

Summary Report on Employment Standards Stakeholder Engagement Process

March 2011



Ministry of
Labour, Citizens' Services
and Open Government

Introduction

On November 25th, the Honourable Iain Black, Minister of Labour, announced that senior ministry staff would meet with key labour and business stakeholders to gather their views on how British Columbia can best ensure that employment standards reflect the realities and needs of employees and employers in 21st century workplaces.

Between December 2010 and February 2011, senior ministry staff held meetings with labour and business stakeholders representing over thirty groups, including organized labour, the Employment Standards Advocates Coalition (a coalition of organizations advocating on behalf of un-represented workers), umbrella business organizations, and selected industry associations. Meetings and discussions were also held with the Centre for Policy Alternatives and the Fraser Institute, and selected academics. See Appendix 1 for a listing of meeting participants.

The purpose of these meetings was to elicit stakeholder views and advice on how to modernize B.C.'s employment standards system around the following themes:

- The role and purpose of the minimum wage in today's economy, and how it should be established and adjusted.
- Enhancing flexibility for employees and employers.
- Clarifying and simplifying standards.
- Improving the provision of information on employment standards to employees and employers.
- Improving the enforcement of employment standards
- Ensuring expeditious hearing and determination of complaints.

This report from the staff who met with stakeholders summarizes the key themes from these meetings and discussions. As a summary, it is not possible to canvass in detail on every view that staff heard from every stakeholder with whom staff met. It reflects a general, and relatively high level overview of what staff heard and noted. It has not been vetted with stakeholders for accuracy or completeness.

The report covers both minimum wage and employment standards. As would be expected, there was a considerable difference in stakeholder perspectives between those who represent employee interests or a subset of them, and those who represent employers and business. In some areas that were discussed there was broad agreement on some issues. We have noted the areas of agreement where that occurred, and we then present the views of employee groups and the views of employer groups.

On the subject of minimum wage, we also reviewed the work of four academics and canvassed their views with them. These results are set out following the summary of stakeholder discussions on minimum wages.

In Appendices 2 and 3 we present some specific proposals that were provided by stakeholders on issues associated with minimum wage (Appendix 2), and Employment Standards (Appendix 3).



I. Minimum Wage

Background

British Columbia's general minimum wage of \$8.00 per hour has been in place since 2001. We asked meeting participants for their views on: the current minimum wage; the role and purpose of the minimum wage; whether it should be increased (and if so, on what criteria should an increase be based); what, if any, criteria should guide future increases; and the timing of future increases.

We also discussed other "minimum wages". We asked:

- whether the "First Job" rate should be continued – The "First Job" rate of \$6.00 per hour has been in place since 2001, and covers the first 500 hours of work of persons who have not previously been employed.
- whether there should be a different (lower) minimum wage for workers who receive gratuities. Two Canadian jurisdictions – Ontario and Quebec – have a separate and lower minimum wage that applies to workers who receive gratuities.¹
- their views on regulated piece rates for agricultural workers. In British Columbia, farm workers who are employed on a piece work basis and hand harvest certain berry, fruit or vegetable crops are subject to a comprehensive, regulated piece rate system. This is unique among Canadian provinces in that the rates are not backed by or subject to payment of the general minimum wage.² B.C.'s piece rate system was established in the 1980s and is based upon a time and motion study that was undertaken by a social scientist. The intent was to set the piece rates at levels such that an average farm worker would be able to earn the equivalent of the general minimum wage.³

1 In Ontario, this rate is \$1.35/hour lower than the general minimum wage, and it applies to employees who serve liquor directly to customers or guests in licensed premises as a regular part of their work. In Quebec, this rate is \$1.25/hour lower than the general minimum wage, and it applies to "an employee who receives gratuities or tips", including liquor servers, food servers, housekeepers in hotels and other tourist establishments, and some others. The differential in Quebec will increase to \$1.30 per hour on May 20, 2011.

2 In contrast, some jurisdictions exclude hand harvesters from minimum wage entitlement entirely (Alberta and Saskatchewan) whereas others require that hand harvesters receive at least the general minimum wage (Manitoba and Nova Scotia). Others still (Ontario and Quebec) generally require that hand harvesters be paid at least the general minimum wage, but permit piece rate systems if the producer is able to demonstrate that that the employee "is paid at a rate that is customarily and generally recognized in the area as having been set so that an employee exercising reasonable effort would earn the minimum wage for the actual hours worked."

