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Employment Standards Review
Corporate Services Division
Ministry of Labour Relations and Workplace Safety
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Review of the Employment Standards Provisions of *The Saskatchewan Employment Act* and Associated Regulations

The Saskatchewan Chamber of Commerce (SCC) is pleased to provide this submission in response to the discussion paper on the review of the Employment Standards Provisions of *The Saskatchewan Employment Act* and Associated Regulations. The SCC is the *Voice of Business* in Saskatchewan. The SCC, which is supported by provincial businesses and local Chambers of Commerce, advocates for policies that increase the attractiveness and competitiveness of operating a business in Saskatchewan. Our overarching goal is to make this province the best place to live, work and invest.

The SCC has long advocated for broad recognition of the fact that there is a competitive advantage to operating in a stable and predictable environment for employment standards. Nevertheless, the SCC is very mindful that the regulations imposed to create safe, stable workplaces need to be balanced with practical application and feasibility. The one-size fits all application of labour standards impacts workplaces differently and the ability of all workplaces to absorb change must be at the forefront of this discussion. There is always a cost to regulatory compliance. It is critical that government understand and pay close attention to the cost of compliance, both direct and through administrative burden, as related to any changes proposed as costly regulation can create a competitive imbalance that will impair the ability of Saskatchewan enterprise to compete in world markets, ultimately eliminating employment opportunities.

The SCC welcomes the opportunity to provide input into the employment standards provisions of *The Saskatchewan Employment Act* and Associated Regulations. Consultation is the hallmark of sound and effective regulatory reform. We also appreciate the calibre of questions being asked; our answers are below. Overall, our membership wants fair, balanced, and competitive labour market regulations that encourage full participation, innovation, productivity, mobility, and investment in human capital while strengthening and protecting Saskatchewan's competitive position.

General considerations

The SCC appreciates that the discussion paper encouraged stakeholders to identify any issues or concerns beyond those referenced. Specifically, the membership of the SCC believes the following topics are important elements in the review of Saskatchewan's employment standards.

Additional statutory holidays (section 2-30)

Saskatchewan has 10 statutory holidays per year, this is equivalent to the number available to federally regulated employees, even though the days designated as statutory holidays differ between the two. However, unlike federally regulated employees, or any other province in Canada, Saskatchewan employees are entitled to at least three weeks paid vacation every year, after a year of service. Comparatively, employees in much of the rest of Canada start with an entitlement of two weeks. This extra week (a 50% increase over entitlements in provinces such as Alberta) materially impacts the cost of labour in Saskatchewan and provides employees access to additional days. The SCC is aware of the ongoing discussion regarding the addition of the National Day for Truth and Reconciliation to the statutory holidays recognized in Saskatchewan, however, due to the cost of Saskatchewan's already significant statutory holiday and vacation pay requirements, and the access Saskatchewan employees already have to additional vacation days, the SCC opposes the introductory of any additional statutory holiday for Saskatchewan.

Recognizing statutory holidays (section 2-31)

The date of statutory holidays does not always align with the desired timing for employees and/or employers (for example, moving the 'holiday' day for July 1st from a Thursday to a Friday, would be generally well received). Unfortunately, the paperwork required for employers wishing to observe or move a statutory holiday to another day is overly bureaucratic. The process involves submitting a prescribed form for approval by the Director of Employment Standards, containing names and signatures of all employees and hours affected (employers must obtain agreement from the majority of employees before submitting the permit application). The SCC believes the current process is unnecessary. The SCC recommends that workplaces be enabled to observe or move a statutory holiday to another day, within a reasonable window, without government involvement, by communicating the alternate date to employees, much like what is done in the education system in Saskatchewan.

