Submission

by the

Alberta Federation of Labour

on the

Employment Standards Review

April 11, 2014

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1. Introduction

The Alberta Federation of Labour appreciates the opportunity to participate in the review of the Employment Standards Code.

The 2005 review was the first review of the Code in 17 years. However, no changes were made following that review.

It has therefore been 26 years since Alberta's Employment Standards Code has been updated. Alberta's economy, workplaces or labour market has changed greatly over the last 26 years. It is past time for our Employment Standards Code to reflect economic and social reality.

While the Code has not been updated, many practices have changed. In the mid-1980s, Employment Standards did not allow 12- 14-year-old children to work in mainstream workplaces. Since 2005, child labour is now permitted in Alberta. Our Employment Standards have moved backwards, not forward.

The AFL is Alberta's largest worker organization, representing more than 160,000 workers and their families across all industries and most occupations. Our connection to workers of varying stripes, situations and working conditions places us well to comment on the provisions of the Code and how it is enforced. We will draw upon feedback we have received from workers who contact our office on a daily basis, and from formal positions taken by our member unions regarding employment standards.

To best fit the structure of the Discussion Guide, we will organize our comments along the same topic headings. We will attempt to directly answer the question in the guide, but will also add additional issues if necessary. At the end we will discuss any issues that were not discussed in the Guide.

2. Employment of 12- 14-year-old children and adolescents

The Alberta Federation of Labour is alarmed that the first item of business for the Minister responsible for Labour is to float a trial balloon on the expansion of child labour via this Review process. We believe Albertans will find it alarming, too.

No child should be working with hazardous cleaning chemicals as a janitor or doing light cleaning duties. No child should be working in a restaurant kitchen, either.

In fact, if the Government of Alberta was listening to Albertans, no Alberta child under 15 would be working in a mainstream workplace.

In the summer of 2005, there was a massive public outcry over the province's decision to allow 12- 14-year-olds to work in restaurant kitchens, even working in bar kitchens.

The province had to scale back its original plans for expanding child labour. Rarely has the public spoken so clearly and loudly – especially in the dead of summer – on an issue of public policy.

Despite public opposition, employment of 12- 14-year-old children was expanded in 2005. Children weren't allowed to work in bar kitchens, but they were allowed to work in regular restaurant kitchens.

In the intervening nine years, there has been a body of academic research peer-reviewed and published on the subject of Alberta's child and adolescent workers.

Here is a summary of the peer-reviewed academic literature on the subject of child labour in Alberta.[1]

1. Interviews with 20 working children or adolescents found most (19 out of 20) experienced Employment Standards violations. These violations included:

a. Working too many hours, most commonly a four-hour shift on a school day.

b. Receiving less than the minimum wage or minimum call-in pay.

c. Working under age or in prohibited occupations or performing prohibited tasks.

d. The majority of adolescents working in restaurants also reported illegal deduction for uniforms and that employers did not provide health and safety hazard assessments.

e. Half of the workers reported multiple violations of employment standards law, although most were unaware that their treatment was illegal—reflecting a limited knowledge of their rights.

2. Surveys of Alberta children and adolescents in the workforce have found:

a. In 2009, 6.3 per cent of children had jobs—that's 8,200 children aged nine to 11. A total of 78 per cent of the jobs done by children were clearly illegal (i.e. janitorial services). The remainder did jobs such as babysitting and yard work.

b. The same survey found that 26,000 adolescent workers were employed. More than 21 per cent of these 12- to 14-year-olds worked in prohibited occupations (janitorial services, sports teams, working on a golf course). By contrast, 28.6 per cent of jobs appear to be legal types of employment (newspaper delivery, retail sales, restaurants, agriculture). The remaining 50 per cent of jobs again fall into the grey area of babysitting and yard work.[2]

3. Surveys conducted in Alberta schools have found:

a. Administrative data gathered from 797 adolescents (aged 12-14) and 1,187 young persons (aged 15-17) in 2011-12 showed 43.7 per cent of adolescents (aged 12-14) and 61.5 per cent of young persons (aged 15-17) in Alberta reported employment in 2011/12. Of those employed, 49.7 per cent of adolescents and 59.0 per cent of young persons reported at least one work-related injury in the

[1] Employment rate surveys were conducted under contract by the University of Alberta Population Research Laboratory in 2008 and 2009. Random sampling of 1,200 homes resulted in statistically generalizable results with an estimated sampling error of 2.8 per cent at the 95-per-cent confidence level. Interviews were conducted with children, adolescents and parents in the spring and summer of 2009. Initial subjects were recruited through newspaper advertisement and handbills and snowball sampling was subsequently used. The results are not statistically generalizable but are analytically generalizable.
The principal investigator of the Child Labour study was Bob Barnetson, PhD, Assistant Professor of Labour Studies at Athabasca University. The study was funded by Athabasca University and the Alberta Federation of Labour.
Survey results have been published in:
Barnetson, B. (2009). The regulation of child and adolescent labour in Alberta. *Just Labour*. 13. 29-47.
Barnetson, B. (2010). Effectiveness of complaint-driven regulation of child labour in Alberta. *Just Labour*. 16. 9-24.

[2] Ibid.

previous year. This study also identifies widespread non-reporting of workplace injuries and seemingly ineffective hazard identification and safety training.[3]

4. 49.7 per cent of adolescents reported at least one work-related injury in the previous year. Here is a breakdown of those reports:

- Muscle sprain, strain or tear: 45 reports
- Laceration: 111 reports
- Bruises: 105 reports
- Fractures or dislocations: 13 reports
- Burns: 59 reports
- Sexual harassment: 9 reports
- Chemical or biological exposures causing health problems: 9 reports
- Other forms of injury: 10 reports

We believe the system as it stands places young Albertans in vulnerable and potentially dangerous situations. We believe there are inadequate checks to ensure these children are not being exploited.

In 2005, Albertans sent a clear message that they believe 12 years old is too young to work in restaurants. We believe the government has an obligation to hear that message.

There is a qualitative difference between a paper route and a 7-11. There is a difference between babysitting and waiting tables in a busy restaurant or working as cleaning staff. The Code needs to ensure 12 to 14 year olds are not working in a mainstream workplace. The provisions allowing the employment of children younger than 15 years of age in restaurants, offices and retail stores should be repealed.

3. Young workers between 15-17 years old

In 2005, the Alberta Federation of Labour recommended no changes to the rules governing young workers. At that time, we found the prohibitions on hours of work—designed to stop work from interfering with school life and periods of rest for young people—to be adequate. We reiterate that position here: We maintain the current restrictions on hours of work for adolescent workers are adequate.

However, we underline that the status quo for conditions of work for many young, minor workers in Alberta is utterly unacceptable and requires changes via the Code and this Employment Standards Review.

There is a body of research that shows young, minor workers are particularly vulnerable to abuses in the workplace. Specifically, illegal deductions, unsafe work, handling of hazardous materials, and sexual harassment are, according to recently published survey data, an unfortunate reality of working in Alberta.

[3] Barnetson, B. (2013). Incidence of work and workplace injury among Alberta teens. *Just Labour*. 20. 14-31.

Survey responses from a July 2013 study of Alberta minors in the workplace

Some of the survey responses are below:

- I was stuck fencing with a 12-year-old using five tonnes of equipment with no way to contact for help. I was the oldest one there. That's retardedly unsafe. (15-year-old male)
- A manager tried to make me clean blood and I refused saying I could contract AIDS potentially. (15-year-old female)
- I didn't have proper gear but was given a substitute gear. (15-year-old male)
- I had my arm sucked into a machine and ripped open from my wrist to my elbow. (16-year-old male)
- I was throwing the garbage out into the dumpster and liquid got in my eye but luckily a co-worker was around to help me. (16-year-old male)
- Nail gun to the foot. (13-year-old male)
- I quit because my supervisors were drinking on the job and leaving me to work the kitchen which I wasn't legally allowed to be in. (Grade 10, female)
- I was told to do work after passing out. My supervisor said too bad I had a job to do and I said no, I got fired. (16-year-old female)
- We had no gloves for pulling out poison ivy. (13-year-old male)
- I fell off a ladder, twisted my ankle pretty bad. But my boss didn't do anything. (14-year-old female)
- I got told by an employee that everyone does drugs and if I told anyone I would not be allowed to work there in future. (14-year-old female)
- I got knocked out by a T-bar lift. (14-year-old male)
- Combine machine lit on fire. (13-year-old male)
- I mixed the wrong chemicals so we opened the window to let it air out. It is a farm so it is hard not to get hurt. (Male)
- I was asked to go out on an icy roof and I did because I didn't know if I had to. (Grade 11, male)
- I stepped on a nail. Now it is recommended to wear boots and there was a huge clean-up. (Grade 11, male)

