

September 16, 2015

C. Michael Mitchell
Hon. John C. Murray
Changing Workplaces Review
Employment Labour and Corporate Policy Branch
Ministry of Labour
400 University Avenue, 12th Floor
Toronto, ON M7A 1T7

Re: Changing Workplaces Review discussion paper

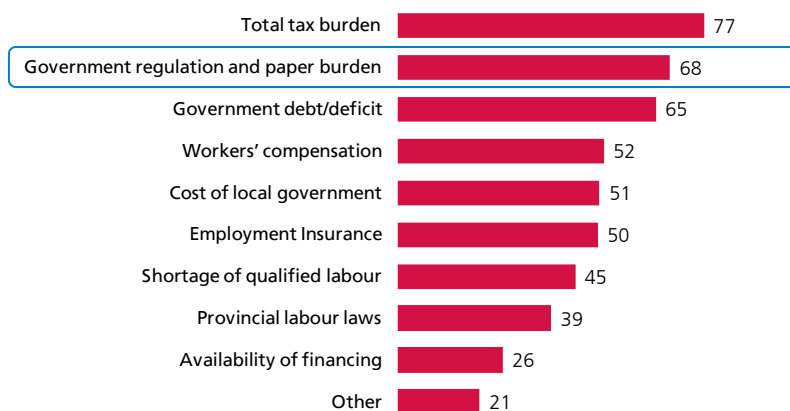
Dear Messrs Mitchell and Murray,

On behalf of our 42,000 small and medium- sized member businesses in Ontario, the Canadian Federation of Independent Business (CFIB) welcomes the opportunity to comment on the above discussion paper. While we support the objective of modernizing the labour and employment law framework, we have a number of grave concerns about this review and the ramifications of any ensuing changes on the province's small and medium businesses and the economy more broadly.

Small and medium- sized businesses account for 98 per cent of all Ontario businesses and employ close to 60 per cent of Ontario's working population. This sector is an integral part of the provincial economy and its importance cannot be overstated. For small businesses, the second most important business concern after total tax burden is government regulation and paperburden (Figure 1). In fact, it costs Ontario businesses close to \$15 billion annually to comply with regulations at all levels of government and every minute devoted to filling out excessive paperwork is a minute not spent on growing the economy and creating employment opportunities for Ontarians. When we look at areas of provincial regulations, **employment standards specifically rank as the third most burdensome area for small businesses.**

Figure 1: Most Important Business Issues

Which of the following issues are the most important to your business? (% response)



Source: CFIB, *Our Members' Opinions* survey No. 74-75, Ontario data, Jan. – Dec. 2014, based on 13,920 responses

For the reasons stated above, it is essential that the provincial government creates sound policy to support entrepreneurship and small business growth. CFIB's position on any policy issue is formulated entirely by the views and opinions of our small business members. In response to the discussion paper, we surveyed our members to get their perspectives on employment standards, labour relations and the changing nature of the workplace. This submission outlines small business views on these issues and it should be taken into consideration in any recommendations you may provide to the Ontario government.

Working relationships in small businesses

The realities of working relationships in small and medium-sized businesses are very different than in large businesses. Generally, in small businesses, the business owner often works alongside their employees, and consequently, the nature of working relationships tends to be more flexible, both for the employer and for the employee. For example, when we surveyed business owners, 84 per cent indicated that they offer their employees flexibility to accommodate personal issues as a benefit of employment in a small business (Figure 2). Three-quarters (75 per cent) also indicated that they offer their employees competitive pay, including wages, commissions and bonuses. Most small businesses must provide competitive benefits in order to retain workers, especially since their larger competitors are able to provide other perks that small businesses can simply not afford to provide.

