

November 17, 2006

**PROVINCE INTRODUCES AMENDMENTS
TO EMPLOYMENT STANDARDS CODE**

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**Three New, Unpaid Family Responsibility/Sick Days,
New Protection for Children Part of Proposed Changes**

Changes to the Employment Standards Code would modernize the act to better reflect the current realities of the economy, the changing face of the labour force and the demands on today's families, Labour and Immigration Minister Nancy Allan said today as she introduced the amendments in the legislature.

"We are pleased to move on this legislation which reflects the consensus reached by labour and management representatives of the Labour Management Review Committee (LMRC)," said Allan. "The proposed legislation would bring Manitoba into the Canadian mainstream in many areas, represents the most significant changes to Manitoba's labour laws in 30 years and, overall, better reflects the realities of today's workplaces and the needs of today's workers and employers."

Highlights of the proposed legislative changes include:

- clear criteria governing the exclusion of managers from hours of work and overtime provisions;
- exemptions from hours of work and overtime for employees who earn a minimum annual amount and exercise substantial control over their work schedule;
- three new unpaid days for illness or to attend to family responsibilities and three new unpaid bereavement days;
- improved statutory holiday pay provisions for part-time workers;
- new graduated termination notice rules based on employees' years of service;
- guaranteeing employees who report for work minimum pay of three hours or pay for the regularly scheduled shift, whichever is less;
- new measures to promote compliance with the legislation including fines for repeat offenders;
- streamlining the process for obtaining averaging permits and hours of work variances;
- new protections for children including specific restrictions on hours of work for those under 16 years of age and prohibiting those under 18 from working alone at night;
- limiting the liability of company directors in cases of bankruptcy or closure; and
- improving the ability to recover earned wages.

The government also intends to act upon the regulatory amendments proposed by the LMRC, highlights of which include:

- provisions to prevent deductions from pay where there is no direct benefit to the worker,
- expanding the definition of a family member to qualify for various statutory leaves,
- improving overtime pay provisions for incentive-based workers,
- improved coverage for domestic workers and live-in nannies, and
- prohibiting employment of those under the age of 18 in higher-risk industries.

“These measures will not only ensure the rules governing our workplaces are modern and equitable but will also contribute to our ability to attract and retain workers in a competitive labour market,” Allan said.

“This is a long overdue step in the right direction for vulnerable working people – particularly those in precarious employment situations and who have no union to act on their behalf,” Manitoba Federation of Labour president Darlene Dziewit said. “Organized labour will continue to identify and promote further improvements to the Employment Standards Code. The consultation process that brought us to this day was a good one – and it shows in the results.”

“It is important to keep in mind that these changes reflect a consensus between business and labour,” said Peter Wightman, executive director of the Construction Labour Relations Association of Manitoba. “This package of changes contains important improvements for employers as well as employees. More importantly, it will help us attract and retain workers in a tight labour market and is another example of Manitoba’s labour and industry leaders working together to create solutions that work for our province.”

In 2005, the province launched the first public review of the code in about 30 years to gather input on ways to improve and update the legislation. The review generated over 100 submissions from workers, employers and stakeholder groups throughout the province and highlighted the need for substantial renewal of the code. The LMRC considered a set of proposals based on feedback from the public hearings and in May 2006 submitted a number of consensus recommendations to the minister. In November, the committee provided Allan with another consensus report on regulatory changes which the minister released today in conjunction with the introduction of the proposed legislation.

The public review also looked at increasing coverage of agricultural workers under the code, given that Manitoba currently has the least coverage in the country for these workers. The LMRC has been discussing this matter with agricultural industry stakeholders and in the November consensus report recommended these consultations continue so that any changes provide appropriate protections while reflecting the unique circumstances in the industry.

**PROPOSED CHANGES TO THE
EMPLOYMENT STANDARDS CODE AND REGULATIONS**

Exclusions from Hours of Work and Overtime

- Managers

The legislation would specify that a person who “performs management functions primarily” is excluded from hours of work and overtime.

