
On February 13, 2009 the federal government released its "Discussion Paper on the Review of Labour Standards in the *Canada Labour Code*" and invited businesses, unions and employees to submit comments on proposed changes to the labour standards in Part III of the *Canada Labour Code*. The proposed changes are based on recommendations from the Commission on the Review of Federal Labour Standards. The proposed changes are intended to respond to the modern challenges facing businesses and workers as a result of globalization, new technologies, and the volatility of international and domestic markets. The recommendations relate to a number of issues, including hours of work, maternity and parental leave, and financial and criminal penalties for non-compliance with the Code. Interested stakeholders are invited to submit their comments by May 15, 2009.

PART III OF THE CANADA LABOUR CODE

Part III of the *Canada Labour Code* establishes minimum employment standards for employees in the federally-regulated sector of the economy. This includes air and marine transportation, inter-provincial and international rail, road and pipeline transportation, banking, broadcasting, telecommunications and federal Crown corporations. The Code applies to approximately seven per cent of the Canadian workforce. Matters dealt with under Part III of the Code include: hours of work; annual vacations; general holidays; termination of employment; minimum wages; and workplace human rights.

Discussion Paper on the Review of Labour Standards in the *Canada Labour Code*

The modernization initiatives put forward by the discussion paper are based on the recommendations contained in the 2006 report "Fairness at Work: Federal Labour Standards for the 21st Century" authored by the Commission on the Review of Federal Labour Standards. The 2006 report was the first comprehensive review of the law that was enacted in 1965. The Commission's report makes almost 200 recommendations to modernize the federal labour standards. The Commission's goal was to preserve decent and fair working conditions for employees, while allowing businesses to operate competitively in the modern market.

The discussion paper frames the consultations around the Commission's recommendations by presenting a number of questions relating to possible amendments to the Code. The discussion paper is divided into three parts, each part addressing a particular set of recommendations from the Commission's report: Part I: Responding to the Evolving Workplace; Part II: Supporting Working Families; Part III: Smart Compliance.

Part I: Responding to the Evolving Workplace

The Commission's recommendations in Part I are intended to respond to the evolving workplace by providing for "regulated flexibility". Regulated flexibility refers to the possibility of adjusting the basic labour standards for each workplace to ensure fairness and decency. Many of the proposed changes are accompanied by a method to adjust the applicable standard to accommodate different sectors and workplaces. Some of the Commission's recommendations were:

- Providing employees with the right to refuse to work above 12 hours per day, and/or 48 hours per week, except in emergency situations;
- Allowing different thresholds for the above refusals through ministerial permit, regulation, collective agreement, or approved workplace proposal; and
- Re-instituting a national minimum wage and ceasing to set the minimum wage by reference to provincial standards, but allowing variations based on the cost of living in different population centres.

Some of the questions stakeholders are asked to respond to are:

- 1) Should an employer be allowed to permit an employee, upon the employee's request, to work in excess of daily or weekly standard working hours at straight-time rates, in order to make up time that is taken off? If so, what conditions should apply, if any?
- 2) Would it be appropriate to provide employees with the right to refuse work after 12 consecutive hours per day or 48 hours per week, except in an emergency? If so, how should "emergency" be defined? What other exceptions, if any, should apply to the right to refuse work? How much notice should employees be required to provide of their refusal to work overtime?
- 3) Should there be a federal minimum wage? Or should the status quo be maintained?

Part II: Supporting Working Families

The Commission's recommendations in Part II are intended to respond to the issues arising from the changes in workplace demographics that have occurred since 1965. These demographic changes include the rise in dual-income and single-parent families. The recommendations respond to the challenges such families face in balancing work with child-rearing and care-giving responsibilities. The Commission recommended numerous changes that would bring the Code into line with other Canadian jurisdictions and reflect human rights principles that are entrenched in Canadian law. Some of the Commission's recommendations were:

- Adding provisions for unpaid, short-term family responsibility leave;
- Reducing the length of service requirements for maternity and parental leave; and
- Providing more flexibility to workers who take maternity or parental leave.

Some of the questions stakeholders are invited to respond to are:

- 1) Is it appropriate to provide employees with the right to 10 unpaid days per year of family responsibility leave to meet obligations related to the care or education of a child and/or the health of a family member? If so, should there be any conditions or restrictions with respect to such leave?
- 2) Would it be reasonable to reduce the current length of service requirement for parental and maternity leave from six months to three months?
- 3) To what extent should parental, maternity and sick leave under Part III be aligned with EI benefits?

Part III: Smart Compliance

Part III of the discussion paper discusses compliance with the Code. This was identified as perhaps the single most important issue the Commission considered. The Commission noted that the causes of non-compliance include the facts that the legislation is poorly drafted, a lack of education and awareness, and a lack of enforcement. Some of the Commission's recommendations included:

- Raising maximum monetary penalties to \$50,000 from \$5,000 for a first offence; to a maximum of \$100,000 for a second offence; and to a maximum of \$250,000 for a third or subsequent offence;
- Treating each day that an offence continues as a separate offence; and
- Retaining the current power under the Code to criminally prosecute individual employers and corporate officers in extreme cases of non-compliance (e.g. deliberate fraudulent conduct, or use of threats or coercion).

Some of the questions stakeholders are invited to respond to are:

- 1) Should fines upon conviction be increased from current levels and if so, by how much?
- 2) Would the possibility of random workplace audits be a sufficient proactive measure to ensure compliance?
- 3) Should criminal prosecutions remain an option for dealing with the most serious or egregious illegal employment practices? If so, what types of cases should be considered "serious" or "egregious"? Should prosecutions be used for other types of violations of Part III?

In Our View

Organizations, including those which are not federally regulated, should take this opportunity to present their views on the recommendations to the federal government. It is important to note that any changes to federal labour standards will inform future changes to provincial standards. The "Discussion Paper on the Review of Labour Standards in the *Canada Labour Code*" is available online at the Labour Program website: www.labour.gc.ca. Comments may be submitted by e-mail to consultations-fls-ntf@hrsdc-rhdsc.gc.ca, and by mail to:

Review of Labour Standards in the *Canada Labour Code*
Labour Program
Place du Portage, Phase II
Mailstop L805
Gatineau, Quebec
K1A 0J2

For further information, please contact [Steven Williams](#) at (613) 940-2737

For more news about recent developments in Employment and Labour Law, and for information about how our firm can assist you, please visit <http://www.emondharnden.com/>