Figure 2: Benefits of employment in a small firm
Which of the following does your business offer to employees? (% response)



Source: CFIB, Small Business and Labour survey, Ontario data, May 2015 based on 3,554 responses

The modern workplace

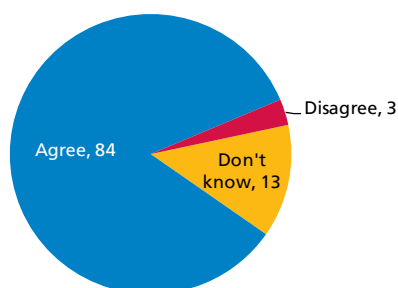
The modern workplace, as we understand it, encompasses a number of different factors. From a small business perspective, the modern workplace is one that is subject to increased pressures from globalization, increased costs of doing business due to changes to government policies, changing employee expectations and attitudes about employment, a mounting gap in the skills available in the marketplace compared to those that small employers need most, and government regulations which are becoming further misaligned from the needs of employers to name a few. In this regard, the government's role should be to facilitate employment relationships instead of creating barriers for the very firms which contribute most to the provincial economy overall.

SMALL BUSINESS VIEWS ON EMPLOYMENT STANDARDS

Employment standards rules and regulations impact virtually every firm in Ontario. Any amendments made in this policy area would have wide-spread implications on small businesses. As such, we are concerned by the language that is used in the discussion paper itself. It seems to suggest that the province needs to move to a more rigid legislative framework. However, jurisdictions around the world are moving to more flexible frameworks to better suit the needs of the modern workplace. For example, in 2014, the Government of Saskatchewan made changes to the *Saskatchewan Employment Act* to allow for more flexibility around work arrangements, time banks, employee notice of employment termination and so on. Our Ontario members reinforce this principle, with 84 per cent indicating that the two Ontario Acts **should be made more flexible to better support businesses in the modern economy** (Figure 3). If the province were to impose more rigid standards, it would contradict the trends in other jurisdictions to the detriment of Ontario's firms, which would become less competitive globally. Ultimately, the goals of this review should be to **bring Ontario more in line with highly productive, growing economies** so that the province's firms can compete internationally.

Figure 3: Flexible framework for labour legislation

The Employment Standards Act and Labour Relations Act should be made more flexible to better support businesses in the modern economy (% response)



Source: CFIB, Focus on Ontario survey, August 2015, based on 3,018 responses

We understand that the *Employment Standards Act* (ESA) is meant to provide minimum standards. Small businesses believe that the ESA fulfills this role effectively and that the Act should continue to play this role. But, they also believe that beyond minimum standards, employers should be allowed to negotiate directly with their employees to accommodate what works best for both the employer and the employee. If these negotiations fail, there are existing mechanisms which can help the parties come to a resolution, including the Office of the Employer Advisor, the Office of the Worker Advisor and the Ontario Labour Relations Board, among others.

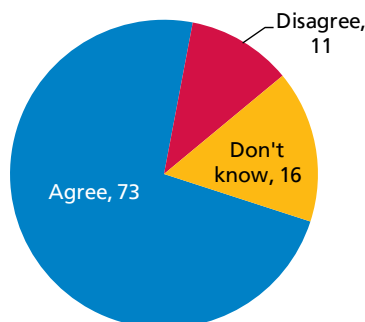
Our members have also identified the following areas of Employment Standards which need to be addressed:

Treatment of the self-employed

The *Employment Standards Act* currently applies to standard employer-employee relationships, but does not cover self-employed individuals. We asked our members about the inclusion of self-employed individuals under the Act. Of note, 73 per cent of small businesses think that the ESA should not be expanded to cover self-employed individuals (Figure 4).

Figure 4: Treatment of the self-employed under the ESA

The Employment Standards Act should not be expanded to cover self-employed individuals (i.e. without employees) (% response)



Source: CFIB, Focus on Ontario survey, August 2015, based on 3,018 responses

Self-employed individuals would prefer to be treated as a business, rather than an employee. These individuals are ultimately in the best position to govern their hours of work, their treatment of public holidays, their parental leave and so forth on their own behalf. An expansion of the requirements to cover the self-employed would create an additional level of regulatory burden, making it more costly and complex to operate a business. Accordingly, the government should refrain from expanding the Act to include self-employed individuals.

Vacation and public holiday provisions

From the small business perspective, existing vacation and public holiday provisions under the ESA should be maintained. Any increase to minimum provisions would likely be met with strong opposition, as the administrative, compliance and financial costs would be significant. In fact, our members tell us that they are still feeling the impact of the designation of Family Day as a statutory holiday.