Provision of Benefits (section 2-39):

This section makes benefits plans mandatory for all employees in a workplace where benefits have been provided to a group of employees, except for those working less than 30 hours per week. While some flexibility is allowed on the employee side regarding benefits (e.g. if an employee has Health & Dental coverage from a spouse, they can opt out of the Health & Dental option on their company plan as it is written in plan design), employers only have options of what they allow under plan design, but no discretions as to which groups plans can apply too (with the exception of any employees working less than 30 hours). The SCC recommends that the provision of benefits section be amended to be more flexible and provide employers with the right to offer benefits at whatever level to whatever groups they choose.

Corporate directors liable for wages (section 2-68)

The SCC believes there is an opportunity to add additional clarity to this section. Currently, the wording could be read that each individual director could be liable for six months wages of an employee, 2-68(2) "The maximum amount of a corporate director's liability pursuant to subsection (1) to an employee is six

months' wages of the employee." However, the intent of this section appears to be to cap on total liability, and 2-68(1) references "the corporate directors of an employer" as a single entity. The SCC recommends the wording in 2-68(2) be amended to clarify that the maximum amount of liability applies jointly to all directors.

Discussion Paper Response

Exclusion from Provisions

As a representative of a broad collection of businesses, the SCC understands the challenge of one-size fits all employment standards given the greatly varying situations business operate through. The SCC appreciates the recognition from government that some businesses need accommodation. With this in mind, the SCC does not recommend removing any of the existing exclusions from the provisions but would like to see them expanded in three areas:

- 1) Firstly, oil truck drivers are currently exempt from overtime pay provisions, the SCC recommends that this exemption be expanded to include all commercial truck drivers. This would improve clarity and better align with industry operation. The SCC makes this recommendation knowing that truck driving is a highly regulated industry, and exempting commercial truck drivers from overtime requirements would not have an effect on the safety or security of the industry.
- 2) Fully commission salespeople should be exempt from vacation pay provisions. Employees who "receive all of their remuneration as commissions with respect to sales of goods or services or offers to purchase that usually are made at a place other than the employer's establishment" are already exempt from hours of work, overtime pay. The unique structure of these jobs already offers significant flexibility and ability for employees to materially impact earnings. Exempting fully commission salespeople from vacation pay provisions would improve simplicity, predictability, and clarity for employers. Further to this, our organization also notes that commissioned salespeople often benefit from technology, so the language on "made at a place other than the employer's establishment" is outdated and should be removed.
- 3) Employers and employees involved in or supporting the time-sensitive and weather-dependent nature of the agricultural, construction, forestry and transportation, that are not excluded from the provision already, should be excluded from the requirement for consent of an employee for overtime hours above 44 hours per week during peak season (for example, the agricultural equipment industry) as the time sensitive nature of this industry has material downstream impacts.
- 4) Due to the project-based nature of the industry, and a desire to align Saskatchewan with its neighbouring provinces, workers in the construction industry should be exempt from the notice, and pay-in-lieu of notice, provisions with respect to layoffs.

Youth Employment

The SCC supports finding a balance between protecting youth and encouraging early labour force engagement. The SCC recommends lowering the age of youth able to work to 13 years old or above and applying age-appropriate changes to the Young Workers Readiness Certificate Course.

Definitions of an Employer and Employee

The SCC believes this topic is of particular importance. Clear and well-defined definitions of employers and employees are fundamental to establishing, understanding, and complying with the provincial aspects of employment standards. In the same vein, defining contractors would be beneficial for the businesses of Saskatchewan, so that there is a clear understanding of when severance is owed to a worker, and when the employment standards set out in Part II apply to the workers. The rapidly changing nature of the work is making it increasingly difficult for employers and workers to determine classifications, however, both parties appreciate the flexibility and recruitment opportunities these new workplace arrangements offer and generally express a desire to preserve and grow them.