Employment Standards breaches were commonly referenced in the survey data. Here are some of the responses from young people:

- They didn't pay me minimum wage and they would tell me to go home early when we weren't busy and not pay me my whole shift and they would call me at the last minute. (Grade 10, female)
- I did not have any break and it wasn't good with my school. I didn't have much time to study because I had to stay with them late until they close the store. I could not get off work earlier. (17-year-old female)
- I was getting $9.05 an hour for hostessing (minimum wage is $9.40). It's supposed to be $9.05 an hour for people serving alcohol. And I wasn't serving alcohol. I didn't do anything about it. (15-year-old female)
- Giving us short notice on our shifts; not giving us overtime pay. I know that my boss takes advantage of us, but I don't think I'd want to stand up to him 'cause then I'd get fired. (Grade 11, female)
- I was underage, they gave me odd hours… and they wouldn't pay me by the number of hours I worked. (Grade 10, female)

- On school nights I worked six-hour shifts even though I was only 14 at the time. (Grade 11, female).

What these data show is that 15- 17-year-old workers are particularly vulnerable to contraventions of the Code*.*

This does not suggest the need for an "awareness" campaign for workers. It suggests an utter disregard for the law on the part of employers, and that disregard has very serious consequences for young, minor workers—as serious as injury and sexual violence.

If there is any argument for Employment Standards to be able to initiate investigations, conduct spot inspections of workplaces that employ young people, to be able to issue on-site administrative penalties, and to toughen up prosecutions and fines, it must be these shocking stories from Alberta's teenaged workers under 18.

- I got sexual harassed (by another store associate) recently and my manager didn't do anything about it. (Grade 11, female)
- I've never been harassed by the people I work with but I have been sexually harassed by a lot of customers. (Grade 11, female)
- My manager was hitting on me. (Female)
- Sexual harassment when I was 13 (by employer). The harassment I didn't realize until a few months ago. (18-year-old female)
- I had a very sketchy boss. He was way too close and made me extremely uncomfortable. I quit. (16-year-old female)
- I was at work and one of the older men followed me to the washroom and tickled me then reached up under my shirt and grabbed my boob. I did nothing because I was only nine, so who would have listened to me? (16-year-old female).
- Verbal harassment towards female workers; manager would call them bitches, etc. (Grade 11, male)[4]

AFL recommendations on child and young workers

1. ***No person under the age of 15 should be allowed to work in a workplace in Alberta, with the exception of newspaper/flyer delivery and babysitting.***
2. ***Director's permits are an inappropriate mechanism for setting public policy. The Director's ability to issue permits around child and adolescent workers should be revoked.***
3. ***The provisions for young persons (age 15 to 17) offer an appropriate balance of allowing employment opportunity to high school aged young adults, but with restrictions to ensure their safety and to prevent undermining their education. We propose no change to current provisions.***
4. ***Targeted inspections for industries that hire adolescent workers between 15-17 year olds.***
5. ***Employers must provide a program of special training for 15-17 year olds on safety, harassment, and their rights at work.***

[4] Ibid.

4. Minimum wage exemptions for persons with disabilities

We believe it is fundamentally wrong to allow a certain group of workers—in this case workers with disabilities—to earn less than the minimum we set for all others. It is discriminatory and exploitative. It perpetuates the stereotype that people with disabilities are worth less than able-bodied workers.

This myth is false and damaging.

A report from the Canadian Government's panel on labour market opportunities for persons with disabilities notes that employees with disabilities did not have any increase in workplace accidents, had on average equivalent productivity and had no increase in sick time. Additionally, the report noted the average cost of accommodating employees with disabilities was negligible.

We do not accept arguments by employers that they cannot afford to pay these workers the minimum wage. Even if a person with a disability has lower productivity, it is not justification for paying less than minimum wage.

AFL recommendations on minimum wage exemptions for persons with disabilities

1. ***Eliminate minimum-wage exemptions for persons with disabilities.*** ***The minimum wage must apply to all workers.***

5. Other Employment Standards exemptions

Over the past 26 years, many aspects of the Code have become outdated, supplanted by evolving workplace practices and convoluted by piecemeal amendments. One of the ways the government has tried to cope is to issue Director's permits to allow certain practices, even if they breach a specific section of the Code.

Two consequences have arisen from this practice—neither positive. First, it has led to a checkerboard of regulation, where certain industries, and even certain employers, play by different rules than others. It has made the Employment Standards regime harder to understand and undermined the purpose of codified legislation.

Second, permits allow policy-making in employment standards to occur without public scrutiny or debate. A department official signs a piece of paper, and only the officials and the employer directly affected are aware that regulations have been changed. This lack of transparency is troubling. It leads to the government losing touch with the desires of Albertans, and leads to such policies as paying certain workers less than the minimum wage, and allowing 12-year-olds to work.

We believe there is no way to make a permit system work in Employment Standards. In health and safety, a director must evaluate if the request can achieve an equal standard of safety. In other words, they can ensure that the intent of the legislation—keeping workers safe—continues to be respected. There is no comparable criteria for Employment Standards. The maximum number of work hours should be seen as a firm number. Any deviation from that number is a loosening of the rules for a particular employer or industry. It is, by its very nature, an act of weakening worker protection.

A strong legal argument can be made that the practice of Director's permits is contrary to law. Under the hierarchy of legislation, lower level regulation cannot contradict the intent of superior legislation. Permits contradict the intention of the Employment Standards Code.

AFL recommendations on Employment Standards exemptions

1. ***Eliminate the minimum wage exemption permits. The minimum wage must apply to all workers.***
2. ***Eliminate the ability of the Director to issue permits. Any change to minimum standards must occur by changing legislation—guaranteeing a public debate.***

6. Internships

Employers are increasingly taking advantage of unpaid internships. We believe these practices can be beneficial to some young people, but in times of stagnant wages, high student debt, and slower growth of full-time jobs compared to part-time employment, internships are another way that young people are being shortchanged in Alberta as elsewhere in Canada.

According to the Canadian Intern Association, Alberta has the least clarity around internships. Alberta's Employment Standards Code provides for a minimum wage of $9.40 for most employees (Reg 14/97). An "employee" is an individual employed to do work who receives or is entitled to wages. It is unclear what "entitled to wages" means and therefore unclear whether interns in Alberta should receive a minimum wage.

Alberta's system of internships is murky and, as the Discussion Guide indicates, "reviewed on a case-by-case basis." This is no way to conduct public policy that affects so many young people. Alberta must update its Employment Standards Code to reflect economic reality.

Alberta's Employment Standards Code should be amended so that paid interns are considered "employees" and therefore the Employment Standards Code, including the minimum wage, breaks, rest periods between shifts, and vacation time and pay all apply. Further, Alberta should be explicit in the difference between a "practicum" for school purposes and an "internship." Practicum students' hours of work, time between shifts, and breaks should be governed by Employment Standards, and proactive inspections should be performed by Employment Standards to ensure this is the case.

If a student is doing practicum and internship hours at the same establishment, the student's cumulative daily hours of work, time between shifts, and breaks should be subject to Employment Standards.

Alberta's lack of clarity around internships and hours of work contributed to the death of NAIT practicum student Andy Ferguson. He was working his practicum hours in addition to internship hours, leading him to work day and overnight shifts. Mr. Ferguson died in a car accident in November 2011 after falling asleep at the wheel after working 16 hours. His family has since become an advocate of reform for internship standards and practices.

We have advocated for Alberta to harmonize its labour and other policies with other jurisdictions. In this case, we have a ready-made model in British Columbia to govern internships.

No Alberta employer should profit from unfair advantage over British Columbia by abusing unpaid internship programs. Therefore, our AFL recommendations rely on the system in place in British Columbia.

