

# REPORT ON THE PUBLIC HEARINGS ON THE MANITOBA GOVERNMENT REVIEW OF THE EMPLOYMENT STANDARDS CODE

## **Introduction**

In the last throne speech, the Manitoba Government announced plans to review the provisions of the *Employment Standards Code*. The Government prepared and circulated a Discussion Guide which invited input into the following areas:

1. Hours of Work and Overtime;
2. Exclusions from the Code: Agricultural Workers;
3. Promoting Compliance;
4. Termination Notice;
5. Statutory Holiday Pay for Part-Time Workers;
6. Wage Deductions;
7. Employment of Children;
8. Unpaid Leaves and Work-Life Balance.

## **Purpose of this Report**

The writer chaired the public hearings into the review of the Code. The purpose of this report is to provide an overview of the submissions and to highlight the positions taken by the various parties, areas of concern, and any areas of

general consensus on possible changes to the Code.

It is not the intention of this report to make specific recommendations. The writer, as Chair of the Joint Labour Management Review Committee, and the Committee will receive and review Government's proposed changes and requests for further input.

### **Public Hearings**

The following public hearings were held:

Winnipeg - December 1, 2005, December 12, 2005 and January 12, 2006

Thompson - December 6, 2005

Brandon - December 7, 2005

Thirty-eight (38) parties made presentations at the public hearings. Most of the parties presenting at the public hearings filed written submissions.

### **Inter-Jurisdictional Comparisons**

The Department of Labour and Immigration reviewed current employment standards legislation across Canada. This review was made available to presenters and will not be analyzed in this report. The Department review

highlights areas where Manitoba's legislation differs from the majority of other provinces. Two examples are provisions providing for graduated notice (depending on years of service) by an employer to employee and bereavement leave to deal with a death in an employee's family.

### **Process**

Many presenters criticized the review process. A common criticism was that the timeframe of the review did not allow the parties time to get input from their constituency and to do a thorough review of the issue. The timing of the review (Christmas) presented other problems. Also, many presenters referred to the Federal Government's review of the *Canada Labour Code* and pointed to this as an example of a properly conducted review in terms of resources and timeframe. In spite of the criticism, most presentations addressed the issues in the discussion paper and expressed the views of their constituency on the various subject areas. The CFIB, for example, presented results of a detailed survey of their members touching on the issues raised in the Discussion Guide.

### **Issues Outside those Raised in the Discussion Guide**

A number of presenters addressed issues that were not specifically raised in the Discussion Guide. Some of these issues were raised by a number of presenters. These included:

(a) Minimum Wage

A majority of labour presenters argued for a proposal tying the minimum wage to sixty (60%) percent of the average industrial wage which would result in a wage of \$10.05 per hour at this time. The CFIB objected to this proposal as being feasible.

(b) Wrongful Dismissal Legislation

A significant number of labour presenters asked for changes to the Code that would require just cause before termination is legally permitted. This would create a system similar to the provisions in the *Canada Labour Code*. HRMAM specifically spoke against these proposals.

(c) General Holidays

A number of labour groups, including the MFL, proposed the creation of a number of additional holidays including August Civic Holiday, Boxing Day, Heritage Day in February and either Easter Sunday or Easter Monday. CFIB indicated its membership was opposed to this proposal.

(d) Vacation with Pay

Many of the labour groups proposed a graduated system of providing more annual leave for employees. The CFIB indicated that a vast majority of its membership is opposed to an increase.

(e) Benefits for Part-Time Workers

Almost all labour groups requested legislation requiring employers to provide pro-rated benefits to part-time employees if these benefits are provided to full-time employees.

Other proposals dealt with the need for provisions in the Code dealing with workplace harassment, severance pay, paid breaks (after 3 hours rather than 5 hours), reporting pay, a closure tax (MFL) and clarification that all union contracts must meet all minimum standards (CEP Local 1403, The Pas).

**Areas of Concern and/or Consensus**

Generally there was little, if any, consensus between labour organizations and employer groups on the issues set out in the Discussion Guide. One area (which will be commented on later in this report) of consensus was the need to ensure compliance with the standards set out in the Code and the value of an enhanced education program for both employers and employees.

Overall, employer groups stressed the need to avoid unnecessary regulations. Manitoba needs to be competitive. It faces a shortage of skilled workers. It also has to be competitive to attract new business. If Manitoba is perceived to have unfair provisions in the Code, this will deter new business from opening in Manitoba. Business (particularly small and medium sized) does not need further

unnecessary regulations.

Labour groups generally urged that certain improvements were necessary to ensure that worker's rights were both protected (i.e. 40 hour week protected) and enhanced (i.e. extended bereavement leave, inclusion of agricultural workers).

### **Issues Under the Review Mandate**

Each of the eight (8) issues outlined in the Discussion Guide will be reviewed separately. Highlights of the submissions will be noted along with the names of the groups making the submissions.