Industry-specific exemptions

Ontario currently provides exemptions from certain standards in industries such as agriculture and transportation. The very nature of these industries calls for special exemptions since the ESA cannot be easily applied in these cases. For example, agriculture tends to operate on a more seasonal basis, especially during periods of peak production (e.g. harvest, calving season). Transportation is another sector which does not fit into the norms of a traditional workplace. This is why agri-businesses and transportation companies have been exempted from these laws in the past and they should continue to be exempted. Any further ESA restrictions would deter investment and growth in both the agri-business and transportation industries – both of which are significant contributors to the Ontario economy.

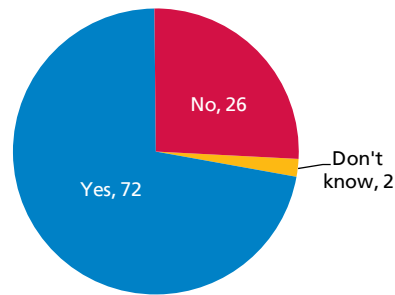
Employee notice upon termination of employment

Under the Act, employees are not required to give their employer notice of their intention to leave their job. However, this is a provision that exists in Alberta, Manitoba, Quebec, Nova Scotia, PEI, and Newfoundland and Labrador. According to small businesses in Ontario, 72 per cent of employees give reasonable notice upon termination of employment (Figure 5). However, more than a quarter (26 per cent) indicate that this is not the case. Where you have a firm that operates with four people, one person leaving means that a quarter of the workforce will be gone if an employee

terminates their employment. To that end, it would be immensely helpful for planning purposes that businesses receive two weeks' notice when an employee decides to leave and the ESA should be amended to accordingly.

Figure 5: Employee notice of termination

In your experience, have employees typically given you reasonable notice (e.g. two weeks) before leaving their jobs? (% response)



Source: CFIB, Small Business and Labour survey, Ontario data, May 2015 based on 3,554 responses

Notice regarding returning to work from pregnancy and/or parental leave

Currently, an employee who is on pregnancy and/or parental leave is required to give an employer four weeks' notice if they do not plan to return to their jobs when the leave is finished. However, an employee is not required to give notice of the date they will be returning to work. Again, for planning purposes, an employee should be required to give the employer notice irrespective if they are returning to work or not. We encourage the Ontario government to streamline these requirements.

Record keeping

In British Columbia, employers are only required to retain employee records for two years after the employee's departure. In Ontario, however, employers are required to retain these records for three years. Given that the provincial *Statute of Limitations* is two years, the required timelines should be realigned.

Treatment of temporary employment agencies

The recently passed *Stronger Workplaces for a Stronger Economy Act, 2014* amended the ESA, adding additional requirements and responsibilities for temporary employment agencies. The changes were put in place in order to get at "underground" operators and "level the playing field". In our experience, legislative amendments such as these do little to reduce the size of the underground economy. Instead, these changes penalize these agencies, the vast majority of which are law-abiding businesses that provide convenient and flexible labour solutions as well as increased employment in their communities. In addition, they have reduced the value of the services that temporary employment agencies provide by increasing the risk for the contracting employer, making the agencies less competitive in the marketplace and threatening to put many of them out of business altogether. Ultimately, the government should use other means to address the underground economy. Namely, educating consumers about the risk of using companies that do not follow the rules, having a tip line where consumers can complain about noncompliant companies and performing investigations into those companies.

PRACTICAL CONSIDERATIONS

We have also received feedback from our membership on practical considerations related to the ESA:

Compliance tools

The tools available to help small businesses comply with the ESA are extremely limited. Given the complex nature of Employment Standards, especially with the associated case law, small businesses are often left to interpret the rules on their own. Even when business owners endeavour to practice due diligence by calling the Ministry to clarify requirements, either the information provided is not correct, it is not provided in writing, or it only adheres to the minimum standards without the caveat that case law may require higher standards. Either of these situations can create hardship for employers, which again, are trying to do the right thing. There is a Policy and Interpretation Manual which represents the Employment Practices Branch's own interpretation of the core legislation affecting employer-employee relations in Ontario. However, it is comprised of 2,000 pages and costs \$432, which is neither practical, nor reasonably priced for most small employers. If the Ministry could develop more interactive and affordable tools, it would help businesses to comply and employees would get what they are rightfully entitled to. In addition, it would make it easier for Ministry auditors to ensure that the standards are being followed.