AFL recommendations on internships

1. ***Amend the Employment Standards Code definition of "employee": a person receiving or entitled to wages for work performed for another, who was hired and receives training from an employer.***
2. ***Amend the Employment Standards Code definition of "work": labour or services an employee performs for an employer whether in the employee's residence or elsewhere.***
3. ***Insert a definition of "internship" in the code:***
    a. *An internship is considered "work" and therefore is subject to the minimum wage.*
    b. *An "internship" is on-the-job training offered by an employer to provide a person with practical experience. If the duties performed by interns fall within the definition of "work" contained in the Act, the intern falls within the definition of "employee", and the agency using the services of an intern falls within the definition of "employer," internships will be considered "work" for the purposes of the Act.*
    c. *Distinguish an "internship" from a "practicum" in the Act. A practicum is hands-on training that is part of a formal education process and done for school credit.*
    d. *A practicum is not considered "work" and therefore not subject to the minimum wage.*
    e. *Employers who hire "practicum" students must abide by hours of work, breaks, and rest periods between shifts.*
    f. *Employees who are doing both practicum and internship hours with the same employer must be subject to the same hours of work, breaks, and rest periods between shifts as contained in the Employment Standards Code to prevent overwork and abuse of the unpaid practicum system.*
    g. *Employers who hire interns and practicum students should be subject to spot inspections, proactively undertaken by Employment Standards, in order to ensure the Code is followed.*

7. Overtime

Overtime is a key issue in employment standards because it governs a core element of the employer-employee relationship. It does it in two ways. First, it establishes the standard number of hours an employment relationship can encompass. It informs both the employer and the worker what they have a right to expect. Second, it places a premium on work demands that exceed this normal standard.

While the workplace has changed significantly—the classic nine-to-five job has become less common—there is still a need for a definition of standard work week. Workers have a right to know how many hours in their week need to be devoted to employment. When the employer wishes to encroach upon the worker's remaining hours, they should be expected

to pay a premium for that encroachment. The rationale behind this concept is that the worker is not the property of the employer, and that asking for something beyond the usual arrangement demands additional remuneration.

Six of Canada's provinces have defined the standard work week as 40 hours, and eight hours per day. These numbers have long been seen informally as the "standard work hours" in Canada. Alberta's legislation lags behind by allowing 44 hours per week.

Employers have argued that the modern need for flexibility demands a loosening of overtime rules. While employment patterns clearly indicate that the standard work week is becoming less common, we must not exaggerate the trend. Over half of workers in Alberta hold "standard" jobs (Statistics Canada), and most industries continue to operate on a long-accepted "business day." The government needs to balance a concern for reflecting modern trends with protecting the bulk of workers who retain the standard employment pattern.

More importantly, if we scratch the call for flexibility a little, we find the concern is not with ensuring the work gets done—it is with wanting to avoid the premium that comes with working extra hours. In short, the call for looser overtime provisions is a call for the government to lower labour costs. We must examine this motivation very carefully before acceding to it.

An example may highlight the concern. The demand for averaging overtime hours over a period of weeks allows the employer to cover busy times by balancing with slower weeks and avoid overtime premium pay. Does this provision help the work get done? No. The work would have occurred anyway. What it accomplishes is to ensure the worker receives fewer wages over the time period than if weekly or daily overtime provisions were in place. The worker does not receive premium for the busy week, when the extra work may create home life burdens such as child-care arrangements, missing activities, and a lack of rest and sleep. At the core, such requests are about lowering labour costs—not making workplaces more flexible.

By loosening overtime provisions, the government sides with employer interests at the expense of worker interests. The AFL opposes any effort to loosen current provisions, including averaging, increasing weekly hours before overtime applies and removing the daily hours maximum before overtime.

Instead, we believe our overtime provisions should be changed to reflect our provincial neighbours. It is often argued that we need to harmonize rules with other jurisdictions to allow for smoother trade and economic competitiveness. In that light, we recommend Alberta lower our work week to 40 hours—as B.C., Saskatchewan and Manitoba have. We should ensure that double time is paid when workers put in more than 12 hours per day, as is the case in B.C.

Finally, to remain consistent with the concept of overtime—that of a demand in addition to the usual employment contract—workers should possess the right to refuse overtime. The right to refuse overtime allows the worker to choose whether they wish to earn premium pay, or maintain those hours for family or personal pursuits.

No worker who is unwilling or unable to work overtime should be forced to work, except in emergencies. Saskatchewan and Manitoba have taken the step to encode a worker's right to refuse overtime. Saskatchewan's provisions are particularly effective, as they do four things:

- No employer can force a worker to work overtime, except in emergency situations

- No disciplinary action can be taken against a worker who refuses overtime
- Onus is on employer to prove "emergency situation"
- Defines emergency situation as "sudden or unusual occurrence or condition that could not, by the exercise of reasonable judgment, have been foreseen by the employer." (section 12(4))

Saskatchewan's provisions protect workers who attempt to maintain balance in their lives, but allow for the labour needed to address emergencies.

We believe this will not unduly inconvenience employers, as in any workplace there is a mixture of workers—those who take as much overtime as they can get, and those who value time away from work.

AFL recommendation for overtime

1. ***Maintain standard work day of 8 hours.***
2. ***Lower weekly hours from 44 to 40 hours. This will harmonize Alberta's weekly hours with most of Canada.***
3. ***Provide double time for work over 12 hours per day or 50 hours per week.***
4. ***Provisions allowing workers to refuse overtime, similar to Saskatchewan.***

8. Overtime agreements

In theory, overtime agreements provide a creative and flexible option for both employers and workers. Rather than paying premium pay, they can agree to time off in lieu of premium pay. We support flexibility of this nature.

However, in Alberta there is a flaw to the agreements. A worker is entitled to only one hour lieu time for every hour of overtime worked, while premium pay is 1.5 times the hourly rate. In effect, this steals from the worker their premium for working extra hours, and creates an uneven playing field. It builds in an incentive for employers to sign agreements to avoid the extra pay per hour of overtime.

AFL recommendation on overtime agreements

1. ***Harmonize overtime agreements with paid overtime provisions. Workers receive 1.5 hours lieu time for every hour of overtime worked.***

9. Statutory holidays and stat pay

No Alberta worker refers to any of our nine statutory holidays as "general holidays," so the first change in the Code should be updating the language so that workers know what the Code is talking about when they attempt to read it for themselves.

The section governing eligibility for stat pay is confusing and in dire need of updating. Every time a statutory holiday rolls around, employees and employers alike can be found scratching their heads as to what to pay to whom. Ask ten people in the restaurant or retail industry what the rules are and get at least twelve conflicting answers, from employers and employees alike. Honest mistakes are often made in interpretations of "usual work day" and length of service to be eligible for stat pay. In fewer cases, the complexity of eligibility

and prevalent misunderstandings among workers makes the situation ripe for abuse by unscrupulous employers.

It is time to remove the confusion and complexity around statutory holidays. The solution is actually simple: adopt the Saskatchewan model, in which all employees on the payroll are paid for the statutory holiday.

The Saskatchewan solution entitles all workers to statutory holiday pay if they are on the payroll of the employer at a proportion of their usual wages (1/20th of their monthly wages, which is equal to one work day). This system is simple, easy to understand and administratively straightforward.

The Saskatchewan solution also reflects what most employers do anyway—pay all their workers for the day. While some may complain about cost, we believe it is of marginal impact, given that there are only nine statutory holidays, and the percentage of workers who are in a grey zone of eligibility is very small.

We also believe workers should be entitled to statutory holiday pay regardless of which day of the week it falls on. It seems Grinch-like to deny Christmas stat pay because it happens to fall on a Sunday. Again the small cost to the employer is exceeded by the ill-will created by being stingy.

AFL recommendations on statutory holidays

1. ***Make all workers on the payroll eligible to receive statutory holiday pay***
2. ***Remove the "usual day of work" requirement for statutory holiday pay, as it creates confusion, misunderstanding, and sometimes abuse by employers.***

10. Vacation time and pay

Much like rest breaks and days of rest, vacations are not just an employment frill—they are essential to maintaining a worker's mental health, productivity and wellbeing. It is the only time in the year where a worker can leave their work behind and spend extended time with family.

Alberta lags behind other jurisdictions with the number of weeks offered for vacation. Currently, a worker can spend virtually their entire career—even with the same employer—never getting more than three weeks vacation. Our neighbour, Saskatchewan offers three weeks after one year, and four weeks after 10 years continual employment. Most European nations offer at least four weeks holidays—and studies show that productivity per worker does not suffer as a result.

Statistics Canada indicates that Albertans take fewer vacation days than any other province. We do not consider this a point of pride. It is an indication that—for whatever reason—our work-life balance has tipped too much toward work.