Specifically, the SCC does not believe the determination of contractor versus employee should be decided solely by the degree of exclusivity a worker engages in but rather by several factors, including exclusivity. Other factors considered should include the ability of the worker to set their own schedules, use their own tools and equipment, and be responsible for their own business expenses, and/or reap their own business rewards. Given the limited control employers have over workers operating in this independent fashion, independent contractors should continue to not be covered by the provincial employment standards provisions. With respect to dependent contractors, a definition might be beneficial, but putting together a definition of a dependent contractor is not easy, since someone with an exclusive relationship to a single business, with some form of reporting structure, is very hard to differentiate from an employee. In any event, as misclassifying a worker can lead to potential liabilities on the provincial level, such as the payment of severance, or overtime liability, the SCC has repeatedly heard that, in addition to definition clarity, education is needed to help all participants in the workplace understand their roles and responsibilities. Education on proper classification is additionally important since the Saskatchewan Employment Act cannot make changes to federally regulated areas, which are often of concern to employers, such as taxation, CPP and EI deductions, and employment insurance.

Hour of Work Provisions

Definition of a Day

In the Act a “day” for the purpose of Subdivisions 2 and 3 of Division 2 (Hours of Work and Obligation to Pay Wages) is considered any period of 24 consecutive hours. Saskatchewan is the only province that does this, in all other jurisdictions that include a definition, the “workday” resets each calendar day. Saskatchewan’s unique definition places a significant administrative burden on employers scheduling shift workers and prevents workers from being selected for shifts they might find desirable. The SCC recommends that a day be defined solely as a calendar day.

Work Arrangements and Overtime

Ad-hoc flexibility of working hours was a concern raised by numerous employers during the SCC consultations. Employers noted that many employees express a desire to flex their time to better accommodate their personal work-life balance concerns on an inconsistent basis, for example, a desire to work longer hours earlier in the week to attend to a personal commitment later in the week (without the loss of wages or the utilization of vacation time). Employers believe the ability to accommodate

these requests would help them build better employee engagement but are financially penalized for such accommodations because of the requirement to pay overtime on daily basis. The two work arrangement currently provided for in the Act are too prescriptive (8 hours per day for five days; or ten hours per day for four days per week), the SCC recommends that more flexibility be enabled under the Act to allow employees and employers to determine the appropriate schedule and averaging of hours. Specifically, to facilitate this change, overtime should be determined on a weekly basis only for employees who work more than 40 hours per week unless an employee is working in accordance with a modified work arrangement or in accordance with an averaging authorization.

Agreements to average work hours

Employers operating under an agreement to average work hours appreciate being able to utilize such arrangements but indicated an area of red tape with respect to these requirements. Employers saw no value in the requirements for them to acquire written permission from an employee every two years to continue a modified work arrangement. Many of these arrangements are structural to business operations and operating under them is a requirement of employment. The two-year permit is perceived as arbitrary and unnecessary. The SCC recommends eliminating the requirements for employers to acquire written permission from an employee every 2 years to continue a modified work arrangement. Allowing an averaging agreement to continue throughout employment would be consistent with the application of other terms and conditions of employment, none of which expire.

Right to Disconnect

The SCC questions the need for government involvement related to the right to disconnect. For a significant portion of the workforce the only material contact occurring post-working hours relates to imperative information (for example, the power is out do not come in), it is simply administrative burden to expect these workplaces to create a right to disconnect policy. The SCC also cautions that connected to a right to disconnect is the adoption of a risk that urgent/emergent work will not get done by the key employees who are required to perform that work. For a province with high-risk industries, like industrial and commercial operations, mining, nuclear, agriculture, and other safety sensitive industries, the right to disconnect could be problematic. Ultimately, the SCC recommends that the government refrain from instituting any broad requirement related to a right to disconnect and instead allow individual workplaces to determine if and how a right to disconnect policy fits into their operations.