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

##### **(i) Flexibility, Salaried, Incentive-based and Managers**

Employer groups generally recommended the need for flexibility in dealing with hours of work and overtime.

The following major themes emerged from the employer group submissions at the public hearings:

- (a) Flexible salary arrangements and hours of work should be encouraged. It was argued that this benefits both employers and employees (Canadian Council of Grocery Distributors, Manitoba

Employer Council, Manitoba Wall and Ceiling Association);

- (b) The status quo for incentive based arrangements;
- (c) Exclusion of Managers from the provisions of the Code dealing with hours or work and/or the whole Code (MEC, HRMAM, Canadian Council of Grocery Distributors). Three groups (HRMAM, MEC and Winnipeg Chambers) recommended the definition of “manager” under the *Labour Relations Act* be adopted for the Code.

Labour groups and other presenters endorsed the following points:

- (a) All workers are entitled to overtime for work in excess of 8 per day / 40 per week (MFL, United Steelworkers, and CCPA);
- (b) Flexible work arrangements usually erode the family / social life of workers because they mean unpredictable work schedules and last minute demands for overtime (United Steelworkers);
- (c) Managerial exclusions are abused because employers place supervisors and lead hands into an exclusion that should only apply to senior managers (MFL);
- (d) An exclusion for salaried workers will be abused because it creates an incentive to convert hourly workers into salaried to evade the legislation (CCPA);
- (e) The need for more, not less, regulation of hours of work is needed in the following areas: legislated reduction in the work week; the creation of maximum hours of work (labour groups and the HRMAM

supported this); and guaranteeing hours and advanced scheduling of part-time workers (MFL Occupational Health Centre, UN Platform for Action).

(ii) Variance Process and Criteria for Variances

Employers (HRMAM, WCA, MEC, Canadian Council of Grocery Distributors) were strongly in favour of moving the jurisdiction for variance applications to the Director of Employment Standards from the Manitoba Labour Board. The rationale for such a change is to ease the workload of the Board.

Certain labour groups (United Steelworkers and CCPA) urged caution in that such a change in the process would lead to less transparency and the potential for political interference.

There was a lack of consensus among employer groups regarding the appropriate criteria to use in variance approval. Some (MEC and Manitoba Wall and Ceiling Association) suggested majority support of employees be the sole criteria. HRMAM recommended that industry norm be the criteria. Others (Genisis Hospitality and Canadian Council of Grocery Distributors) suggested that the present system remain intact.

Labour groups and others (USW and CCPA) agreed that majority rule is

not appropriate.

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

All labour groups (CCPA, Brandon District Labour Council, MFL, UN Platform for Action, United Steelworkers, MGEU, Safe Workers of Tomorrow, Manitoba Interfaith Immigration Council, and UFCW) urged that agricultural workers no longer be excluded from the provisions of the Code.

As for the employer group, the CFIB surveyed their membership on this issue. Ninety-two (92%) percent of the agri-business members wish to preserve the exclusion from the Code for farm and ranch hands.

The MEC and Winnipeg Chamber urged caution in making any changes to this area of the Code. They argued that further input and consultation was required from industry representatives. Care should be taken to interfere with one of Manitoba's growth industries.

## **3.0 Promoting Compliance**

With the exception of the Manitoba Employers' Council and Winnipeg Chamber there was a consensus from employers, labour, and other groups on the need to promote compliance. All groups believe that in order for there to be meaningful

minimum standards there is a need to ensure compliance with those standards. Employer groups such as the HRMAM explained that a lack of enforcement gives advantage to some employers at the expense of progressive employers who follow the law. Presenters promoted the following enforcement tools:

- (1) Education and Promotion of Minimum Standards - A common view was that a lack of knowledge, not intent, is at the heart of the enforcement problem. Labour and other groups explained that vulnerable workers in Manitoba do not understand their rights and as a result are unlikely to stand up for those rights. Groups proposed that the mandatory posting of standards in the workplace, written in plain language, become a standard to ensure all workplace parties have access to standards. The Canadian Council of Grocery Distributors and WCA were among the employer groups supporting this solution. The CCPA and one employer group (WCA) promoted better use of the print and electronic media similar to the Safe Work campaign.
- (2) Increasing Administrative Resources of Branch - Many labour, other stakeholders, and employer representatives (HRMAM, WCA, Manitoba Wall and Ceiling Association) explained that it is pointless to pass new regulations if there is not adequate staff to enforce those regulations.
- (3) Choosing Appropriate Investigative Methods - Many labour, other, and

employer groups supported a move from the current reactive investigative structure to proactive auditing of violators and potential violators. The common theme on new approaches to investigation was that if the legislation is meant to protect the vulnerable, it should be recognized that those workers are too fearful to stand up for their rights. The use of anonymous complaints, third party complaints, and support for community and advocacy groups were cited as a way to assist in investigations that target the most vulnerable.

