

Consultation Paper

with respect to the

P.E.I. *Employment Standards Act* /Regulations and the *Youth Employment Act*

Introduction

The Lieutenant Governor in Council, on the recommendation of the Honourable Elmer MacFadyen, Minister of Community and Cultural Affairs, has approved a review of the *Prince Edward Island Employment Standards Act* /Regulations and the *Prince Edward Island Youth Employment Act*. A panel of three people – an employer representative, an employee representative and a chairperson – has been appointed to conduct the review to begin in early 2006.

The review by the Employment Standards Review Panel is intended to develop recommendations to improve existing legislation in employment standards and in youth employment. It is anticipated the review will be completed in time for any recommendations to be considered by the Legislature Assembly as early as the fall of 2006.

It has been more than one decade since the *Employment Standards Act* / Regulations have been comprehensively reviewed. Some changes to the *Act* have been introduced in recent years to usher in such measures as maternity/parental leave and compassionate care leave benefits. Ongoing changes in the workplace, however, as well as evolving expectations are creating new realities for employees and employers.

The Review Panel will invite submissions from the employer and employee communities, community organizations, as well as individual citizens about how the existing legislation can be improved.

Why a Consultation Paper?

The purpose of this consultation paper is to suggest ways for you to think about what employment standards and youth employment mean to you, and how this legislation may be improved to meet the needs of Islanders. To assist you in this process, some topics and questions will be presented in the following pages for your consideration. The Review Panel welcomes your opinions on these topics or on any other relevant issue within its mandate.

Background to Discussion

Purpose and Scope of *Employment Standards Act* / Regulations

Much of the legislation forming the current *Employment Standards Act* / Regulations have been in place for many years. The purpose of this legislation is to establish rules that govern the employment relationship for private sector employers and their non-unionized employees on Prince Edward Island. Employment standards ensure employees are given fair and equitable employment conditions and also provide a level playing field for employers in the marketplace.

The *Employment Standards Act* / Regulations apply to about 55,000 employees on the Island – about 81 percent of the province’s workforce. The employers and employees who are subject to the legislation are diverse, ranging from the food and beverage industry to the manufacturing, tourism and resource sectors.

Changing Nature of the Workplace

Canada’s social, economic and demographic landscape has changed dramatically in recent years with some of these changes being felt also by Islanders. This experience is changing how Islanders work and how their workplace is organized.

Work arrangements and employment relationships have become much more complex. This is characterized by the rise in self-employment and other non-standard forms of work, including part-time, temporary, casual and agency employment, telework, and holding multiple jobs. Holding a “permanent” job throughout one’s working life is no longer a reality for most workers. Today, most Canadians can expect to have about three careers and eight jobs over their lifetime.

There have also been remarkable changes to the family and workforce demographics. Key examples include the greater participation of women in the labour force, the rise in dual earners and lone parent families, an aging population and a more diverse and multi-cultural workforce.

Globalization, increased competition, rapid technological change, evolving work processes and the need to constantly upgrade skills and acquire new knowledge have also made workplaces more complex.

These changes present new opportunities that can often benefit both employers and workers. On the other hand, they can also pose important challenges.

For example, the employment status of some non-standard workers may in effect exclude them from minimum labour standards protection and access to certain rights or benefits. Many workers also report facing increasing pressures to work longer hours while at the same time having to deal with pressures at home. As a result, some workers, especially those who are part of the “sandwich generation,” face difficulties balancing their work obligations with their personal and family responsibilities. Some studies suggest that this may contribute to rising stress in the workplace and related health and productivity problems.

Other studies show that workers seeking to be more productive and to respond to the demands of the labour market are looking for more learning opportunities, more control over their work schedules, and more input into important issues affecting their working lives.

Purpose and Scope of *Prince Edward Island Youth Employment Act*

This *Act* regulates the working conditions of young people under the age of 16 years.

Topics and Questions for Discussion

I. The *Employment Standards Act*

One of the goals of employment standards has traditionally been to protect employees who are in a weak bargaining position by enshrining standards of employment that reflect community norms and workplace practices in unionized sectors. Over the years, the *Act* was also amended to meet various social policy objectives. Some examples include the introduction of maternity, parental and compassionate care leave as well as sexual harassment provisions. Employment standards have also been modified to include exceptions and special provisions, especially with respect to the regulation of hours of work in certain sectors.

Suggested Questions:

1. What should be the general focus of the *Employment Standards Act* / Regulations?
 - 1.1 Should the Act/Regulations focus upon providing minimum protection for the most vulnerable employees or should they, instead, act to improve the overall working conditions of employees? Should new, innovative legislation be adopted or should changes be limited to already existing legislation? If the development of innovative legislation is appropriate, what kinds of innovative legislation should be considered?
 - 1.2 What should be the relationship between employment standards (as minimum standards) and workplace practices of the unionized sector?

II. The *Employment Standards Act* / Regulations – What Works; What Does not Work?

Prince Edward Island's employment standards legislation ensures all workplace relationships subject to the legislation are governed by minimum standards rules. The legislation includes some of the following provisions:

- hours of work / standard work exemptions
- overtime
- meal/rest periods
- minimum wage
- annual vacation
- statutory holidays
- maternity/paternity/adoptive leave
- bereavement leave
- sick leave / family leave /compassionate care leave
- notice of termination
- reporting pay

Suggested Questions:

1. Which of the above provisions, if any, should be amended and how should they be changed? What other sections of the *Employment Standards Act*, if any, needs to be changed? For example, should an additional paid holiday be established?
2. The banking of overtime hours beyond the standard work week is not currently permitted under the Act. Should the banking of overtime be permitted and, if so, in what form? Would time off in lieu be appropriate?
3. Are there workplace issues not currently covered by the Act which should be regulated?

