The “family farm” is disappearing from Manitoba’s culture and landscape, and is being replaced by huge agribusiness operations. These operations are indistinguishable from industrial operations in other sectors of the economy. Agribusiness employs large numbers of employees in circumstances where those employees must be entitled to the same basic statutory protections as all other

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<sup>3</sup> Manitoba Federation of Labour, “*Brief to the Employment Standards Code Review Commission*,”

workers. There is no reason to exclude agricultural workers from the *Code*. Further, there is no logical reason for differentiating among agricultural workers, as is the case in Ontario, by providing protection to some types of agricultural workers and not to others. The *Code* in its entirety, including minimum wage, hours of work, overtime, vacation, and holiday pay should apply to all agricultural workers.

Further, the United Steelworkers support the submission of the Manitoba Federation of Labour that the exclusion of domestic workers and route salespersons from the *Code* also be lifted.<sup>4</sup> There should be no exemptions from the minimum standards in the *Code* for any purpose whatsoever. There is no reason why domestic workers, farm workers, and route salespersons should be excluded from the *Code* or subject to "special rules." We are opposed to creating a two-tiered system of employment standards rights in Manitoba.

The United Steelworkers fully supports amendments to the *Code* which expand the applicability of the employment standards provisions to all people in Manitoba who are dependent on an employer for their livelihood. The United Steelworkers supports a definition of the employment relationship that will ensure the universal applicability of the *Code* to all working people in Manitoba.

## **Employment of Children**

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December 12, 2005 at p. 6.

<sup>4</sup> *Supra*, note 3 at p. 3.

Young people are particularly vulnerable to exploitation. They are rarely educated about their employment rights and often work under unsafe conditions, with inadequate training and education. Furthermore, working long hours interferes with a young person's education and social development.

There should be a ban on any employment of children under the age of 16 and the current system of issuing permits to allow for children under the age of 16 to work should be abandoned.

### **Leaves and Work-Life Balance**

The United Steelworkers supports legislative changes that promote a better work/family balance. The *Code* must be amended to promote this balance. The current *Code* is entirely silent on the issue of sick, family or bereavement leaves. At a time when the demands upon working people to care for sick children or elders, are increasing due to demographic changes and the erosion of our publicly funded healthcare system, workers should not be penalized through the threat of job loss.

As the *Discussion Paper* recognizes, workers are facing issues related to work-life balance for a number of reasons. This is because demands by employers for workers to work excess hours or flexible hours are increasing. In addition, as our population ages, an increasing number of workers (disproportionately women) face the pressure of caring for ageing parents, while also raising children and, in many cases, heading single parent households. These competing pressures give rise to a great deal of stress, which can be

debilitating to workers. In addition, such stresses and pressures undermine productivity in the workplace.

The *Code* must be amended to recognize that workers must be entitled to respond to their family's needs without fearing job loss or other adverse employment consequences.

#### **a) Maternity/Parental Leaves**

There is no sound justification for the requirement that, to qualify for maternity and/or parental leave an employee must have been employed with the same employer for seven consecutive months. This requirement exceeds the requirement in many other jurisdictions. Indeed, there is no rational basis for the law to require any minimum period of employment before an employee is entitled to maternity leave. If a minimum period of employment is maintained in the *Code*, it should be reduced to 13 weeks of continuous employment prior to the leave.

#### **b) Compassionate Care Leave**

The current eight week limit on compassionate care leave should be extended to 12 weeks. Furthermore, the current eligibility for compassionate care leave is unduly restrictive. Leave is only granted when a spouse, common-

law partner, child, or parent of the employee faces a significant risk of death within 26 weeks. The circumstances to which the leave applies should be expanded to include siblings, grandparents, aunts and uncles who are gravely or terminally ill, though not necessarily at risk of imminent death.

### **c) Illness, Family Crisis and Bereavement Leave**

In order to alleviate the stress associated with personal illness and family crises, the *Code* should establish separate paid leave provisions for personal illness, family crisis and bereavement leave.

Five days of paid bereavement leave should be provided in the event of a death of a family member, being a spouse, common-law partner, child, parent, grandparent, sidling, cousin, aunt or uncle.

Currently, the *Code* does not provide any leave for sickness or family emergency. For employees with childcare responsibilities - who are primarily women – this is a concern. Children frequently get sick and employees may have to sacrifice their own sick days in order to care for their children. Furthermore, the employer may not provide sufficient sick days to enable an employee to care for her family, and she may face termination when an emergency situation arises.