Wages and Regulation Tips

Minimum Wage

The minimum wage level in Saskatchewan has a direct impact on the ability of businesses to increase the viability and fund growth, but this wage level is disconnected from any measure of affordability relative to business operations and therefore increases can represent a significant burden. In previous years, minimum wage increases have been determined pursuant to a pre-set formula based upon annual changes to the consumer price index. This provided a welcomed degree of predictability for both employers and employees, however, in 2022 the government implemented specific annual increases

instead for each of 2022, 2023 and 2024. This abrupt deviation from the indexed formula was unwelcomed. The SCC appreciates the recent inflationary challenge the government was attempting to respond to, but both people and businesses are being impacted and increasing a business' costs through minimum wage hikes merely compounds the problem. The SCC recommends that on a go-forward basis the government should refrain from using the minimum wage to address inflationary challenges and instead evaluate the benefits of cuts in personal income taxes for low-income earners. Post-2024 the government has announced it will reimplement the previous formulaic approach, the SCC supports this and urges the government to abstain from modification following 2024's increase.

Vacation Pay

Currently, an employee's vacation pay is determined by the employee's wages for the year of employment or portion of the year of employment preceding the entitlement to the vacation; this means if an employee utilized vacation pay in the preceding period, employers pay vacation pay on that amount. Many other jurisdictions do not pay vacation on top of vacation pay; this policy quirk increases the cost of operating in Saskatchewan. The SCC recommends that vacation pay should be calculated on wages, excluding any vacation pay, earned in the 12-month vacation entitlement year or stub period (where that applies).

Vacation Pay on Pay-in-Lieu of Notice

Where an employer opts to provide pay in lieu of notice, rather than working notice, the employee is not required to be at the employer's disposal, and therefore no vacation is possible. Therefore, a clear exemption from paying vacation pay on top of pay in lieu of notice should be included in the provisions.

Tips and Gratuities

Employers in tipping industries must ensure their gratuity structure meets the requirements set out by both the Canada Revenue Agency and recent Court rulings. Further to this, the *Saskatchewan Employment Act* already protects against employers making deductions from employee wages. Given these considerations the SCC believes it would be prudent to maintain the current treatment of tips and gratuities under the employment standards provisions of Saskatchewan. Nevertheless, if any changes are contemplated the SCC urges the provincial government to ensure any tipping-focused regulations align with, and do not interfere with, requirements at the federal level surrounding taxation, EI, and CPP.

Protection when Ill or Injured

Sick Leave

The SCC does not support a mandatory paid sick leave program that is funded by employers. During consultations SCC members expressed concerns about the cost such a mandate would have to employers, especially for small businesses. Further, many businesses offer paid sick days as part of their company compensation and were concerned a government mandate would remove this labour attraction advantage.

The Act currently protects employees from discriminatory action if they are absent from work due to their own illness or injury or because of the illness or injury of a family member. Employers believe this provision is sufficient and does not need to be changed.

Employment Leaves

The *Saskatchewan Employment Act* provides numerous protected employment leaves addressing a variety of circumstances, in fact Saskatchewan is one of four jurisdictions with the highest number of leaves across Canada. This is in addition to the generous vacation time also available in the province and the mandatory insurance system in place for workplace injuries or illnesses. Given this situation, the SCC recommends the government avoid expanding or creating additional employment leaves.

Bereavement Leave

The SCC recognizes the challenge of creating a uniform approach to bereavement leave as individual circumstances vary, as such the best place for accommodation and understanding is at the individual workplace level and as part of the employer-employee relationship. Therefore, the SCC recommends that the definition of immediate family for bereavement leave not be expanded and specifically the SCC urges the government to avoid following the language in other jurisdictions applying it to “a person the employee isn’t related to but considers to be like a close relative.”

Layoff and Termination

Notice required

The Act should allow for more flexibility in the 13 weeks of consecutive service period requirement, often referred to as a 90-day probation. Current provisions apply after 13 weeks, regardless of the number of days an employee has worked. The SCC recommends this be amended to reflect 90 days actively at work. Under the current system, if an employee goes off work for whatever reason within their probation period it does not allow the intended time provided under legislation to assess the employee, possibly creating other issues. In addition to this amendment, the SCC also recommends that workplaces be able to extend the 90-day probation period if the employer and employee agree in writing; this would allow for greater flexibility as some roles require more time for the employee and employer to assess if the position is the right fit.

