



2016 New Brunswick Employment Standards Review

- Statutory Review of Minimum Wage
- Employment Protection for Young Workers
- Coverage under the *Employment Standards Act*

Submitted to:
Department of Post-Secondary
Education, Training and Labour
PO Box 6000
Fredericton, NB
E3B 5H1

Submitted by:
Fredericton Chamber of Commerce
364 York Street, Suite 200
Fredericton, NB
E3B 3P

Introduction

The Fredericton Chamber of Commerce, its board of directors and 950 member businesses thank the Department of Post-Secondary Education, Training and Labour for the opportunity to comment on these proposed changes to minimum wage legislation, the protection of young workers and coverage under the *Employment Standards Act*.

However, given that we were only provided 20 business days from the release of the consultation discussion papers to the deadline for submissions, we were not able to gather as much information and feedback from our members as we would generally prefer. As such, the information gathered from our members and presented here is largely anecdotal.

We recommend that moving forward, a minimum of 60 days be provided for each consultation. Less than a month for three consultations that will have an immediate and lasting impact on the business community is not sufficient. It gives the impression to our members that the Department does not wish to seriously consult with the business community, but rather go through the motions to be able to state that a consultation was held.

Part I: Statutory Review of the Minimum Wage

The costs of doing business are always a primary concern for members, particularly those in the small-to medium-size category. New Brunswick's economy has been stagnant or worse for nearly a decade now, but employers' costs have continued to be pushed relentlessly upward. Businesses are struggling for survival in New Brunswick. In the past year they have seen increases in personal income tax, minimum wage, HST and corporate tax. Now they are facing a massive increase in worker's compensation premiums in 2017, a carbon tax in 2018 and a hike in the Canada Pension Plan in 2019 - at a minimum.

A further increase in the minimum wage will put even more increased pressure on employers' bottom line and will continue to be a drag on the economy overall. Employers are in favour of cost certainty and costs commensurate with their ability to pay more - i.e. a growing economy. For this reason, **our members are generally in favour of tying minimum wage to the provincial Consumer Price Index** from the current rate of \$10.65 per hour.

Members in various industries - particularly food service, accommodations, etc. - also support other options that better reflect the realities of business. Examples include:

"In order to make hiring youth more attractive...having a lower **training wage** for let's say 150 hours or so, at which point they become proficient in their duties and their wage will go up accordingly."

With a lack of work experience, a higher turnover rate and other responsibilities such as school, hiring young workers is becoming increasingly less attractive for employers. This has long term consequences for employers, students and the province. Both students and employers tell us that the lack of work experience is a primary barrier to hiring new graduates. We also know that finding a job trumps all other factors when trying to retain our youth. For a shrinking and aging population, this situation is a disaster in the making.

Another member reports the following:

“As minimum wage goes up, budgets are not increased [proportionally]; therefore, **retailers have to reduce the number of employees accordingly**”.

In summary, we submit that minimum wage should not be looked at in a vacuum, but rather from the total cost burden on employers and their ability to absorb an increase. Employers are forced to look at their particular financial situation in particular circumstances and some will have to make tough cost-controlling decision such as reducing hours or employees - hurting workers, employers and the economy.

Part II: Employment Protections for Young Workers:

The protection of young workers (and all workers) is a priority for employers. Providing a safe working environment is good for employees and good for business. Employers also recognize that some workplaces are inherently safer than others. However, overall the feeling is that **the recommended changes (a) go beyond what is necessary to protect young workers; and (b) in total will have a detrimental effect on young workers** (much more than employers). We also note the lack of evidence presented that young workers need further protection outside of existing policies, regulations and legislation.

All employers we were able to consult with on the issue expressed concern with the already-existing decline in youth preparedness for the workplace becoming exacerbated by further restrictions. Many are already hesitant to even hire employees under 16 or 18 - depriving them of their first work experience. They also stated that most of their young employees are in the workplace because they are saving for school or transportation and/or are helping to support their family unit.

There was unanimous concern with the proposed requirement to receive parental permission. Several employers were quite blunt that having to deal with parents is not something they are interested in and simply would not hire anyone in this category. Part of the reason to get a job as a young person is to become more independent and a productive member of society. Some employers now have informal policies that if a parent calls on their child's behalf of drops off their resume, the young person is not considered for employment.

Similarly, the proposed restrictions on what hours of the day a young person can work does not reflect the reality of the workplace and automatically disqualifies them for employment. One example provided is a fast food restaurant that closes at 11:00 pm. They would not be willing/able to hire someone who had to legislatively stop working at 10:00 pm.

There was also confusion concerning the proposal to increase the hours a young worker was able to work on a school day in section 7 of the discussion paper provided. How would a person be able to go to school for 5.5 hours, work for 4 hours (a total of 9.5 hours) but only be able to work a total of 8 hours between school and work? There is already an inconsistency in the legislation that requires employees to be paid a minimum of 3 hours for any shift worked. Presumably the current maximum shift a young person can work is 2.5 hours on a school day (i.e. 5.5 hours of school + 2.5 hours of work = 8 hours total [the maximum allowed in a day]). It leaves the impression that these changes were not wholly thought through.

Coverage under the *Employment Standards Act*

We did not receive any feedback from business on this discussion paper, but provide the following comments, particularly in relation to *clarifying the employment relationship*.

In general, employers are in favour of increased certainty. In terms of who is considered an employee, however, the one 'challenge' presented on page four of the discussion document succinctly explains why this has not been previously achieved and is likely not possible:

“Courts have found that there is no single test or set of indicators that will definitively decide whether an employment relationship exists, and that each case must be evaluated on its facts. A legislated definition may not be able to provide for every circumstance.”

We interpret this as the courts saying it is not possible to provide a clear definition to the question and indeed, may not be desirable. This is also why eliminating exemptions for young workers, agricultural workers, etc is not desirable. The recommendations and discussion paper also do not seem to contemplate the shifting work paradigm that includes the sharing economy such as AirBNB, on demand services such as Uber and an increase desire amongst young workers for freelance work - the gig economy. No one definition can cover all situations and the situation is becoming murkier by the day. Trying to put this relationship in a tighter box will create red tape and discourage employers further from hiring young workers who driving this paradigm shift.

Summary

Employment and employment standards legislation cannot be viewed in isolation, nor can a 'one-size fits all' approach be adopted without causing harm and/or unintended consequences to employees, employers and the economy. Any changes must be carefully considered and some of the information presented in these discussion papers (and what's not presented) leave the impression that this has not been the case with these files to this point. We are concerned that the proposals are politically motivated as much as they are intended to provide benefits and protection to workers.