This change would formalize the current policy of the Employment Standards Branch by clarifying that true managers are excluded from hours of work and overtime. To be excluded, a manager would have to meet a number of criteria such as exercising direction and control over others and the authority to schedule, hire, fire, promote and discipline other workers. Those who may be called managers but do not meet these criteria would continue to be covered by hours of work and overtime provisions.

- Other Workers

Workers whose earnings meet a minimum threshold of twice the industrial annual average wage (approximately \$68,000 in 2005) and exercise substantial control over their own work schedule would be excluded from hours of work and overtime.

This provision recognizes the flexibility required in some circumstances while continuing to provide hours of work and overtime protection to those who need it the most.

Averaging Permits and Variances

The process for issuing averaging permits and variances would be streamlined by transferring the process from the Manitoba Labour Board to the director of Employment Standards.

Reporting Pay

A worker who reports to work would be guaranteed pay for three hours of pay or pay for the regularly scheduled shift, whichever is less.

This replaces the current system under which a worker is guaranteed three hours pay only when called in to work for a non-scheduled shift.

Administrative Penalties

Administrative penalties would be issued for repeat violations of specified provisions of the code.

The possibility of receiving these penalties will provide a deterrent to potential violators and contribute to a level playing field among employers.

Directors' Liability

Directors would not be liable for wages in lieu of notice for individual or group terminations, but would continue to be liable for earned wages.

This provision reflects the reality that in situations such as bankruptcy it is often impossible to collect wages in lieu of notice.

Recovery of Earned Wages

A person who manages or supervises a corporation could be deemed a director and be liable for earned wages. This would help deal with situations where a corporation operates without a director, leaving no recourse to collect wages owed to workers.

Termination Notice

Notice of termination from an employer to a worker would be based on the following graduated scale:

<u>Length of Employment</u>	<u>Notice Period</u>
less than one year	one week
at least one year and less than three years	two weeks
at least three years and less than five years	four weeks
at least five years and less than 10 years	six weeks
at least 10 years	eight weeks

Notice of termination from a worker to an employer would be based on the following graduated scale.

<u>Length of Employment</u>	<u>Notice Period</u>
less than one year	one week
one year or more	two weeks

This change would replace the current system under which an employer and worker are both required to provide one pay period of notice. It would also eliminate the ability of an employer to establish an alternate notice period including a 'no-notice period'. In addition, an employer could no longer withhold the wages of a worker who does not provide required notice.

Statutory Holiday Pay for Part-time Workers

Part-time workers would be provided with statutory holiday pay that is prorated to reflect their gross wages in the four weeks leading up to the holiday.

This would replace the current system under which a worker is required to work 15 of 30 days prior to the holiday to be eligible for holiday pay.

Employment of Children

Individuals under 16 would be prohibited from working between 11 p.m. and 6 a.m. and restricted to 20 hours of work during a week of school. In addition, individuals under 18 would be prohibited from working alone between 11 p.m. and 6 a.m. The LMRC also recommends a number of industry-wide prohibitions be placed in regulation.

Unpaid Leaves

Workers would be entitled to three unpaid days for their health or for family reasons per year. Workers would have to provide as much notice as reasonable and practicable of their intent to take the leave and the employer would be entitled to reasonable verification the leave was necessary under the circumstances.

Workers would also be entitled to three unpaid days of bereavement leave for the death of a family member.

The government also intends to act upon the regulatory amendments proposed by the LMRC, highlights of which include:

Standard Hours of Work for Select Industries

The LMRC recommends that industry-specific standard hours of work commonly granted by the Labour Board in past variances be placed in regulation. The LMRC recommends that landscaping be the first industry included in regulation. The standard hours of work for the landscaping industry would be 10 hours per day and 50 hours per week between April 15 and Nov. 30 of each year.

Overtime for Incentive-based Workers

The LMRC recommends a formula to determine overtime pay for a worker compensated by incentive pay. In cases where productivity of the worker is measured, the overtime rate would be one-and-a-half times the productivity during the overtime hours (one-and-a-half times the commission, piece-rate, etc.).