3 Since 1992, the piece rates have increased an average of 33% (with individual piece rates increasing from as low as 22.7% for blueberries to as high as 42.7% for beans), which is lower than the 45.5% increase in the general minimum wage over the same period. Since 1998, government's practice has been to increase the piece rates across-the-board by the same percentage amount as the increase in the general minimum wage.

Stakeholder Perspectives on Minimum Wage

Current Minimum Wage and Potential Increases

Areas of Agreement:

There were some areas of agreement among stakeholders representing employers and workers. These are:

- Wage increase:
 - There was a broad (although not universal) recognition that it was time to consider a minimum wage increase and that one would likely occur in the near future.
- Index future increases:
 - Many participants, representing both employers and workers, also agreed that once adjustments are made to bring the minimum wage up to the desired rate, it would be preferable that future increases be made in a relatively incremental and predictable way that is “de-politicized” as much as possible and that is linked to economic indicators such as the Consumer Price Index.
- Policy considerations:
 - Most participants also agreed that minimum wage policy should be considered in the broader context of tax and income supports for B.C.’s low income workers and that how B.C. compares with other jurisdictions should not drive B.C.’s policy – although there was some disagreement over what this kind of analysis will show. Specifically, some employer participants noted that low income workers are exempted from provincial income taxes and are beneficiaries of certain other exemptions and income supports (including their MSP premium assistance, housing subsidies, and others), and that these measures need to be taken into account when considering the overall well-being of low income workers in B.C. Participants advocating on behalf of workers noted that even after taking account of differences in tax policy and other exemptions/subsidies, minimum wage earners in B.C. had less disposable income and were facing higher living costs than their counterparts anywhere else in the country.

Despite these broad areas of agreement on the general idea of a minimum wage increase, there were significant differences noted below.

Role and Purpose of the Minimum Wage—Quantum and Timing of Increases

Employer Groups:

- Most employer groups expressed the view that minimum wage protects vulnerable workers from unscrupulous employers that attempt to under-cut the minimum market rate within the economy. They argued that it should not be used as a poverty-reduction tool on the grounds that government is better positioned to support low-income workers through the tax system and other measures.
- Some employer participants also noted that minimum wage, as a poverty-reduction tool, is an exceedingly blunt policy instrument that could end up hurting the people that it is intended to help by causing employers to lay off staff and cut back on hours.
- As a result, most employer groups argued for relatively modest increases that are phased-in over time, along with considerable advance notice to allow employers to plan for the increases.

Worker Groups:

- Most worker groups expressed the view that raising the wages of low income workers is a key component of a poverty reduction strategy.
- Some stated that the negative employment impacts cited by employer groups and economists are often over-stated because they focus on short-term or transitional impacts that diminish significantly or disappear over the longer-term.
- They also said that any negative employment impacts need to be weighed against offsetting benefits, including improved productivity, greater consumer spending, and more stable workforces (evidence that higher wage jurisdictions experience fewer hires, but also less turnover and fewer layoffs).
- As a result, most worker groups suggested a significant minimum wage increase to at least \$10.00/hour that would be implemented immediately or be phased in over a relatively short timeframe.

The “First Job” Rate

Area of (Partial) Agreement:

- In this area, all groups representing workers and some groups representing employers expressed support for the elimination of the “First Job” Rate. The principal reason cited in favour of its elimination included the view that the “First Job” Rate is very rarely used by employers or employees.

(Some) Employer Groups:

- In contrast, specifically the Coalition of B.C. Business (the Coalition) and the B.C. Agriculture Council expressed support for continuing the “First Job” Rate. The Coalition would preserve the current \$2.00/hour differential between the “First Job” Rate and the general minimum wage, whereas the B.C. Agriculture Council would establish a narrower differential.
- Proponents of the “First Job” Rate indicated that some employers are still using it, especially in the fast food and agriculture sectors, and that it still serves a useful purpose in terms of providing employers with an incentive to hire and train inexperienced young workers.
- These employer groups, and some others, also expressed support for replacing the “First Job” Rate with something else that would also be targeted toward inexperienced younger workers – such as a “Student”, “Young Workers” or “Entry Level” minimum wage.