III. New Forms of Work

Employment relationships governed historically by the *Employment Standards Act* / Regulations have involved permanent, full-time employees and their employers. This traditional workplace model has evolved to include part-time, casual, contract and other non-standard forms of employment.

Suggested Questions:

1. Should the *Employment Standards Act* / Regulations be broadened to include provisions to address non-standard forms of employment such as temporary or part-time work?
2. Should the *Act's* definition of "Employer" and "Employee" be broadened and, if so, how?

IV. Diversity and Changing Demographics in the Workforce

The workforce has changed considerably in the last four decades. The labour participation rate of women has doubled. Canada's population is aging. Members of the baby boom generation are now entering or approaching retirement, while the birth rate continues to decrease. The workforce is becoming more multi-cultural and there is growing recognition of the need to bring more people into the labour force from traditionally disadvantaged groups.

Suggested Questions:

1. Do current employment standards meet the needs of an aging workforce? For example, are older workers and their employers given the necessary flexibility to design work arrangements to allow these workers to remain active in the labour force if they wish to do so? Could legislative or non-legislative measures be taken to ease the transition from work to retirement? If so, please provide any examples or describe how this might be done.
2. Do current employment standards meet the needs of employed women? Are there any provisions that promote or hinder the pursuit of gender equality in the workplace and in the labour market?
3. Does the legislation need to be changed to address the needs of visible minorities. Provide any examples?

V. Globalization; Workplace Productivity

Globalization is requiring Island employers to become ever more competitive.

Studies suggest training opportunities do improve productivity. However, many employers and employees face obstacles in obtaining training opportunities due to limited financial resources.

Suggested Questions:

1. To what extent does Prince Edward Island's current employment standards legislation promote or harm productivity?
2. How can the *Employment Standards Act* /Regulations be improved to enhance productivity?
3. What should be the role of labour standards in promoting continuous learning in the workplace?
4. The Act/Regulations currently do not regulate employee training. Should the legislation regulate employee training and, if so, what kinds of training benefits should be set down as minimum standards?

VI. Balancing Work and Family Responsibilities

Many employees appear to be experiencing greater stress than ever before and many employers are experiencing first hand its effects. A better work-life balance may mean better employee health and greater productivity for employees and employers.

Suggested Questions:

1. What, in your opinion, is the effect of work-life stress experienced by employees/employers in Island workplaces?
2. What legislative changes, if any, should be made to make employment standards legislation more responsive to employee work-life needs?

VII. Improving the Administration and Enforcement of the Act

The Employment Standards Branch administers its legislation on a day-to-day basis by responding to inquiries from employees and employers. Many of these inquiries involve requests for information about the *Employment Standards Act* /Regulations and are resolved quickly – often with one phone call. More complex cases often require more time and effort to resolve. The Branch may also attempt to mediate disputes if the parties agree. Many disputes have been settled using this approach.

Consider a situation, for example, when an employee claims an employer has contravened the legislation and the parties cannot resolve this dispute and Branch mediation, if attempted, has been unsuccessful. If the Branch is informed of the employee's claim and if after an investigation the Branch is satisfied the claim has merit, the Branch will issue an Inspector's Order to the employer requiring it to pay the employee's claim if the employer is not willing to pay the amount of the claim.

The employer has 10 days from receipt of the Order to pay the amount claimed or to appeal the matter to the Employment Standards Board. If the employer appeals within the 10-day period, a hearing date will be set and the Board will make its ruling on the matter after hearing the parties to the dispute. If, for example, the Board rules in favour of the employee, it will issue a Board Order to the employer to be paid within 10 days. An unpaid Board Order will be registered with the Supreme Court of Prince Edward Island as a Court Order, leading to a judgment filed against the employer and subsequent action by the Sheriff's Office to recover monies from the seizure and sale of property.

Although the Branch has the authority to audit employers' payroll records as a means of pro-actively enforcing its legislation, diminished Branch resources have, over time, reduced its reliance upon this approach. As a consequence, employment standards legislation in this province is enforced primarily by a complaints-based process.

The complaints-based approach assumes employers, for example, comply with the legislation or will do so after being informed of the requirements. Concerns have been raised, however, about how well this approach is able to ensure overall compliance. For example, most complaints are only filed once an employee has lost his/her job.

Suggested Questions:

1. In your opinion, to what extent are current compliance measures' adequate? Are they effective and fair for employees and employers? If not, what should be done to ensure compliance?
2. Should there be more educational and other activities to inform employers and employees of their rights and responsibilities? If so, what should they be?
3. Does the *Act* adequately protect employees who wish to file a complaint? If not, what additional measures are needed to ensure employees can exercise this right?

VIII. Minimum Wage Rate

The Review Panel will not be seeking public input about establishing a new rate for Prince Edward Island's minimum wage. Only the Employment Standards Board has the authority to set the minimum wage rate. The Review Panel, however, will have the authority to receive public comment about how the *process* of setting the minimum wage rate may be improved.

IX. Youth Employment Act

This Act regulates the working conditions of young people on Prince Edward Island under the age of 16 years. Although important legislation, the *Youth Employment Act* does not generate as many inquiries from the public – in contrast to the *Employment Standards Act*.

Suggested Question:

1. Should the Youth Employment Act be improved and, if so, how?

X. Other Issues

The Review Panel welcomes your comments and suggestions concerning any issue relating to employment standards not raised in this document.