The government can play a role in addressing this imbalance. A person's life is not only about their job. As a prosperous province, we have the capacity to offer greater vacation time without hardship on employers—most of whom already provide more weeks than the Code requires. The government can increase the number of weeks a worker receives to send a strong signal that the employment year is a balance between hard work and well-deserved rest.

AFL recommendations on vacation time and pay

1. ***After three-years employment, workers should be entitled to three weeks vacation. After seven years, increase vacation to four weeks.***
2. ***We recommend no change to four per cent vacation pay for the first four years of service, and six per cent for the fifth year of service and beyond.***

11. Maximum 12-hour day and rest between shifts

Rest between shifts

The Code must include rules guaranteeing a minimum number of hours between shifts. This is beneficial both for health and safety and for the worker's quality of life.

Alberta's WorkSafe Bulletin acknowledges the need for rest and especially sleep: "Although there is considerable variation among individuals, research indicates that on average, workers require 7.5 to 8.5 hours of sleep per day." Allowing for transportation, eating, and personal grooming, a minimum nine-hour interval between shifts is therefore the least that Alberta should write into its Employment Standards Code.

Maximum 12-hour day

There are very good reasons to maintain the current daily maximum of 12 hours per shift.

An international review of extended work days—a survey that included Canada, Germany, the United States, and Australia—found that extended work hours increase the risk of injury substantially. The study defined "extended work hours" as increasing work time from an eight-hour day to a 12-hour shift.

"This review showed that extended work hours increased the risk of occupational injury. Especially working over 12 hours per day doubled the risk of injury." ("Shift Work and Extended Working Hours as Risk Factors for Occupational Injury." *The Ergonomics Open Journal.* 2010, Volume 3.)

By removing the daily maximum, we risk creating health and safety hazards.

A 15- or 16-hour shift should not become a part of anyone's regular work schedule. There may be times when a shift of that length is required, but it should remain the exception. To that end, the current exceptions in the Code—urgent work, unforeseeable circumstances, serious interference with business—are sufficient to provide appropriate flexibility.

We also believe the right of the Director to issue a permit extending hours of work should be removed. If there are additional circumstances when an exception is required—such as seasonal work or weather conditions—those should be explicitly added to the section as exceptions. Legislation by permit is not acceptable.

AFL recommendations on maximum 12-hour day and rest between shifts

1. ***Maintain the 12-hour daily maximum and remove the Director's right to issue exemption permits.***
2. ***A minimum of nine hours rest between each shift.***

12. Breaks at work

Rest breaks are a necessary protection for workers. They allow for meals and for a time when the worker can remove themselves from work to rest or do personal business. They improve productivity and allow for a crucial mental rest for workers.

However, the wording of the Code allows for a 30-minute break during each shift in excess of five hours. This is significantly looser than other provinces, and could see a worker working eight or nine hours in a row without a rest break.

Alberta's language should be changed to closely resemble the language used in most other provinces, including Ontario, B.C., Saskatchewan and Nova Scotia. This would require a 30-minute rest break at intervals ensuring a worker works no longer than five consecutive hours. This wording would have two effects. First it ensures breaks occur in the middle of an ordinary eight-hour shift—and not near the end when it is less effective. Second, it guarantees a second break if the shift is 10 hours or longer. Thirty minutes rest for a 12-hour shift is inadequate. The second break would allow for a second meal or mental break that all workers need.

AFL recommendation on breaks

1. ***A 30-minute rest break required at intervals to prevent a worker working more than five hours consecutively without rest.***

13. Compressed work weeks

The AFL supports the concept of a compressed work week for some occupations; many workers find they provide more time for family and home obligations, less time spent commuting, lower child care costs, and more time off and predictability for themselves and their families.

The only change the AFL would make is that overtime should become payable after 40 hours of work in a week, not the 44 under the current Code. This would bring Alberta's standards in line with the majority of the rest of Canada.

AFL recommendation on compressed work weeks

1. ***No change to the current section of the Code governing compressed work weeks.***
2. ***Align maximum hours of work before overtime with the rest of Canada, and allow employees to earn overtime after 40 hours worked in a week.***

14. Occupations exempt from the Employment Standards Code – farm workers

The question asked in the Discussion Guide pertained to the exemption of domestic workers from the Code, which we will discuss below.

However, before dealing with the question of exemptions to the Code for domestic workers, the Alberta Federation of Labour is frankly aghast that the Discussion Guide did not reference Employment Standards exemptions for Farm and Ranch Workers in Alberta.

Alberta is the only province in Canada that does not have any protection for farm and ranch workers.

Alberta is far out of line with the rest of Canada. Manitoba, Saskatchewan, Ontario and British Columbia—provinces with large agricultural sectors—provide for Employment Standards protections for farm workers.

Alberta is also offside the law with its continued Employment Standards, WCB, and OHS exemptions for farm workers. A judicial review—now five years old—of the death of Kevan Chandler (who died of suffocation in a High River grain elevator) recommended the province amend its Employment Standards and other codes to include farm workers.

It has been almost eight years since Kevan Chandler did not return home to his wife and toddler after going to work. And yet, the response from the Government of Alberta is stone-cold silence on the subject of farm workers. Some politicians have promised action. Former Premier Alison Redford, when campaigning for the leadership of the PC party, was unequivocal in her support of basic protections for farm workers. Unfortunately, she did not enact these changes during her tenure.

It is time to quit playing politics with the question of farm workers' safety and protections at work. If such a system were so difficult to administer, Manitoba and Saskatchewan would not have thriving agricultural sectors.

We are unimpressed by those who continue to argue for exemption, particularly those who raise the specter of the "family farm" as justification. While this may have made sense 26 years ago, when the Code was last reviewed, the rationale for this exclusion has long since evaporated. Farming has changed. It is now dominated by feedlots, factory farms and large industrial-style operations.

The law lags behind the times.

Agricultural workers perform difficult, physical work. The demanding nature of the work should increase government attention to those workplaces, not cause it to look away entirely.

We believe that the default position of the government should be that every worker automatically deserves all the basic employment protections, and that the burden of proof lies with anyone who wishes to exclude a group of workers. In the case of farm workers, there is no good reason.

Our position is that all exceptions should be removed for agricultural workers, regardless of where they work.

Our position regarding family farms is two-fold. First, we believe that including farm workers in Employment Standards does not add significantly to a family farm's financial or administrative burden. The number of workers they employ is small, and often for restricted periods of time. Much of the protection under the Code is about rest periods, days off and eligibility for unpaid leave. These are not hard costs, where the farmer pays out of pocket.

Second, if family farmers can make a case that they are unable to meet the requirements of the Code, we would be open to discussions about finding an appropriate balance between protecting workers and protecting family farms. We would want to ensure that no corporate agricultural producer is able to use a loophole aimed at family farms to avoid providing work conditions they are more than capable of meeting.

AFL recommendation on exemptions for farm workers

1. ***Extend Employment Standards protections to farm workers. Eliminate all exceptions for farm and ranch workers regardless of where they work.***

15. Occupations exempt from the Employment Standards Code – domestic workers

The situation for domestic workers is different, but we end up with the same position—extend Employment Standards protections to domestic workers.

Domestic workers are the most vulnerable workers in the labour market. They are in private homes, usually working for single families with no human resources infrastructure. They are often newcomers to Canada, and are almost exclusively women.

This is a group of workers that is in dire need of government protection. We can think of no group of workers more in need of the rights and guarantees offered by the Employment Standards Code. Yet, currently they are left to fend for themselves.

The power imbalance between domestic worker and their employer is marked. The government has a responsibility to take active steps to protect these workers.

The argument that domestic employers cannot afford to abide by the Code carries no weight. If they have enough money to hire a nanny or housekeeper, then they are able to offer overtime pay, respect limits on work hours and other such basic measures. Such requirements are neither onerous nor difficult to achieve.

AFL recommendation for domestic workers and Employment Standards

1. ***Extend Employment Standards protections to domestic workers. Eliminate all exceptions for domestic workers.***

16. Exceptions to the Employment Standards Code – other occupations

The discussion around the myriad other occupations that have exceptions under the Code and regulation can quickly become mired in confusion and detail. We do not wish to engage each and every exception individually. On the surface, we see little reason for any exception at any time. However we are unfamiliar with the specific conditions in some of the occupations and industries currently listed. In the interests of reasonableness, we instead offer a set of criteria upon which policymakers can assess the arguments for and against excepting certain occupations or industries.