Worker Groups:

- As noted above, all groups that represented worker interests supported the elimination of the “First Job” Rate.
- Some worker groups cited some anecdotal evidence of abuse of the “First Job” Rate including a refusal by some employers to recognize employment experience from other countries, or a tendency by some employers to terminate employees before they have had a chance to accumulate a sufficient number of hours to advance from the “First Job” Rate to the general minimum wage.

A Separate Gratuity Rate

Employer Groups:

- Employer groups expressed very strong support for establishing a lower minimum wage for workers who receive gratuities, modelled along the lines of Ontario’s “liquor server rate”. In their view, this would provide cost relief to the food and restaurant industry that has been very hard hit by the implementation of the HST, recent changes to the laws governing drinking and driving, and the generally weak condition of the industry. They noted that in many licensed restaurants and bars, the servers earn more in wages and gratuities than anyone else, and that exempting these servers from the general minimum wage increase would make it easier for restaurant and bar owners to pay wage increases to employees who do not receive tips.

Worker Groups:

- Worker groups opposed a lower gratuity rate for liquor servers, citing both practical difficulties in fairly administering such a system as well as concerns that it would unfairly disadvantage many servers who do not work at “high end” restaurants and bars.
- Specifically, they noted that gratuities are largely unregulated under the *Employment Standards Act*. Servers are often required to hand some of their gratuities over to a “tip pool” that is shared with other workers who do not receive gratuities or to management. In their view, if servers are required to rely upon gratuities for a larger proportion of their earnings, then it would become necessary to enact regulations either to ensure that servers are allowed to keep all that they receive in tips or to set rules on how tips should be allocated within the tip pool.
- In either scenario, their concern is that any regulatory structure that provides a lower gratuity rate for liquor servers is likely to be very complex and open to abuse.

Regulated Piece Rates for Hand Harvesters in the Agriculture Sector

Area of Agreement:

- The stakeholders who commented on the piece rate system - including the B. C. Agriculture Council (BCAC) and most worker groups - agreed that the original time and motion study was conducted almost thirty years ago and that it may be time to review the piece rates. However, there were also significant differences between the BCAC and worker groups in terms of next steps and the future of the piece rates.

Employer Groups:

- While agreeing that the rates should be reviewed to account for changes in harvesting practices and technological/mechanical advances, the BCAC expressed the view that this review should be completed before government considers changes to existing piece rates.
- In their view, some of the current piece rates may be higher than they should be relative to the original intent of the piece rates (i.e., to set the rates at levels such that an average farm worker would be able to earn the equivalent of the general minimum wage.)
- The BCAC also indicated its strong opposition to any proposal to eliminate the piece rates, or to make any piece rate system subject to workers earning at least the equivalent of the general minimum wage. The BCAC believes that eliminating the piece rate system would significantly

increase the amount of supervision that would be required in the fields (at substantial costs to producers) and that it would not take account of the considerable discretion that farm workers currently have to take breaks for cultural or other reasons.

Worker Groups:

- As noted above, worker groups support the idea of a comprehensive review of existing piece rates, but on the basis that the time and motion study that set current piece rates was flawed in that it measured productivity during the peak of the harvest season. In their view, it is difficult or impossible for an average farm worker to earn the equivalent of the general minimum wage over the entire harvest season.
- They noted that the piece rate system is incompatible with the federal Employment Insurance system, which determines eligibility based solely on the number of hours worked. While it is possible to meet Employment Insurance eligibility requirements simply by recording the number of hours worked and how much was earned over those hours at the piece rate, representatives noted that record keeping practices are prone to error and abuse, and that workers are not always aware of how many hours are being recorded for Employment Insurance purposes by their employer or farm labour contractor.
- In light of these concerns, most worker groups expressed the view that the piece rate system should either be abolished or be made subject to the general minimum wage.

Academic Perspectives on Minimum Wage

As part of this review, we examined a large body of the academic literature on minimum wage, and identified four minimum wage and employment standards experts for follow-up and further discussions: Professor Morley Gunderson, CIBC Chair in Youth Employment, University of Toronto; Professor David Green, Department Head, Department of Economics, University of British Columbia; Dr. Niels Veldhuis, Fraser Institute; and Professor Harry Arthurs, Professor Emeritus and President Emeritus, York University. These four experts bring different perspectives to the minimum wage discussions reflecting their analysis and understanding of the available empirical evidence, as well as their core values and beliefs.