- (4) Administrative Penalties / Ticketing - Labour and employer presentations were not unanimous on a need to introduce additional penalties. Many employers (MEC, Winnipeg Chamber, Canadian Council of Grocery Distributors and Genesis Hospitality) were not convinced that additional tools are required. The HRMAM, labour and other groups supported penalties explaining that the only way to promote compliance is to make it a lose / lost situation for the violator.
- (5) Other Tools - The issue of publishing names of violators was not discussed in many presentations. The Grocery Council formally rejected the use of public shaming while the CCPA support this tool. Some other presenters (Workers Organizing Resource Centre, Earl Dyck - Citizen, Alice Gable - Citizen, and CUPE Manitoba) explained that due to the fact that workers using the standards are extremely vulnerable there is a need

for specific advocacy for workers similar to that under the Manitoba Public Insurance and Workers Advisor systems.

#### **4.0 Termination Notice**

The existing Code provisions do not provide for graduated notice provisions based on years of service. These provisions are present however in a number of jurisdictions across Canada. The CFIB was the only group to be opposed to any change in the legislation under any conditions. MEC and HRMAM supported the inclusion of graduated notice conditional on the employee having an obligation to mitigate their damages and that any monies payable in lieu of notice be reduced by subsequent wages received by the employee.

Labour groups supported unconditionally the introduction of graduated notice provisions into the Code.

With respect to the issue of the requirement for an employee to provide notice, most labour groups and other presenters were opposed to this requirement.

MEC and Canadian Council of Grocery Distributors argued in support of the principle that employees provide the same notice as employers, and the Canadian Council of Grocery Distributors urged that employees be held financially accountable for a failure to provide notice.

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

The Code stipulates that a worker earn wages for fifteen (15) of the thirty (30) days prior to a statutory holiday in order to qualify for holiday pay.

Most presenters argued in support of a part-time workers' right to holiday pay. Nonetheless while labour and other groups advocated for the repeal of the 15 of 30 rule, some employers suggest a desire to maintain a system with differential treatment of part-time workers. The MEC, while supporting pro-rated pay on each cheque, believed that the 15 of 30 rule should remain in place. The Canadian Council of Grocery Distributors support an hours based threshold suggesting a worker would be required to work 50% of full-time hours to be eligible for holiday pay. The CFIB explained that 84% of their membership does not support holiday pay for part-time workers. The HRMAM supports a system similar to the way vacation is currently compensated.

## **6.0 Wage Deductions**

Under the present provisions of the Code, employers are allowed to make deductions from employees as long as a prior specific authorization is obtained from the worker.

There was a lack of consensus on this issue. Labour argued that it is not appropriate to allow deductions because vulnerable workers will sign an authorization out of fear for losing their job. As a result, labour supports the prohibition of deductions even where an authorization has been obtained. Employer groups (MEC and Genesis Hospitality) supported the status quo in this area. Genesis explained that employees should be held accountable for cash shortages through deductions. This is the easiest way for employers to recoup monies owing. Other employer groups, including the WCA and the Canadian Council of Grocery Distributors, support any deductions so long as the employee earns above the minimum wage.

## **7.0 Employment of Children**

The Code provides that a permit is required from the Director of Employment Standards for a child under sixteen (16) to work. Certain criteria are set out in the Code such as the prohibition on the employment of a child where the majority of work is done with machinery.

There was a divergence of views on this issue. The Steelworkers and Safe Workers of Tomorrow both advocated a prohibition on children under sixteen (16) working, although the Workers of Tomorrow expressed that if children work, they should be prohibited in working beyond 11:00 p.m. The CCPA spoke against the Alberta Code that allows employment of children without a permit.

Employers either recommended that the Government maintain the status quo (MEC) or requested more flexibility. The Canadian Council of Grocery Distributors recommended that the permit system be maintained but only for those children under fourteen (14). Otherwise, all children over fourteen (14) should be allowed to work without a permit unless they are employed in a factory. There was support by this group for a restriction of four (4) hours of work per day on a school day for any child.

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

There were significant differences between the position of labour, other groups and individuals. Every labour presentation promoted an employee's right to broad leaves that cover sickness, bereavement and family leave. In many cases labour believed these leaves should be with pay. Labour also advocated that there be a broadening of the compassionate care leave definition. A few of the labour presenters and others stated that the current eligibility requirement for maternity and parental leave of seven (7) months be reduced to either thirteen (13) weeks or twenty-six (26) weeks.

The employer groups urged caution in extending the leave provisions of the Code. Many groups explained that in smaller workplaces attendance is crucial and therefore granting leave should be done with caution. The Manitoba

Employers Council submitted that Manitoba is not out of line with other jurisdictions because Manitoba provides access to compassionate care leave.

The above review sets out a summary of the positions taken in the public hearings.

All the presenters are to be complimented for the time and effort put into these presentations.

Submitted this 26<sup>th</sup> day of January, 2006.

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