We see the criteria as follows:

1. The default is that all workers are covered by all sections of the Code.
2. The onus for demonstrating the need for exception lies with the industry or employer group requesting the exception.

3. No request will be considered unless it contains a legitimate practical issue, such as safety, reasonableness or unavoidability. Cost implications for employers are not sufficient.

4. If a request is made, the government will initiate a multi-stakeholder process, including labour and representatives from industries not affected by the request, to discuss the merits of the request.

5. Before any decision to exempt workers is made, a full public notification and consultation will occur, so that every Albertan has the opportunity to comment.

6. Any exception will be legislated through the Code, so that it must be passed by the Legislature in a full and public debate. No Director's permits or quiet regulation changes.

7. No exceptions will be granted to employers using the Temporary Foreign Worker Program for any reason.

This allows for the presumption that all workers deserve equal protection under the Code, but allows for a deliberative and open process for assessing whether selected provisions create more problems for both workers and employers.

The key to our position is that there needs to be a substantive and objective reason for any exception. This reason needs to be verified by workers in the industry as well as employers. Any employer can make an argument for an exception, but we must be careful to ensure it is not a thin veneer to lower labour costs.

AFL recommendation on other exceptions to the Code

1. ***All exceptions should be removed from the Code and any exceptions are subject to an open and thorough process before being included in the legislation.***

17. Termination – by Employer

The provisions for termination are in need of reform. They are among the stingiest in the country, and offer too many loopholes for unscrupulous employers to avoid notice or severance pay.

The number of weeks' notice required is out of step with other provinces, and with established common law regarding termination. Someone who has worked for an employer for almost two years is entitled to more than one week's notice. The table is also difficult to understand, as there is no consistent association of years to weeks notice. A cleaner calculation of one week for every year worked, to a maximum of 10 weeks is fairer, simpler and more reflective of our provincial neighbours and the courts.

We also believe enhanced notice should be required for group termination (layoffs). The disruption of a large group of workers being laid off is significant. With a group layoff, not just one family is affected, but an entire community—people who work together and often share social time together are all affected. The extra human cost of group layoffs necessitates more notice to allow for planning, preparation and response. We suggest eight weeks for 50 to 100 workers, 12 weeks for 101 to 300 workers and 16 weeks for layoffs of more than 300 workers.

The second area of concern is the stated exceptions to notice provisions. These are the loopholes that leave thousands of workers each year without proper notice, or right to wages in lieu of notice.

In particular, the exception for workers employed less than three months has earned a notorious reputation. It is the tool used by many employers to avoid any responsibility. They hire a worker (especially in low skill jobs) for three months, and then let them go just before the three month mark, and thus prevent paying a week's wages. This is often used in conjunction with efforts to avoid adding workers to benefit plans and other obligations. However, its common use to prevent a worker becoming established and building some rights to the position needs to be condemned by the government. And the best way to make that statement is to remove the exception altogether.

In fact, the AFL's position that none of the exceptions are sufficient to warrant waiving the notice period. Remember, this is not about the employer's right to terminate a worker, but merely how much notice (or wages in lieu of notice) they are required to give. Just because a worker agrees to a term contract of, for example, six months, that should not mean they lose the right to notice of termination.

The phrase "just cause" is rife with opportunity for abuse, and the employment standards system is not adequately positioned to assess when such a term is being used appropriately.

Our suggestion is to remove all exceptions, and allow the waiver of notice periods in emergency situations only.

AFL recommendation on termination by employer

1. ***Alter the notice period requirements to one week per year. Add additional notice for group terminations and removing all exceptions but emergencies.***

18. Termination – by Employee

By law, Alberta workers must give notice of resignation to their employer based on the length of employment: one week if employed for more than three months but less than two years, or two weeks if employed for two years or more.[5]

Employers in Alberta can financially penalize a worker who doesn't give notice that they're resigning by withholding pay for up to 10 days after the length of resignation notice requirements.

Workers should have the right to quit their job without financial penalties such as having their pay withheld, even temporarily. Workers do not need to give employers notice of resignation in British Columbia, Saskatchewan, Ontario, New Brunswick, Northwest Territories, or Nunavut. We fail to see any compelling reason why Alberta employers require notice of resignation, and why they should have the ability to penalize workers who fail to give the prescribed notice by withholding pay.

AFL recommendation on termination by employee

1. ***Eliminate provisions in the Employment Standards Code that require workers to give notice of resignation.***

[5] *Employment Standards Code*, Section 58(1)(a) and (b), http://www.qp.alberta.ca/documents/Acts/E09.pdf

19. Termination – Temporary layoff

Temporary layoffs are a special subset of termination. It is in both the worker's and employer's interests to allow a period of time when the employment relationship is maintained, despite a layoff, so that recall is easier and smoother. We believe 60 days is an appropriate length of time before termination pay must be paid.

AFL recommendation on temporary layoff

1. ***No change to temporary layoff provisions.***

20. Leave – Maternity and parental

There are three shortcomings in the current wording for maternity and parental leave in the Employment Standards Code.

First, the status of a worker's benefit plans when they go on leave is up in the air. Many find themselves ineligible for extended health or dental benefits during their leave—at a time when such benefits might be needed the most. Saskatchewan possesses language that prevents this legal difficulty by ensuring a worker can remain on their benefit plan if they choose and pay any associated costs. We support a clause that allows for this option.

Second, there are no provisions for complications during pregnancy. Many other provinces waive notice periods or allow extensions on leave timelines if there is a complication in the pregnancy, birth or post-partum. Allowing for maximum flexibility for a mother with medical complications is both humane and good business practice. The government should include language to protect women whose pregnancies suffer from complications.

Third, and more seriously, women are not eligible for maternity and neither parent eligible for parental leave unless they have completed one full year employment with that employer. This requirement is far too high. It can create the perverse situation where a woman is eligible for maternity benefits from EI, but not entitled to unpaid leave from her employer. This provision is also likely to be contrary to the Charter of Rights and Freedoms, and could be vulnerable to a challenge.

Other provinces range between no requirement (B.C., New Brunswick), 13 weeks (Ontario) and 20 weeks (Saskatchewan, Manitoba). Only one other province (Nova Scotia) requires a year.

There should be no minimum employment requirement for maternity or parental leave—as pregnancy and parenthood are fundamental, natural activities that should never put one's employment at risk.

AFL recommendations on maternity and parental leaves

1. ***Adjust maternity/parental leave rules to allow continuation of benefit plans.***
2. ***Waive restrictions for pregnancy and birth complications.***
3. ***Lower the number of weeks required for eligibility to zero.***

21. Leave – other leaves

One of the evolving elements of employment standards in recent years, both in legislation and employer policy, is the recognition that the complex nature of life often creates conflicts between home and family commitments and work commitments. Parents have always struggled with the circus act of juggling child rearing and employment. And today more and more families are actively caring for sick or dying parents or other family members.

Legislation needs to catch up with these struggles. Just as legislation decades ago recognized the need to provide days of rest, we need to acknowledge that juggling family and work responsibilities is part of the modern employment reality.

Workers need protection to ensure that tending a sick child, or spending final days with a dying parent will not put their job in jeopardy. Just as we recognize that pregnancy should not force a woman to quit her job, neither should the care of family in emergency or crisis situations.

Eligibility requirements for leaves should not be part of the changes to the Employment Standards Code.

AFL recommendations on other leaves

The AFL is supportive of all of the following leave options for employees covered under the Employment Standards Code.

1. ***An Emergency Leave of five days per year, which can be accumulated for three years.***
2. ***Bereavement leave of five days when a close family member dies.***
3. ***Sick leave of at least five days per year when the employee has to miss work due to a minor illness, which can be accumulated for three years.***
4. ***Jury duty leave when the employee is on jury duty.***
5. ***Critically ill child leave when the employee's child is critically ill.***
6. ***Death or disappearance of a child as a result of crime leave.***
7. ***Citizenship leave to attend the employee's citizenship ceremony.***
8. ***Organ-donor leave when the employee donates an organ.***

22. Enforcement

There are two aspects to enforcement of Employment Standards: how contraventions of the Code are discovered and then what is done about it when contraventions are found.

The enforcement regime is the anchor of the entire system. The province could have the strongest, most forward-looking legislation in the country, but if there is no one to enforce it, the rules become a mockery. If the enforcement system is not designed to achieve specific goals, it will undermine and erode the legislative structure.