Areas of Agreement:

Incremental Increase:

- All four experts indicated that incremental increases in the minimum wage are preferable to a single large increase, citing evidence that a single large increase may “shock” employers such that they may make more significant adjustments to labour inputs (i.e., number of workers employed, hours worked, etc.) than they otherwise would.

Phase In:

- They have all spoken in favour of longer notice and phase-in periods to give employers time to plan for, and to adjust to, minimum wage increases.

Areas of Difference:

Minimum Wage as a Policy Instrument:

- In his capacity as Commissioner for the Federal Labour Standards Review (*Fairness at Work: Federal Labour Standards for the 21st Century*), Professor Harry Arthurs, argued that the debate over a national minimum wage is not about politics or economics, but is about decency and the notion that someone working full-time at a regular job for a full year should not have to find themselves with less money than they need to live at or just above the poverty line.
- In contrast, Dr. Veldhuis argued that increasing the minimum wage can be an exceedingly blunt policy instrument in that it can have significant negative impacts in terms of jobs lost and fewer hours. His analysis also notes that the majority of minimum wage earners live at home with their parents and do not fit the profile of a full-time, full year worker who is trying to make ends meet on a minimum wage job.

Employment Effect of Increase to Minimum Wage:

- The experts also differ on their analysis of the evidence of the employment impacts of minimum wage increases.
- Professor Gunderson and Dr. Veldhuis both present evidence that job losses and foregone job opportunities associated with a substantial (25% increase from \$8.00 to \$10.00/hour) minimum wage increase could be significant (up to 50,000 jobs lost or foregone to the B.C. economy).
- Professor Green's analysis challenges these conclusions on methodological grounds, and presents evidence to the effect that a more modest increase (10% increase from \$8.00 to \$8.80/hour) is likely to have only marginal effects on overall employment.

II: Employment Standards Review:

We sought participants' general views on the *Employment Standards Act*, and their views on the following specific topics: enhancing flexibility for employees and employers; clarifying and simplifying standards; improving the provision of information on employment standards to employees and employers; improving the enforcement of employment standards; and ensuring expeditious hearing and determination of complaints.

General Perspectives:

With some limited areas of general agreement, employer and worker groups expressed very different views on the status of employment standards in British Columbia and the need for change.

Employer Groups:

- In broad terms, employers were supportive of the changes that were made to the *Employment Standards Act* in 2002, and suggested that any changes that could be made at this point should support the general direction that was established through the 2002 amendments.
- Perhaps the strongest message from employer groups was that increasing skills shortages combined with increasing competition for labour and the need to attract the 35 and under age demographic have made it absolutely essential for employers to be able to offer their employees greater flexibility in terms of hours of work and work scheduling.
- Most employer groups expressed concern that existing *Employment Standards Act* provisions, particularly relating to hours of work and overtime, may have created barriers to the kinds of flexibility that employees and employers require.

Worker Groups:

- The strongest message from worker groups was that this review of the *Employment Standards Act* is inadequate to consider and address the broad range of issues workers and their advocates have experienced with the current legislation, and that there should be a comprehensive public review process.
- All worker groups expressed the view that the 2002 and 2003 amendments to the *Employment Standards Act* went too far in terms of removing protections for workers, and that at least some provisions that were in place prior to 2002 and 2003 needed to be restored.
- With respect to the focus that these consultations has placed on the question of whether there is a need to enhance flexibility for employees and employers within the scope of the Act, one worker group noted that the key to flexibility, especially for vulnerable workers may in fact be greater predictability. In practice, this could mean balancing employer scheduling needs against consideration of more leave entitlements.⁴ It could also mean incorporating safeguards into the *Employment Standards Act* to ensure that alternative scheduling arrangements have been established through meaningful consultations and the consent of workers at the individual or group level.

4 Such as extended parental leave entitlements such as those that are currently in place in Quebec or sick leave entitlements that are in place in Quebec, Yukon, Newfoundland and Labrador, New Brunswick and Saskatchewan).

Specific Topic Areas:

Enhancing Flexibility for Employees and Employers:

Employer Groups:

- Some employer groups made specific proposals that they believe will provide greater latitude for employees and employers to agree to mutually acceptable arrangements. These include proposals: to allow employers to average hours of work over a multi-week period for determining overtime entitlements; to allow employers and individual high-level employees to agree in writing to hours of work and compensation packages which differ from the requirements of the *Employment Standards Act*; and to allow employees to agree on an individualized basis to alternate statutory holidays (for example, to accommodate individual religious or cultural preferences).