We understand that the Ministry has a new process by which it invites certain employers to fill out a checklist to see if an employer is in compliance with the ESA ahead of an audit. This is a perfect example of a tool which should be made available as an educational tool for all employers, instead of just a selected few.

Another element that makes compliance incredibly challenging is the language used to describe the requirements. Often, the language is based on legal jargon or the ideas are unclear or so complex that they are difficult to understand. One example is the letter that employers receive when there has been a claim filed against them. The letter indicates that a claim has been filed, but that no determination has been made as to whether the standards have been contravened. However, there is a settlement form attached that employers can use to settle the claim with the employee, despite no determination having been made. And, while the letter identifies the standard that may have been contravened, it provides no specific details about the claim, which precludes the employer from investigating and resolving the matter directly with the employee. The lack of clarity creates confusion for employers, most of which, do everything that they reasonably can to comply with the requirements. As such, any tools or communications developed should use simple, clear, and transparent language to convey the requirements.

Treatment by the Ministry

Where a Ministry inspector visits a workplace for the first time and finds that the business is unintentionally not following Employment Standards rules, the inspector should issue a warning instead of a fine. These scenarios are an excellent opportunity to educate the business about the requirements and to create a constructive relationship with the business owner, instead of developing a relationship of fear, which is most often the case. The reality is that businesses play an important role in the system, but many times the Ministry treats business owners like they are automatically guilty of noncompliance. This can be particularly frustrating, especially since most are trying their best to treat their employees as best they can, to follow the rules and to comply fully with the requirements.

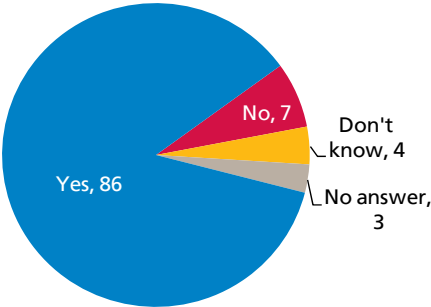
There must be a shift in the views and language used by the Ministry about employers and their role in the system, with the view of making the relationship more collaborative. This should extend to all communications, metrics and so on. For example, many of the indicators and metrics currently used by the Ministry point to the number of infractions accumulated over the course of a

blitz or over the course of a year, as opposed to the rates of compliance or success rates. By shifting the focus onto positive outcomes such as how many employers are following the rules, it would reinforce the great work that the Ministry and employers are doing.

SMALL BUSINESS VIEWS ON LABOUR RELATIONS

Despite a Supreme Court decision protecting an individual’s right not to associate or be part of a union, Canada is the only industrialized country which forces employees in organized workplaces to pay union dues. In most other countries, court or human rights rulings as well as statutory provisions give employees the right to choose whether or not they wish to join the union and whether or not they wish to pay union dues. To that end, the majority of business owners (86 per cent) believe that employees in unionized workplaces should have the right to opt-out of paying union dues (Figure 6).

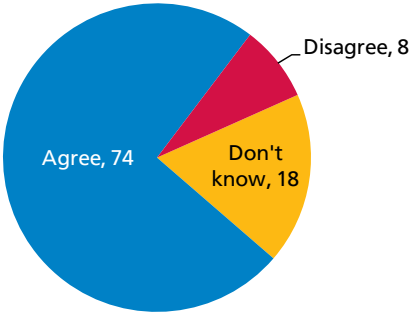
Figure 6: Employee right to opt-out of union dues
Should non-union members have the right to opt-out of union dues in organized workplaces? (% response)



Source: CFIB, Mandate 236, Question 2, Ontario data, October 2009, based on 3,704 responses

Furthermore, 74 per cent of small business owners believe that employees should not be forced to contribute to union activities not related to collective bargaining (Figure 7). In light of the Supreme Court ruling, CFIB encourages the Ontario government to use this review as an opportunity to make changes to the *Labour Relations Act* to reflect the right not to associate and to give employees the choice of whether to pay no dues at all, or at most, only pay dues related to bargaining activities.