You can build the sturdiest boat, but if you do not waterproof it properly, it will still sink. That is the importance of the enforcement regime.

And right now, Alberta's enforcement arrangements are woeful. They are passive and skeletal. The end result is that few offenders are found, and even fewer suffer any real consequences for their actions.

The AFL identifies four key shortcomings.

1. The complaint-driven system does not work

The only time an enforcement officer enters a workplace is when a formal complaint has been received. There are no pro-active inspections or audits of employers, even in industries with poor track records. Waiting for complaints to come to you is a method to ensure very little gets found. It is as ineffective as it is passive.

2. Almost zero prosecutions

There are almost no prosecutions under Employment Standards, and very few cases where specific remedies have been applied for contraventions of the Act. In most cases, the remedy is direct—repayment of wages, correction of scheduling, etc. Often this is appropriate, as the goal is to prevent unfair practices. However, the system is not set up to differentiate between an occasional honest mistake and an intentional flouting of the rules. Serial offenders, such as Buffet World a few years back, receive the same treatment as the mom and pop shop which made a sincere error. This is confusing, confounding and counterproductive. There needs to be a method for addressing contraventions in a manner that is correlated to its severity, frequency and intent. Currently, no method exists.

3. Partial payments for wages or other monies owed

The AFL hears frequently from workers of situations where the enforcement officer has negotiated a partial payment for wages owing (or other owed money) to a worker. These negotiations have the effect of paying a worker a percentage of what is legally owed to them.

We have two concerns about this practice. First, in strict terms, the settlement remains in contravention of the Code. If a worker is owed $1,000 in unpaid wages, and the officer negotiates a payment of $500, then the worker is out $500 of wages—money they worked hours to earn but now must go without. This is contrary to the intent of the legislation.

Second, workers often express the sentiment that they felt pressured by the enforcement officer to accept the negotiated deal, even if they did not want to. This is of particular concern. An enforcement officer is in a position of authority and respect. They are seen as the person protecting the worker's interest. If they tell a worker this is what has been negotiated, the worker is likely to accept, even if they feel they have a right to the full amount. From the government perspective, we believe this puts the enforcement officer in an awkward position—of mediator rather than enforcer.

We appreciate situations regarding lost wages can be complicated—and often a partial payment is the only option (or preferable to months of fighting over the residual). However, the government needs clear guidelines for how an enforcement officer will conduct themselves, and clear policy regarding when negotiated settlements are appropriate. At all times the final decision must clearly rest with the worker (both in legal terms, and in worker perception). We believe the default position must be full payment and only in a specific set of limited circumstances are partial payments even to be considered.

4. The appeal system is confusing and unbalanced

Few workers know how the appeal system works, and fewer access it. Stranger still is that an employer has a different appeal system than a worker. The employer system allows for more avenues of appeal, and for an external appeal body. This is not the case for the worker. The appeal structure is one of those examples where both justice and the appearance of justice not being done.

AFL recommendations on enforcement

1. ***Implement a program of "targeted industry" inspections for employers with a poor record of compliance with the Code.***
2. ***A system for routine pro-active inspections of workplaces (not waiting for complaints.)***
3. ***Constraints to the conflict resolution system, restricting opportunities for negotiated settlements for owed money, and guaranteeing the final decision remains with the worker.***
4. ***Clearer appeal system applied equally to workers and employers.***

23. Fines

Fines are a controversial topic. Their appropriate level is a constant matter for debate and disagreement. We believe this arises from a misunderstanding of their purpose in legislation. Fines accomplish three functions in an enforcement regime. First, they are a direct penalty to the offender—an economic charge for willfully ignoring the law of the province. Second, they serve as a deterrent to other potential offenders. Fines are intended to make a person or organization think more carefully about the consequences of contravening law, and to consider the contravention less beneficial.

Third, and this is the piece often forgotten, fines are a symbolic statement about the importance of the set of rules to be enforced. The reason a penalty for murder is higher than property theft is because it reflects society's belief that a human life carries more importance than a stereo. The same logic applies to non-criminal enforcement. The level of the fines in Employment Standards is a symbolic reflection of the importance we place on protecting workers and ensuring minimum standards in the workplace.

On all three levels, the current levels of fines fail. They are simply too low to serve as an effective economic penalty, a deterrent or a strong symbolic statement. To correct this failure, we need to raise the maximum fine that can be assessed, to establish a minimum fine and to build in an element of progressivity (i.e. increased fines for subsequent offences). We recommend a maximum fine of $1-million for a first offence, and doubling the maximum for each subsequent offence. We also believe a minimum fine of $100,000 is required to send a strong signal.

At first blush, these figures may raise eyebrows. Some may charge they are far too high. We believe that upon closer examination of the enforcement regime, these figures are appropriate.

First, we need to remember that only the most serious offenders are taken to court under Employment Standards. They will either be single offences that affect many workers, have a particularly damaging impact or are notably unethical, or they will be serial offenders

who intentionally flout the law for economic benefit. This means any fines imposed will only be for serious breaches of the Code.

Second, Employment Standards offences are by their nature economic offences. The person or organization is attempting to achieve an illegitimate economic gain through ignoring legal obligations—for example, they are shortchanging paycheques, making illegal deductions, not paying overtime or employing workers that are too young to be employed. These have an economic motivation, which requires a sufficient economic deterrent and penalty. A serial offender can pocket tens of thousands of dollars very quickly by breaking certain provisions of the Code. A fine of $30,000 or $50,000 may not be sufficient to prevent the offence from being economically beneficial.

Third, judges always have discretion to assess a fine level they deem appropriate. While $1-million may seem excessive for a small store owner (and we would agree it might be), a fine of that level may be the only way to catch the attention of Wal-Mart. A $100,000 fine will not impact such a large corporation. We need to trust that judges will balance the seriousness of the offence with the circumstances of the offender.

In our mind, more important than the level of fines is the rigour in which prosecution is pursued. Currently, the fines in the Code are little more than theoretical. Almost no one has been prosecuted in years in Alberta. This is the quintessential "paper tiger." We need look no further than recent cases. Buffet World had dozens of employment standards infractions a few years ago and nothing came of it. This year, the contractor for the Klondike Days midway was found repeatedly in violation of the Code, and no action taken.

This is a disgrace. Employers can thumb their nose at the rules laid out in legislation, and no one makes them accountable for their actions. We need a more stringent set of rules for when cases are forwarded to prosecution, and more cases need to be prosecuted each year to show both the public and those involved in work that the Code has significance.

A practical reform would be to follow the lead of Workplace Health and Safety in appointing prosecutors dedicated exclusively to Employment Standards cases. It has proven highly effective in health and safety. It built a level of expertise and the focus needed to effectively prosecute cases.

AFL recommendation on fines

1. ***Increase fines, including minimum fines and progressive fines for subsequent offences. We also call for greater prosecution of offenders.***

24. Ticketing / administrative penalties

The AFL is supportive of the concept of administrative penalties, more commonly known as ticketing. While prosecution and stiff fines are effective methods of enforcement, they are only practical for the more serious offences—either in frequency or impact. The cost of taking a case to court, the level of due diligence to persuade a judge and then the difficulty of collecting the fine make pursuing this avenue against an employer that didn't give proper termination notice unfeasible.

For these cases, an administrative penalty is the perfect vehicle. It allows for direct, immediate enforcement of the law, and in a manner that is cost effective. It can be done with existing infrastructure, in the same manner of a traffic ticket.

The key to making it effective is to ensure the penalty is sufficient to achieve the enforcement goal. We recommend linking the penalty to a percentage of payroll for employers. This way a small company is not overly burdened by a fine for a relatively minor infraction, while a large employer cannot laugh away the fine.

We also argue tickets should only be issued to employers. This is not to be unfair or biased. Our rationale is based upon the nature of provisions in the Code. The vast majority of requirements are obligations for an employer. The only measures aimed at workers are notice provisions (for termination or leaves), and failure to return to work after layoff. Neither of these items seems particularly well-suited for a ticket.

More pointedly, each of these provisions allows the employer an effective remedy should the worker breach the provision. They lose their right to pay in lieu of notice, or can be denied their request for leave. We fail to see how penalizing a worker further with a ticket will enhance any of the three purposes of fines—penalty, deterrence or symbolism.