Worker Groups:

- Most worker groups were not supportive of measures that would allow individual employees and their employer to opt out of provisions of the *Employment Standards Act*, citing an inherent power imbalance between employees and employers in most employment relationships.
- Some worker groups noted that sectoral standards serve a useful purpose in allowing for flexibility while preserving a level playing field in the application of employment standards within an industry.
- While most worker groups were not inherently opposed to the provision of greater flexibility at the workplace or individual level, the prevailing view was that there is a need to restore a supervisory role for the Employment Standards Branch over variances and other alternate arrangements.

Clarifying and Simplifying Standards:

Areas of Agreement:

- Employer and worker representatives agreed at a high level that employment standards could be simplified.
- From the perspective of some employer groups and some worker groups, the current averaging agreement provisions and the current statutory holiday provisions were cited as examples of legislative provisions that could be clarified or simplified.

Worker Groups:

- The B.C. Federation of Labour and some other worker groups went considerably further in their assessment of the current legislative provisions in terms of their clarity and simplicity. For example, representatives from the B.C. Federation of Labour noted that, on an international scale, B.C.'s employment standards legislation is very complex, and suggested that this may be a consequence of the flexibility that has already been written into the Act.

Employer Groups:

- Several employer groups expressed a general interest and desire in seeing a simplified statute and regulatory structure, and expressed the view that new statutory provisions that provide greater hours of work and scheduling flexibility would contribute to the development of a simplified statute.

Improving the Provision of Information on Employment Standards to Employees and Employers:

Areas of Agreement:

- Many groups representing both employers and workers expressed an interest and willingness to work collaboratively with the Employment Standards Branch and with government to facilitate the provision of information on employment standards to employees and employers.

Worker Groups:

- Worker groups expressed significant concerns, suggesting that considerably more needs to be done in terms of public education and the provision of information in other languages.
- Most worker groups were critical of the 2002 legislative changes which, among other things, repealed the requirement to post employment standards information in the workplace. Indeed, some argued that the posting of information in the workplace is an effective and inexpensive way of ensuring that all workers have access to basic information about their employment standards entitlements.
- Some worker groups also requested the establishment of an employment standards advocacy office (modelled on the Workers' Advisers Office within the workers' compensation system) to provide assistance and support to individuals who have filed employment standards complaints.

Improving the Enforcement of Employment Standards, and Ensuring Expedient Hearing of Determination of Complaints:

Employer Groups:

- Employer groups generally had few issues or concerns with the current enforcement framework.

Worker Groups:

- Worker groups expressed very serious concerns with the current enforcement model, including many of the provisions that were enacted through the 2002 legislative changes. Such as:
 - The self-help kit poses a barrier to access to justice, and should be eliminated.
 - There is a need to devote more time and resources to investigations and audits, in addition to the current emphasis on complaints.
 - There is a need to devote more time and resources to vulnerable groups including temporary foreign workers, agriculture workers, and young workers.
 - The current dispute resolution model (including fact-finding and mediation) works to the disadvantage of individual complainants. The final resolution of some complaints is taking too long, primarily due to procedural delays and challenges by employers.
 - In broad terms, these concerns were expressed in support of proposals to repeal many of the 2002 legislative changes.

In Closing:

We would like to take the opportunity to thank the organizations and people who took the time to meet with us. It was a pleasure for us to meet with them, to hear their views and options and to have the opportunity to seek input and views on these very important policy questions.

Appendices



Appendix 1

Stakeholder Meetings and Participants

Business Council of British Columbia, December 13, 2010

- Greg D'Avignon, Doug Alley

B.C. Chamber of Commerce, January 12, 2011

- John Winter, Jon Garson

B. C. Restaurant and Food Services Association, January 13, 2011

- Ian Tostenson, Durda Krilic

Coalition of B.C. Business, January 20, 2011

- Mark Von Schellwitz, Canadian Restaurant and Foodservices Association
- Philip Hochstein, Independent Contractors of B.C.
- Shafiq Jamal, Retail Council of Canada
- John Winter, B.C. Chamber of Commerce
- Andrea Zwack, Heenan Blaikie
- James Chase, B.C. Hotel Association
- Victor Ursnik, Communications Coordinator