In cases where the productivity is not measured, the worker would be compensated in one of two ways:

- For those compensated fully by incentive pay, overtime would be one-and-a-half times their average hourly wage for the pay period.

- For those compensated by a combination of incentive pay and a base-rate that is at least twice the minimum wage, overtime would be one-and-a-half-times the base-rate. Those whose base-rate is less than two-times the minimum wage would be paid overtime according to the same formula as those compensated fully by incentive-pay.

This recommendation would replace the current system under which, when the wage rate varies, there is no formula for determining the hourly rate and overtime is therefore based on the minimum wage. The amendment would ensure that overtime is more reflective of actual hourly earnings.

Administrative Penalties

The LMRC recommends that the director of Employment Standards have the ability to issue a penalty of \$500 per worker, per violation, for most contraventions of the code and \$1,000 per worker, per violation, for contraventions of the child employment provisions. A maximum penalty of \$10,000 could be issued at any one time.

Temporary Layoffs

The LMRC recommends the process for extending the period after which a layoff becomes a termination be streamlined by transferring it from the minister to the director of Employment Standards. In addition, parties subject to collective agreements would have the ability to negotiate their own layoff and recall provisions.

To ensure that flexibility is balanced with protection, the regulations would provide clearer guidance on those situations when a layoff may be extended. 'Seasonal' would be defined more restrictively to cover 'regular and reoccurring' disruptions in employment and a worker would have a choice to accept being on a layoff by continuing to receive wages or payments into a pension or insurance plan from an employer or to not accept the layoff and activate a termination.

Deductions from Pay

The LMRC recommends that deductions from a worker's wages be permitted only where there is a direct benefit to the worker. This would prohibit deductions for cash shortages (such as in dine and dashes at restaurants), faulty work and uniforms that are specific to the employer's business.

Deductions that would continue to be permitted would include those required by statute (CPP, EI, etc.), court orders or judgments (garnishments), paying back an advance on wages, premiums for company benefit plans, voluntary worker purchases, transferable tools of the trade, education that benefits the worker, and meals and lodging.

This recommended change would replace the current system under which deductions are permitted as long as the worker authorizes the deduction in writing.

Employment of Children

The LMRC recommends that individuals under the age of 16 be prohibited from working on a construction site, in an industrial or manufacturing production process, on a drilling or servicing rig, in work involving scaffolding or swing stages, or in arboriculture (the pruning, repair, maintenance or removal of trees).

In addition, individuals under the age of 18 would be prohibited from working in forestry or logging, sawmills or pulp mills, in a confined space, in the underground workings of a mine or the face of an open-pit quarry, or in asbestos abatement and removal.

Permits from the director would still be required for the employment of individuals under the age of 16. The director could deny employment in industries not specified if the employment is deemed to be a threat to the child's health, safety, well-being or educational development. The director could also override the provisions and issue a permit in exceptional circumstances. The director would continue to work closely with the Workplace Safety and Health Division when reviewing permit applications.

Definition of Family

The LMRC recommends the definition of family for the purpose of accessing various unpaid leaves be amended to be consistent with the recent changes adopted by the federal government for compassionate care benefits.

Domestic Workers

The LMRC recommends improving coverage for domestic workers by including live-in nannies in the definition of domestic workers and extending coverage to domestic workers that work for the same employer for more than 12 hours a week. In addition, domestic workers would be entitled to payment for all hours worked.

Casual babysitters that come into the house to provide care would not be considered domestics and would continue to be excluded.

These changes would replace the current system which live-in nannies are excluded and coverage for domestic workers is limited to those who work more than 24 hours per week for the same employer, and daily pay for domestics is capped at 12 hours.

Agricultural Workers

The LMRC and the Manitoba Labour and Immigration have been involved in consultations with agricultural stakeholders over the past several months regarding extending employment standards coverage to workers in that industry.

The LMRC has recommended those consultations continue.