No Evidence to Justify Lowering the Floor
A Submission to the BC Employment Standards Review

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Introduction

The British Columbia Government is currently reviewing its employment standards legislation, and is clearly contemplating a dramatic rollback of these important labour laws. In November 2001, the Ministry of Skills Development and Labour released a discussion paper outlining a number of drastic changes, with the intention of introducing new legislation by April 2002. This policy brief represents the CCPA—BC's response to the suggestions outlined in the Ministry's discussion paper.

Employment standards currently cover most workers and workplaces, and represent the minimum labour rights to which employees are entitled—a basic floor below which employers cannot go. Employment standards cover issues such as the minimum wage, minimum and maximum hours of work, over-time pay, maternity leave, statutory holidays—in essence an array of labour laws that allow workers to better balance work and family, protect their personal time, and earn a decent living under reasonable conditions. At the heart of employment standards is the radical notion that economies are meant to serve people, and not the other way around—that we don't live to work, but rather work to live.

Employment standards are particularly important for society's most vulnerable workers (new immigrants, women workers, young workers, and low-wage workers) and those not represented by unions (as collective agreements establish workplace conditions that are superior to the minimum requirements laid out in employment standards law). In effect, employment standards represent a collective agreement society negotiates on behalf of all workers, in recognition of the fact that the relationship between a worker and an employer is not an equal one.

Employment standards also help to level the playing field for businesses. For example, a reasonable minimum wage means that employers who want to pay a decent wage are not put at a competitive disadvantage vis-à-vis employers wanting to pay poverty wages.

Nevertheless, many employers and business associations are eager to see employment standards relaxed. They claim that increased "flexibility" will increase competitiveness and thus enhance job growth. But they have not presented evidence to this effect. And in the absence of such evidence, rolling back employment standards appears to be no more than a gift to employers and corporations eager to lower their labour costs, demand more of their workers, and boost their profit margins.

The Review Process—Limited Time and Notice

This brief is being submitted after the December 12, 2001 deadline for submissions. That is because the one-month timeframe between the release of the Ministry's discussion paper and the deadline for submissions was unreasonable.

A meaningful consultation process cannot demand that people drop all other work they are engaged in, and must allow time for research and thoughtful consideration. There is no justification for this urgency. The timeframe appears designed to limit input.

This impression is compounded by the dearth of public notices regarding the review. (Despite being a heavy consumer of news, I saw no newspaper ads or notices nor heard any radio announcements informing people of the review process.) In the absence of such notices, it is highly unlikely that the Ministry will hear from many ordinary workers about the suggested employment standards changes.

Who is covered by Employment Standards legislation?

Many of the ideas floated in the Ministry's discussion paper relate to who is covered by (and exempted from) employment standards law. The paper proposes excluding from the Act: workers with higher incomes (such as those making over $60,000 per year); workers covered by a collective agreement; a number of new categories of professionals; all managers (broadly defined); and—most significantly—any employee who "voluntarily" agrees to a work arrangement that diverges from the rules laid out under employment standards.

These policy suggestions, individually and as a whole, would be a move in the wrong direction for a number of reasons:

The notion that individual workers and employers can voluntarily agree to "mutually beneficial" employment agreements is based on a false assumption that the relationship between workers and employers is equal. In particular, vulnerable and marginal workers (such as those in the contingent workforce) would feel tremendous pressure to accept such agreements.

Additionally, in all likelihood, those more willing to enter into individual agreements exempting themselves from employment standards would be disproportionately those without family obligations. As such, this proposal has significant gender implications. It means that women, who carry a heavier burden of home obligations, would be more likely to refuse such "voluntary" agreements, and thus, more likely to be denied employment and promotions. Consequently, this policy could increase the earnings gap between women and men.

A further gender impact results from the fact that, for many women, their only maternity leave rights are those granted under the Employment Standards Act. By exempting higher-income workers, all managers, and new categories of professionals from the Act, thousands of women will lose any entitlements they have to maternity leave.

The proposal to exempt those covered under collective agreements represents an invitation to employers to sign agreements with "rat" or "company" unions. This proposal has the potential to take the province back decades, to a time when phony company-sponsored unions were rampant.

Excluding large sections of the workforce from the Employment Standards Act is counter to the basic principle of equality before the law.