B.C. Federation of Labour, January 26, 2011

- Irene Lanzinger, John Weir, Jessie Uppal, BC Fed
- Jonathan Chapnick, Dan Cahill, BCGEU
- John Mountain, United Steelworkers
- Keith Reynolds, CUPE
- Jacquie de Aguayo, HEU

Centre for Policy Alternatives (B.C.), January 26, 2011

- Seth Klein, Iglrika Ivanoua, Shannon Daub, Centre for Policy Alternatives
- David Green, Mark Thompson, University of British Columbia
- Marjorie Griffith Cohen, Simon Fraser University
- David Fairey, Trade Union Research Bureau

Fraser Institute, January 27, 2011

- Niels Velduis, Amela Karabegovic

Employment Standards Advocates Coalition (first meeting), January 27, 2011

- David Fairey, Trade Union Research Bureau
- Linnies Clark, Hospital Employees Union
- Cara Johnson, United Food and Commercial Workers, Local 1518
- Carolyn Rice, New Westminster & District Labour Council
- Gurpreet Pabla, Progressive Intercultural Community Services Society
- Michael McCarthy-Flynn, Living Wage for Families
- Joe Barrett, B.C. & Yukon Territory Building and Construction Trades Council
- Angele Contreras-Chavez, Collectivo Red Legal

Employment Standards Advocates Coalition (second meeting), February 2, 2011

- David Fairey, Trade Union Research Bureau
- Jonathan Hanvelt, Susan Lee, Adriana Paz, Justicia 4 Migrant Workers
- Adrienne Montana, Helesia Luke, First Call: B.C. Child and Youth Advocacy Coalition
- Marilou Carrillo, Jocelyn Vergabera, Philippine Women Centre
- Kasari Govender, West Coast LEAF
- Cecelia Tumolva, Darla Tomeldan, Vancouver Committee for Domestic Workers and Caregiver Rights
- Graeme Moore, Canadian Union of Public Employees, Local 15
- Rocio Vasquez, Organizing Centre for Social and Economic Justice
- Virginie Francoeur, West Coast Domestic Workers' Association
- Professor Gerardo Otero, Simon Fraser University, Department of Sociology and Latin American Studies

B.C. Agriculture Council, February 9, 2011

- Andreas Dolberg, Rhonda Driediger, Jeff Hicks

Canadian Federation of Independent Business, February 10, 2011

- Laura Jones, Nicole Nash

A written submission was provided by the British Columbia and Yukon Territory Building and Construction Trades Council, *Building Trades Perspectives and Proposals on Employment Standards*, submitted February 10, 2011.

Appendix 2

Specific Proposals on Minimum Wage

Specific Proposals

With respect to the general minimum wage, the Coalition of B.C. Business was the only employer group to make a specific proposal with respect to adjusting the minimum wage. Under the Coalition's proposal, the minimum wage would increase as follows:

- To \$8.50/hour, effective six months after the date of announcement. (For example, if a minimum wage increase is announced on April 1, 2011, the increase would take effect on October 1, 2011).
- To \$9.00/hour, effective six months after the first increase (i.e., April 1, 2012 in this example).
- To \$9.50/hour, effective six months after that (i.e., October 1, 2012 in this example).
- Future minimum wage increases would be linked to an economic indicator such as changes in the Consumer Price Index, although increases would not occur in years of flat or negative economic growth.
- A minimum wage for servers who earn gratuities that would be \$1.50/hour lower than the general minimum wage would be phased in, based on Ontario's liquor server rate – i.e., the minimum wage for liquor servers would remain at \$8.00/hour until a \$9.50/hour general minimum wage is achieved.
- The "First Job" rate would be retained, and the \$2.00/hour differential would also be retained.

In contrast, worker groups generally subscribed to the B.C. Federation of Labour's proposal for minimum wage increases as follows:

- An immediate increase in the general minimum wage to \$10.00/hour.
- A further increase in the minimum wage (timeframe not specified) to a level that equals or approximates the Low Income Cut-off (LICO) for a single urban British Columbian with no dependents. (The before-tax LICO for a single person in a major urban centre in Canada is currently \$22,229, which translates into an hourly rate of \$11.11/hour based upon a 40 hour week and 50 weeks/year. The before tax LICOs for smaller urban centres and rural areas are somewhat lower.)
- Opposition to a lower minimum wage for servers who earn gratuities.
- Elimination of the "First Job" rate.