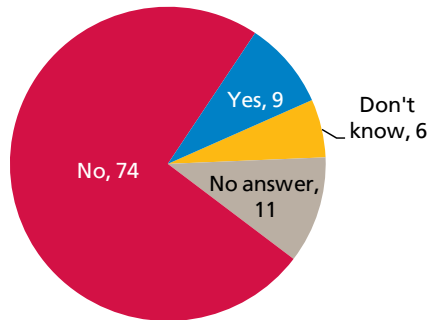
Figure 7: Union dues unrelated to collective bargaining
Unionized employees should be allowed to opt-out of paying for union activities not related to the collective-bargaining agreement (e.g. political advertising) (% response)



Source: CFIB, Focus on Ontario survey, August 2015, based on 3,018 responses

In addition, with respect to the collection of dues, nearly three-quarters (74 per cent) of small businesses also believe that employers should not have to collect dues on behalf of unions (Figure 8). This is not surprising given the associated administrative costs and the fact that businesses are not compensated for providing this service to labour organizations.

Figure 8: Collection of union dues by employers
Should employers be required to collect union dues from their employees? (% response)



Source: CFIB, Mandate 250, Question 1, Ontario data, April 2013, based on 4,769 responses

SUMMARY OF RECOMMENDATIONS

The cumulative impact of government policy proposals, including the possibility of more rigid labour laws, cannot be underestimated. Such a change in policies would make it more difficult for small firms to continue hiring Ontarians, contributing to the province's economic growth and paying tax dollars to help sustain the provincial government. In order to ensure that any updated framework considers the realities of small business within the context of the modern workplace, we would like to offer the following recommendations to guide any further government action on these issues:

1. Do not increase the regulatory burden that small businesses face with respect to employment standards and labour relations requirements.
2. Ensure that any changes to labour legislation allows employers to have flexibility so that they can respond and negotiate directly with their employees.
3. Do not expand the *Employment Standards Act* to cover self-employed individuals.
4. Keep all existing provisions around vacation and public holidays.
5. Preserve existing industry-specific exemptions in the *Employment Standards Act*.
6. Require employees to provide two weeks' notice upon termination of employment.
7. Require employees returning from pregnancy and/or parental leave to give employers four weeks' notice regardless of whether they intend to return to the organization or not.
8. Reduce timelines for holding employee records from three years to two years.
9. Develop a suite of tools which are free of charge to help small businesses comply with the *Employment Standards Act*.
10. Use simple, clear and transparent language in all external communications addressing the requirements under the *Employment Standards Act*.
11. Undertake an initiative to change the way that employers are viewed and addressed within the Ministry, with the view of building a more collaborative relationship.

12. Reinforce the right of employees not to associate and give them the choice of whether to pay union dues, or only to pay dues related to bargaining activities.
13. Do not require small and medium-sized firms to collect dues on behalf of labour organizations, or require unions them to provide compensation to businesses for the collection of those dues.

We appreciate the opportunity to outline our members' views regarding employment standards, labour relations and the modern workplace. However, we remain very concerned about this review and the potential impact on small and medium-sized businesses within the province. It would not suffice to implement the recommendations above, only to have the government implement more burdensome requirements such as increased vacation allowance, additional paid leaves, or more rigid requirements for employment relationships. Any such measures would only make it even more difficult for small businesses to operate within the province, and in conjunction with other policy proposals such as the Ontario Retirement Pension Plan, would have a devastating impact on job creation.

Instead, we urge you to focus on recommending changes that will modernize labour legislation to keep Ontario moving forward. Where possible, the government should simplify the requirements and provide employers with greater flexibility to manage their relationships directly with their employees. We expect you will consider the points that we have raised in this submission and that your next steps will reflect the needs of small businesses in the context of the modern workplace.

Sincerely,

Original signed by:

Plamen Petkov
Vice-President, Ontario

Nicole Troster
Director, Provincial Affairs

cc: Hon. Kevin Flynn, Minister of Labour