The bulk of employment standards work is ensuring the employer—the party with the bulk of power—abides by its legal responsibilities to meet a minimum standard of employment. We should not get sidetracked by a theoretical debate about being evenhanded. It is a fruitless discussion, for enforcement in Employment Standards is, in effect, about dealing with employers who wish to avoid their basic obligations. The ticketing program should reflect that reality.

AFL recommendations on ticketing/administrative penalties

1. ***Establish a system of administrative fines (ticketing) that is proportionate to size of payroll.***
2. ***Ensure ticketing only applies to employers, given the nature of the Employment Standards Code. Issuing an employee a ticket for failure to provide appropriate notice or failure to return after a layoff does not make any sense.***

25. Other issues not contained in the Government of Alberta Discussion Guide

Alberta's labour market and the nature of work have changed considerably in the past 26 years. Retail, restaurant, and hospitality/service sector work has expanded dramatically. So has part-time work. Since the Employment Standards Code was last changed in 1987, women's participation in the workforce has tripled. In 1987, the Temporary Foreign Worker program was restricted to a few dozen workers in specialized roles. In 2014, there are more than 85,000 TFWs in Alberta.

The Ministry's parameters for a review of Employment Standards seems blissfully oblivious to our changing society and economy.

We have therefore taken the opportunity to highlight ways in which Alberta can bring our Employment Standards Code into the 21st Century, particularly for women, young workers in the service industry, and to make sure TFWs are not being used by employers to drive down wages and working conditions for Albertans.

1. Prohibition on gender-based wage discrimination

Alberta is one of only four provinces (B.C., P.E.I., Newfoundland) that does not contain language that prohibits gender-based wage discrimination in the Code. This is an oversight that needs to be corrected. It is a longstanding and universally regarded principle that men and women should be paid the same wages for doing the same job. Unfortunately, in too many workplaces, we continue to see an unjustified wage gap between male and female workers. We need provisions to explicitly make such discrepancies illegal and empowering enforcement officers to order remedies.

Current provisions in the Human Rights Code are not sufficient to address the issue of discriminatory wages. The complaint process is cumbersome and time consuming. The need for a worker to single themselves out through the complaint process is too much to ask when addressing a topic such as unfair wage gaps. Our position is that the Employment Standards Code is the ideal place to enforce rules regarding wage discrimination.

AFL recommendation on gender-based wage discrimination

1. ***Following the path led by Saskatchewan, Manitoba and Ontario by implementing provisions prohibiting gender-based wage discrimination and implementing capacity to enforce remedies.***

2. Protections for restaurant, retail, and hospitality industry workers

The AFL is providing a series of special recommendations for the restaurant, retail, and hospitality industries.

We do so because we hear complaints from workers in these industries far too often. Contraventions of the Code in these industries are rampant.

Moreover, these industries are where we find most women workers, young workers, new Canadians, and, increasingly, Temporary Foreign Workers. These sectors are where workers are most vulnerable.

The restaurant, retail, and hospitality industries have exploded since the mid-1980s when the Employment Standards Code was last revised. It is time to stand up for women, young people, new Canadians, and Temporary Foreign Workers and update the Code to reflect our changing economy.

a) Deductions to earnings

The Code makes illegal any deductions for error, cash shortages and other losses. However, each week the AFL offices get another phone call from a worker whose employer is attempting to make an illegal deduction. In these cases, the worker's choice is very stark. Pay it, or fight it and lose hours. Often, the employer finds creative ways to deduct wages—by reducing hours, changing shifts or other punishments.

Many restaurant employers require workers to contribute to a "dine-and-dash"fund, which is used to pay shortages. These acts are officially legal, but clearly their intent is the same as deducting amounts from a paycheque. A fund

collected from workers for future losses is no different than retroactively deducting wages.

The language around deduction of earnings needs to be strengthened. First, it needs to outlaw both deductions and any reprisal directly attributable to the loss. While an employer has a right to discipline for lack of performance, reduction of working hours is just another way to recoup financial losses. Second, it must ensure that all forms of deductions—whether preceding or following the loss—are illegal. This language should ensure collective deductions (e.g. dine-and-dash funds) are also forbidden.

These changes merely ensure the intent of the current provisions are met by closing loopholes found by employers intent on making workers pay for honest mistakes or customer action.

There should also be specific penalties stipulated for attempting to make illegal deductions.

The other shortcoming is that the Code allows employers to charge workers for their uniforms, and only prohibits profit-making. There are two difficulties with this language.

First, many clothing retail employers require their workers to wear clothing sold at the store. It is unclear whether this practice contravenes the current provisions. The employer is making a profit on the clothes, even if an employee discount is offered, and they require the use of such clothes. However, it is uncertain if these clothes are "uniforms" or "special clothing." The Code provisions need to be clarified to ensure that any form of clothing required by the employer are included in deduction provisions.

The second concern is that under current provisions, the worker continues to pay out of pocket for something that is a job requirement. We consider this unfair. The employer has the right to impose clothing rules for safety or other reasons (including universality of appearance), but should be expected cover the cost of this requirement.

The B.C. Code contains a provision that ensures that no worker pays for the purchase, cleaning or maintenance of special clothing required to be worn at work. This provision properly reflects the balance of employer right to set dress codes with the obligation to pick up the expense of such policies.

AFL recommendations on deductions to earnings

1. ***Adopt the B.C. Code provisions on special clothing, and ensure that all forms of required clothing are covered by the provisions.***
2. ***End the loophole for "dine-and-dash" funds.***
3. ***Outlaw deductions for losses and reprisals for losses.***
4. ***Specific penalties should be outlined in the Code for attempts by employers to make illegal deductions.***

b) Advance floats for restaurant servers

A recent trend in the restaurant industry is to require servers to provide their own float at the beginning of their shift. A float is a medium amount of money that serves as the basis for providing change to customers when they pay their bill. Traditionally, employers would provide the server with a set amount of money for their float, which must be returned at the end of the shift.

The shift to "self-floating"—where servers use their own money to provide change—may seem insignificant at first. But it sets up a crucial difference regarding the relationship to floats, cash shortages and financial responsibility.

First, it is an unreasonable financial burden on a server to have access to a certain amount of cash to provide for the float. Many servers work few shifts, have multiple employers or do not have ready access to cash. The employer is in a much better position to provide float money.

Second, it is a subtle shift of responsibility for shortages (customers leaving without paying, etc.). Now, any lack of balance that results in the float not being fully funded comes directly out of the server's pocket. Before, while there were often disputes about float shortages, at least it was the employer's money that was short. Now, if a server wants to be repaid for a shortage (to which they have a legal right), they need to persuade the employer to provide them with cash to make up the difference. This rarely happens. The AFL has received numerous phone calls from servers complaining about this practice. All of them report that self-floating results in the worker paying for shortages.

It is a way for employers to avoid complying with the provisions around wage deductions.

AFL recommendation on advance or self-floating

1. ***Prohibit the practice of self-floating, ensuring restaurant employers provide servers with a necessary float at the beginning of their shift.***

c) Tip protection

Alberta does not have any tip protection legislation, despite the fact that the province talked about bringing in some protection for service industry workers when they brought in the two-tier minimum wage.

Some restaurant employers demand servers submit a percentage of their gross sales, often about four per cent, which means they must turn over $40 for every $1,000 in total billings whether they get tips or not.

The solution is simple: a one-sentence change to legislation. At one sentence, it will take no time at all to write this piece of legislation, and no time at all for MLAs to read and understand it.

AFL recommendation on protecting tips for servers

1. ***Add one sentence to the Employment Standards Code: "An employer shall not take any portion of an employee's tips or other gratuities."***

d) Two-tier minimum wage

Alberta's decision to move to a two-tier minimum wage has been a bonanza to unscrupulous employers in the restaurant industry. There have been frequent reports of servers who do not touch alcohol being paid the "servers" minimum wage—despite the fact that the law clearly states that serving alcohol is the test for the lower-tier wage.

The two-tier minimum wage has also come without any regulations on how to handle tips in the restaurant industry—despite the fact that the province recognized this would be an issue when they brought in the two-tier wage. Tip-outs, dine-and-dash funds, and other cash grabs from employers that are subsidizing their wage costs through tips earned by front-of-the-house serving staff are commonplace.

The two-tier minimum wage was recently abandoned in British Columbia, given its rampant abuse and the problems it created. It's time Alberta did the same.