The United Steelworkers submits that the *Code* should provide for a minimum of five paid sick days a year and at least five paid emergency leave days a year to enable employees to deal with family crises. These leaves must be paid, so that workers are not penalized for using them. These workers cannot afford to sacrifice pay when they or their family members are sick. Furthermore, if paid sick and emergency leave is available, employees will not attend work when they are ill and potentially put their health and safety and the health and safety of their co-workers at risk.

### **Termination and Severance Pay**

The United Steelworkers submits that the current provisions for termination in the *Code* are inadequate and in need of change. Given the speed with which technological developments are reshaping the workplace, workers who have been terminated and are searching for jobs require more time to undertake skill development and job search activities. Most other jurisdictions in Canada provide for graduated notice of termination of employment. The purpose of notice of termination is to give the employee a period of time to come to terms with his pending termination, consider options and search for alternative employment. The provision of greater notice to workers who have greater seniority with their employer recognizes that such workers are likely to be older

and may not have a current skills base. These factors may make it more difficult for the terminated worker to find work elsewhere and accordingly, that worker will need a longer period to adjust to his pending termination and, hopefully, find another job.

The United Steelworkers submits that the *Code* should be amended to provide for a minimum of two weeks' written notice of termination for each partial year and full year of employment. This written notice of employment should apply in all situations of individual termination of employment, and will be in addition to an increased notice entitlement when a group of employees is terminated.

The *Code* must be amended to eliminate the employer's entitlement to collect a financial penalty from a worker who quits without providing "proper notice." There is no justification for such a provision in the *Code*.

Further, the United Steelworkers supports the submission of the Manitoba Federation of Labour that the *Code* should provide for severance pay for all employees, and that mandatory termination procedures must be implemented in workplaces where more than twenty employees will be terminated.<sup>5</sup>

### **Termination for Just Cause**

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<sup>5</sup> *Ibid* at p. 9

The United Steelworkers endorses the submission of the Manitoba Federation of Labour that the *Code* should contain a provision requiring the employer to demonstrate just cause for termination.<sup>6</sup>

An unjust dismissal provision is a step in the right direction; however, more needs to be done. Unjust dismissal claims are litigated in the courts. This process is cumbersome and expensive, resulting in few employees actually filing claims.

The United Steelworkers submits that the *Code* should incorporate a system similar to that found in s. 242 of the *Canada Labour Code* whereby an independent adjudicator is appointed to hear and decide a complaint of unjust dismissal. Such a system would expedite the process and alleviate the financial burden associated with litigation.

### **Statutory Holiday Pay for Part-Time Workers**

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<sup>6</sup> *Ibid.*



Manitoba should change the eligibility requirement for statutory holiday pay for all workers. The United Steelworkers submits that the requirement that an employee work 15 of the 30 days prior to the holiday in order to be entitled to holiday pay should be repealed.

If the *Code* is not amended to eliminate this precondition for full time workers, it must be eliminated for part-time workers. Part-time workers should be eligible for statutory holiday pay regardless of how many days they have worked in the preceding 30 days. To require such workers to work 15 of 30 days prior to the statutory holiday unfairly disqualifies many part-time workers from entitlement. As the Discussion Paper points out, the number of part-time workers in today's economy is increasing. Accordingly, it is reasonable to ensure that legislation which was passed when most workers had full time jobs, such as the requirement to work 15 days in a thirty-day period prior to a holiday, is eliminated so that this growing sector of the employment population is not unfairly penalized.

### **Wage Deductions**

The practice of deducting "costs" from workers pay is most common in the retail and service sectors, where workers typically work on a part-time or contingent basis and are often poorly paid. These workers have very little bargaining power and can be easily victimised by this type of employer practice.

If an employer has a basis upon which it may claim that a worker is responsible to pay certain "costs," the employer has a variety of other mechanisms through which it can recover those costs, including small claims court. It is regressive and unfair for the law to explicitly authorize and entitle an employer to deduct "costs" from the wages of its employees.

It is consistent with the spirit and intent of minimum standards legislation for the most vulnerable workers to be protected. The United Steelworkers submits that the *Code* should be changed to expressly prohibit employers from deducting any amounts from the wages of employees.

The current state of the law which permits deductions from wages where such deductions are "authorized" by employees is unfair. In virtually all situations where a worker "authorizes" his employer to reduce his wages, that such authorizations are not freely given. In all likelihood, the worker provides such authorization because he feels he has no choice but to do so, or face recriminations, up to and including dismissal.