One of the clear objectives of the proposed policy changes is to reduce the workload of the Ministry's employment standards officers (in anticipation of a 30-50% budget cut). It is hoped that, by excluding more of the workforce from the Act, fewer complaints will need to be handled. However, some of the suggested changes may have the opposite effect. Specifically, the exemption of all managers (and broadly defining who is a manager) could lead to hundreds of complaints from people who have been artificially re-categorized as "managers" in order to exclude them from the Act. Indeed, most of the exemption proposals are potentially complex to administer, and would thus increase the workload of the employment standards branch. Moreover, if the Ministry truly believes that excluding the proposed categories of workers from the Act will indeed lower the workload of its staff, then it is de facto conceding that many of these workers have, to date, been subjected to workplace abuses and have felt the need to exercise their rights under the Act.

Where is the evidence?

At the core of the proposed changes is a demand from powerful business lobby groups for increase workplace "flexibility"—a euphemism for workers more willing to work for less pay and/or accept inferior work conditions. Yet underlying the Review process is a fundamental lack of evidence to justify the need for these rollbacks. In short, the business lobby pushing for these changes has not made its case—it has merely argued by assertion.

Where is the evidence that businesses in BC have withdrawn or withheld investment due to alleged "rigidity" with respect to employment standards? Where is the evidence that current employment standards undermine "competitiveness"? To the extent that much of the pressure for relaxing the current legislation is coming from the service/hospitality sector, these businesses are largely unable to relocate—the market for their services is here.

In fact, there is evidence that the policy ideas being proposed would have the opposite effect of their stated goal. Specifically, rather than increasing employment (the supposed object of the exercise), relaxing employment standards could decrease employment:

Professor Stephen McBride (chair of political science at Simon Fraser University) and Russell Williams, in an article published in the December 2001 issue of the journal Global Social Policy, tested the premise of the OECD's Jobs Strategy and its push for increased labour flexibility. In a review of labour laws and employment in all the OECD countries, they found, contrary to the OECD hypothesis, that

there was no correlation between labour flexibility and employment rates. Indeed, a number of countries with very high labour and employment standards (such as Denmark and the Netherlands) were also among the best performers with respect to employment rates. Additionally, Andrew Jackson, research director with the Canadian Council on Social Development, has found that many of these same countries are also among the strongest performers with respect to GDP growth.

A great deal of research has recently been conducted on the policy goal of increasing employment by way of enhanced work-time sharing. In this respect, the proposals on work-time and overtime proposed in the Ministry's discussion paper go against the current in much of Europe. Rather than improving work sharing, they risk increasing the use of overtime (as the cost of overtime to employers would be reduced), and thus, reducing employment.

Conclusion

We recommend strongly that, before any legislative changes are brought down, further study is needed. Specifically, the Ministry of Labour should:

Conduct a detailed analysis of the impact of the decision in the late 1990s to exempt the high tech sector from employment standards (Was there an increase in overtime? Did such an increase lower overall employment? Were there complaints from employees in the high tech sector to the employment standards branch? Has a post-exemption survey of high tech employees been conducted, and what impact do employees feel the change has had on their personal and home lives?).

Undertake a thorough gender analysis of any proposed changes to employment standards (in particular, the gender implications of moving towards workplace cultures that assume increased overtime).

Conduct an analysis to determine if proposed reforms would disproportionately impact visible minority and young workers (who are concentrated in the service sector and more often lack union representation). If the answer is yes (and we suspect it is), then such changes open the government to Charter challenges.

Overall, the rollbacks to employment standards proposed in the Ministry's discussion paper have serious gender implications. They are not conducive to healthy families or healthy lifestyles. They would make it more difficult for working people to plan their home and social lives, and to engage in civic life—to live as citizens as well as workers.

Moreover, by encouraging the increased use of overtime (rather than an increase in work-time redistribution), the proposed reforms risk lowering employment—the opposite of what is supposed to result from an increase in "competitiveness" and "prosperity".

To the extent that these reforms are being driven by a budget-cutting imperative (as well as a powerful business lobby), this government-imposed imperative should be rejected. We re-affirm that the work done by staff at the employment standards branch is vital and important. Cutting the staff of the employment standards branch will mean that laws—hard-won rights—will go unenforced and complaints will languish.

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