AFL recommendation on two-tier minimum wage

1. ***Extend fairness to people who work in restaurants by abolishing the two-tier minimum wage.***

3. Setting the minimum wage

One of the most disastrous elements of Alberta's employment standards regime is the process for setting the minimum wage. Workers who earn minimum wage deserve, at the very least, certainty that their wage will increase in-line with changes to Alberta's cost of living. But the government has denied them this certainty.

While it is government of Alberta policy to link increases in the minimum wage to average weekly earnings and the Consumer Price Index (CPI) for Alberta, this same government (indeed, the same labour minister) has previously ignored minimum-wage policy and foregone increases in the name of 'supporting the economy,' rather than supporting the province's lowest-paid workers.[6]

Keeping minimum-wage increases as policy politicizes the decision to increase it. The decision of what Alberta's lowest-paid workers will earn is left to the whims of political calculation. Consequently, the minimum wage is increased when it suits the re-election needs of the government of the day, rather than the needs of low-wage workers and conditions in the labour market.

This is a poor model for public policy. It is also disastrous for small business. They may go years without an increase, and then face a spate of increases to make up for it. Small business deserves more predictability than a political cycle can provide.

We acknowledge that the government has taken some steps (albeit insufficient) in increasing the minimum wage should increase along the same lines as increases in average weekly earnings and the CPI. The issue is not the policy of tying the minimum

[6] Government of Alberta, "Alberta's minimum wage to remain the same through 2010," February 5, 2010, http://www.gov.ab.ca/release.cfm?xID=277809EBCEED4-0E95-ABCA-75F112D1B6444B3B

wage to inflation or cost-of-living increases – it is the discretion of the Minister and Cabinet.

AFL recommendation on setting the minimum wage

1. ***Take the politics out of the minimum wage by enshrining increases in the Regulations.***

4. Temporary employment agencies

Manitoba and Saskatchewan have both passed imaginative legislation regulating the Employment Agency industry. In both provinces, an employment or temporary labour agency must be licensed before it can operate. There are also clear prohibitions on charging workers for linking the worker with an employer. Manitoba also prohibits employment agencies from providing replacement workers during a strike or lockout.

In Alberta, temporary labour is a growing industry. We have seen a proliferation of agencies setting up shop and servicing employers looking for temporary workers. With this growth has come abuse and questionable practices. It is not uncommon for agencies to charge both the employer and the worker for their services. Some of these agencies are shady operations, shortchanging workers and taking advantage of lax rules to make a fast buck and disappear.

There is a great need to regulate these agencies. The workers who utilize agencies to find work are among the most vulnerable workers in the labour market. Their connection to the labour market is tenuous, and often their skill levels are lower than many workers. These workers need added protection from preying agencies who find ways to nickel and dime them out of fair wages.

While in Saskatchewan and Manitoba, there is separate legislation to address this issue, we believe language can be incorporated into the Code to offer equal protection to these vulnerable workers.

AFL recommendation on temporary employment agencies

1. ***Require employment agencies to obtain a license, and prohibition of charging workers for providing agency services.***

5. Employer reprisals

Most employment standards acts across the country contain language protecting a worker from employer reprisal, punishment or discrimination when they make a complaint to the Employment Standards branch, or provide evidence at an inquiry, or request something to which they are entitled under the Code. Alberta is no different on this matter (section 125).

However, here in Alberta it is simply a theoretical right—as the section has no avenue for a worker to pursue this protection, and there is no specific penalty applied to this provision. It also does not address what happens if a worker requests a right under the Code, and is refused.

The language in this section needs to be toughened, to ensure it is able to protect workers in real life situations.

AFL recommendation on employer reprisals

1. ***Provide an explicit set of penalties for contravention of section 125, and allowing a worker to act to protect a right provided under the Code.***

6. Temporary Foreign Workers

There are more than 85,000 Temporary Foreign Workers working in Alberta. The number of TFWs is not linked to the number of available jobs in Alberta: when the unemployment rate spiked in 2008–09, the TFW program continued to grow.

Given the explosion of the program, it is clear there is a role for Employment Standards.

The public has been able to access a limited amount of evidence about breaches of the Employment Standards Code by employers who hire Temporary Foreign Workers. There have been no proactive inspections of workplaces with TFWs, but we do know that a very high number of complaints filed by Temporary Foreign Workers result in the finding of violations by employers.

Here is an overview of what we do know about TFWs and Employment Standards:

- Of investigations launched because of a complaint by a TFW, 47 per cent found the employer had contravened the Code. By comparison, the figure was 33 per cent when the complaint came from a Canadian worker.
- Ensure Employment Standards violations against TFW workers get reported to the Harper government. The Alberta Federation of Labour has found that the provincial government has not told Ottawa of employers who break Employment Standards rules. These employers should be found "non-compliant" with Ottawa's rules governing TFWs and banned from using the Program. But, as of March 2014, the non-compliant list is empty: http://www.cic.gc.ca/english/work/list.asp

  There are better ways to ensure Temporary Foreign Workers are not brought to Alberta to be abused by unscrupulous employers. Manitoba has a model for tracking where Temporary Foreign Workers are employed and under what conditions—and their model works. Our recommendations mirror the Manitoba model.

  Emulating best practices in other Canadian provinces will make sure Alberta citizens and permanent residents aren't being unfairly undermined by lower wages and working conditions for Temporary Foreign Workers.

AFL recommendations on employment standards and temporary foreign workers

1. ***Proactive, targeted inspections by Employment Standards officers of worksites where employers hold a valid Labour Market Opinion, Accelerated Labour Market Opinion, or are participating in the Alberta Pilot Project for skilled TFWs.***
2. ***Give Employment Standards Officers the resources and the power to conduct unannounced inspections of housing arrangements employers make for Temporary Foreign Workers. Employers are legally required to provide "adequate housing" for Temporary Foreign Workers. But the Alberta***

Federation knows, from years of TFW complaints, that there remain very serious issues related to housing. Some employers' version of "adequate" is six or eight people living in a two-bedroom, unfurnished apartment at $400 rent each per month. Employment Standards should therefore be empowered to look into housing provisions for Alberta TFWs.

3. ***Adopt the "Manitoba Model" for Temporary Foreign Workers within the Employment Standards Code. Actions include:***

    a. *The definition of "employment agency" should be broadened to include the following: arranging visas, settlement services, etc. Recruiters have been managing to avoid prosecution by saying that they are charging $10,000 for activities such as "settlement services" (arranging visas, arranging Alberta Health, opening bank accounts, etc.) not for "recruitment."*

    b. *Employment agencies and recruiters should have to register with Employment Standards, in addition to requiring all employers who hire TFWs to also register with Employment Standards (based on the "Manitoba Model," see below).*

    c. *Charging fees to temporary foreign workers—either directly or indirectly—must be prohibited. The prohibition must come with tough enforcement for non-compliance.*

    d. *Agencies should have to provide security (like posting a bond) to protect job-seekers from financial harm. The Manitoba government has successfully implemented a program such as this and we believe that Alberta should also. In Manitoba, anyone registered to provide recruitment services—which include "settlement services"—must provide a surety of $10,000.*

    e. *The definition of "settlement services" must be expanded to include all services relating to accommodation, which would include buying furnishings for the housing arrangements made by the employer.*

    f. *Make proactive enforcement, payroll inspection, monitoring of recruiter activity, status of work permits, and labour market needs monitoring much easier by emulating Manitoba in requiring all employers wanting to recruit foreign workers to register with the Employment Standards Branch, Business Registration Unit. The immigration application of a foreign worker does not proceed unless the employer hiring them is registered.*

    g. *When registering, employers are be required to provide information about their company, the types of positions they are recruiting and information about any third parties that will be involved in the recruitment process. Any third party used to recruit must be licensed as a foreign worker recruiter by the Employment Standards Branch.*

    h. *Employers are responsible for paying any recruitment fees.*

    i. *The names of all individuals or businesses holding a valid license from Employment Standards are accessible to the public. In Manitoba, names are posted on the Employment Standards website at* www.manitoba.ca/labour/standards.

26. Conclusion

The Alberta Federation of Labour appreciates the opportunity to contribute to a Review of Alberta's Employment Standards Code. We hope our analysis of the problems facing Alberta workplaces and our gradualist, reasonable recommendations will be taken as seriously as the input of those stakeholders who recommend weakening Employment Standards in the interest of expanded profits and driving down wages and working conditions.

Respectfully submitted,

Gil McGowan, President

The Alberta Federation of Labour

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