## **Human Rights Committees**

Protecting and improving the working conditions of workers requires acknowledgement of the gendered and racialized structure of the working population, workplaces and jobs. Women, visible minorities and immigrants are much more likely to be in low-paid and insecure jobs. Incidents of discrimination and harassment on the basis of sex, race and ability in the workplace are pervasive. Employment standards legislation can and should be utilized to secure and promote human rights in the workplace.

The United Steelworkers submits that the provisions of the Manitoba *Human Rights Code* should be enshrined in the *Employment Standards Code*.

Unrepresented workers often lack the support and the means necessary to address workplace human rights problems in a timely way. We support the mandatory creation of workplace human rights committees, following the model for health and safety committees in the *Workplace Safety and Health Act*.

Human rights committees – consisting of equal numbers of employee and management representatives and funded by employers – would monitor compliance with human rights statutes and provide education and training on human rights and diversity issues for both employees and management. They would deal with discrimination and harassment complaints at the workplace level. In the event an issue could not be resolved, the committees would provide

information on how employees could file complaints under existing human rights statutes.

As with the enforcement of minimum standards generally, non-unionized workplaces must be scrutinized and monitored to ensure that workplace human rights committees are established and functional. To this end, the United Steelworkers also recommends and supports a pro-active and ongoing educational campaign for workers and employers so that all affected parties know their rights and obligations.

## **Enforcement**

The United Steelworkers supports amendments to the *Code* that will strengthen the penalty and reprisal provisions for employer non-compliance. Non-compliance with the *Employment Standards Code* is widespread. Excessive delays in processing claims are commonplace, and this discourages workers from utilizing the *Code*.

As long as workers can be fired without cause by their employers, it can not be said that workers can truly exercise their rights under the *Code*. As noted above, the United Steelworkers supports the recommendations of the Manitoba Federation of Labour that the *Code* be amended to include a prohibition against unjust dismissal in employment. Only when a worker knows that he or she cannot be fired without cause will workers feel free in coming forward to exercise their rights under the *Code*. The United Steelworkers supports strong, immediate measures to deal with reprisals.

The key to effective enforcement is knowledge of employees' rights and employer's obligations under the *Code*. To this end, an educational program

should be implemented in all workplaces. The *Code* should provide for postings and distribution of employment standards in all workplaces. These postings should be in plain language and translated into the language(s) in common usage in each workplace. This ensures that employees are aware of their rights and employers are aware of their legal obligations.

The United Steelworkers submits that the almost exclusively complaint-based nature of the *Employment Standards Code* creates further barriers to enforcement of the *Code*. Making low paid, vulnerable workers - often women and immigrant workers with limited English skills - responsible for filing complaints ensures that many abuses of employment standards by employers will go undealt with. The Ministry of Labour needs to take a proactive role in seeking out and investigating violations of the *Code*, by conducting random inspections and spot audits of employer's records. The Steelworkers agree with the Manitoba Federation of Labour's submission that the *Code* must allow for anonymous and third party complaints.<sup>7</sup> Employers should be subject to routine and unannounced audits of their degree of compliance with the *Code*.

To further strengthen compliance with the *Code*, along with orders, a system of escalating fines should be imposed for violations of the *Code*. The level of fines should include all costs of the investigation and penalties, not simply administrative costs. Employers against whom an order is made should be subject to a series of random, unannounced follow-up inspections. Repeated

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<sup>7</sup> *Ibid* at p.7.

violations should result in larger fines and prosecutions. The fines currently payable upon being found guilty of an offence need to be significantly increased.

The United Steelworkers takes the position that the *Code* must continue to be enforced through the Ministry of Labour. It must not be downloaded or otherwise transferred to other parties. Where minimum standards are made enforceable through collective agreements, for example, such enforcement is weakened. The Ministry of Labour must retain responsibility for ensuring that the legislated minimums are aggressively enforced.

It is essential that any changes to the enforcement mechanism of the *Code* be adequately backed up by ensuring that the proper resources are available to the Ministry. This means that Ministry staff must be properly funded so there are enough Officers to ensure that the *Code* is enforced throughout the province. The Officers must be properly trained and clothed with the necessary authority to be able to obtain all of the information necessary to issue orders and follow their enforcement through.

## **Conclusion**

The United Steelworkers calls for improved and more generous employment standards and for stricter enforcement of the *Code* against unscrupulous employers preying on the most vulnerable workers in our society. The United Steelworkers believes that strong and vigorously enforced standards are an

important means of building a society where the benefits of economic growth and prosperity are more equitably shared amongst all its members.

**All of Which is Respectfully Submitted.**

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