Appendix 3

Specific Proposals on Employment Standards

Specific Proposals

Employer groups provided several specific proposals aimed primarily at enhancing flexibility for employees and employers, and to a lesser extent at clarifying and simplifying standards and ensuring expeditious hearing and determination of complaints. Specifically:

- The Coalition of B.C. Businesses recommended that the qualifying period for statutory holiday entitlements should be increased to 90 days and a qualifying condition of working the scheduled day before and day after the holiday should be introduced.
- The Coalition of B.C. Businesses recommended that the Act should accommodate employers and individual employees to mutually agree to allocate the employee's statutory holiday to a different day, even if this results in some employees observing different days as statutory holidays than the majority.
- The Coalition of B.C. Businesses recommended that the *Employment Standards Act* should recognize the unique circumstances arising from incentive based compensation systems. Specifically, hours of work for commissioned salespeople should be compensated based on gross earnings (including commissions and any salary or hourly wage) over a four week period so long as this amount is greater than what the employee would have earned at minimum wage (including overtime rates) for all hours worked over the period.
- Several employer groups recommended that the hours of work and overtime provisions of the *Act* should be significantly revised to create a flexible system wherein hours of work are averaged over a multi-week period, for the purposes of determining payment of overtime premiums, while maintaining protections for employees. The Coalition of B.C. Businesses' proposal in this regard would set the default number of weeks for averaging purposes at four weeks, with employers and employees being able to agree to longer or shorter averaging periods if they wish. Similar proposals that were raised by other employer groups were not as specific in terms of the number of default weeks or the extent to which alternate work arrangements would be subject to employee agreement, either at the individual or group level. However, it is clear that there is broad support among employers for legislative change that would provide greater latitude for employers and employees to develop alternative hours of work and overtime arrangements.
- Several employer groups recommended that senior technical and professional employees and others at this level should be free to negotiate and agree in writing with their employers to hours of work and compensation packages, which differ from the requirements of the *Employment Standards Act*.
- Several employer groups recommended that the existing mandatory and escalating penalty scheme be amended to allow the Director of Employment Standards to exercise discretion in applying the penalty under certain circumstances.

- The Coalition of B.C. Business recommended that the B.C. Government eliminate jurisdictional disputes and adjudicative duplication by forming a unified workplace tribunal. This tribunal would deal with the workplace-related disputes and other matters currently overseen by the B.C. Labour Relations Board, the Employment Standards Branch and the B.C. Human Rights Tribunal.

Worker groups provided several specific proposals aimed primarily at improving oversight and enforcement. Many of these recommendations were non-legislative in nature in that they call for restoring funding to the Employment Standards Branch, more proactive monitoring and enforcement, and the establishment of community-based advocacy or advisory services. However, the following specific recommendations would require legislative or regulatory change:

- Several worker groups recommended increasing the minimum allowable age for employment to 15, except under exceptional circumstances that would be defined by regulation. The First Call group which advocates on behalf of children would supplement this effort with a much expanded list of occupations that have minimum entry ages based upon safety considerations. First Call recommended the establishment of an advisory committee to identify these prohibited occupations, although another option might be to identify these occupations through the WorkSafeBC Occupational Health and Safety regulatory process.
- Several worker groups recommended changes to the *Employment Standards Act* to restore the provisions that were in place prior to the 2002 amendments to the Act. These proposed changes would include: removing the requirement to use the Self-Help Kit prior to a complaint being accepted into the employment standards system; restoring the minimum call-out period from two hours back to four; restoring coverage of unionized workers under the Act; and restoring a two year time-frame for the filing of complaints and the collection of back wages from the current six months.
- Several worker groups recommended changes to the *Employment Standards Act* or the development of separate legislation modelled after Manitoba's legislation that would regulate recruiters of temporary and other foreign workers. This legislation would be aimed at tracking and preventing the payment by workers of illegal recruitment fees, and it would also make it easier for enforcement authorities (including the Employment Standards Branch) to target enforcement activities to workplaces where temporary foreign workers are being employed.
- Representatives of the Employment Standards Advocates Coalition recommended several other potential changes to the Employment Standards Act, including: extending employment standards protections to some contractors or sub-contractors that are not legally in an employment relationship; clarifying jurisdictional overlaps and gaps between the federal and provincial jurisdictions; and the re-establishment of an Advisory Council on Employment Standards.



BRITISH
COLUMBIA