Payments in case of layoffs or terminations

Currently, when an employee gives termination notice, (required to be at least two weeks for those employed for more than 13 consecutive weeks but may be more) and an employer wants to expedite the termination, the employer must pay the wages that the employee would have earned if they had worked regular hours for the remainder of the notice period. Employers should have the right to waive the two week notice period (or any notice period given by the employee). If an employee has provided notice that they are leaving, especially if the employee is going to a competitor, the employer should not be forced to continue to employ the employee, or pay them, for the employee’s own notice period.

Group Termination

Termination of employment of 10 or more employees within a four-week period currently activates the group termination provisions, then the length of the notice period required under these provisions is dependent upon the number of employees impacted. The SCC thinks basing the requirement for notice and length of notice upon an absolute number is ineffective. An absolute number, especially an amount as low as 10, does not take into consideration the large variances in the size of companies, and therefore in the impact of layoff. The SCC recommends the government utilize a more appropriate measure, specifically the group termination provisions should only apply to large employers (500+ employees) and the group termination requirements should be based upon the percentage of a large employer's total workforce being terminated, starting at a minimum of 10%.

Authority of Employment Standards Officers

The SCC heard significant concerns over this consideration during its consultation process. Firstly, employers voiced unease that government officials tend to perceive their role as protectors of employees and they felt the ability of individuals to have impartiality at this level was questionable. Secondly, employers stated that often when an employer/employee relationship has dissolved to this level, it is a multi-faceted issue that not only requires significant impartiality but an in-depth understanding of legality, particularly related to the issue of reinstatement verse amounts owed. They were uncomfortable with the assumption that employment standards officers have the skill sets to make these determinations. The SCC strongly opposes giving the director of employment standards the authority to order an employee's reinstatement and payment of lost wages due to discriminatory action.

Conclusion

Thank you again for the opportunity to submit comments on the discussion paper on the review of the employment standards provisions of *The Saskatchewan Employment Act*. Amending the employment standards is an opportunity to facilitate the *Saskatchewan's Growth Plan: The Next Decade of Growth 2020-2030* goal of "growing small businesses and reducing government red tape for businesses" and our organization is optimistic about the changes that can be made.

While generating recommendations from this review, the SCC encourages the Ministry to be fundamentally cautious with regulatory change, unintended consequences can have material impacts on workplaces. The government should never impose an uneven set of obligations that negatively impact the ability of businesses to compete in a global marketplace, a regulatory balance must be protected. The SCC recommends a guiding principle of this policy formulation process be to ensure a competitive and open marketplace that seeks to foster business growth as this will lead to greater employee choice and a competitive labour market. As outlined in greater detail above, the SCC believes this can be accomplished by implementing the following recommendations related to the review of the employment standards provisions:

1. Refrain from adding any new statutory holidays in Saskatchewan.
2. Enable workplaces to observe or move a statutory holiday to another day, within a reasonable window, without government involvement.

3. Amend the provision of benefits section to be more flexible and provide employers with the right to offer benefits at whatever level to whatever groups they choose.
4. Amend the wording relating to the corporate directors liable for wages (2-68) to clarify that the maximum amount of liability applies jointly to all directors.
5. Exclude all commercial truck drivers from overtime pay provisions.
6. Exclude fully commissioned salespeople from vacation pay provisions.
7. Exclude employees in the industries of agriculture, construction, forestry, and transportation from the overtime hours not to be required provision during peak season.
8. Exempt workers in the construction industry from the notice provisions with respect to layoffs.
9. Lower the age of youth able to work to 13 years old or above and applying age-appropriate changes to the Young Workers Readiness Certificate Course.
10. Independent contractors should continue to not be covered by the provincial employment standards provisions.
11. Define a day solely as a calendar day within the Act.
12. Enable more flexibility under the Act to allow employees and employers to determine the appropriate schedule and averaging of hours beyond the two work arrangements currently provided for.
13. Determine overtime only on a weekly basis for employees who work more than 40 hours per week unless an employee is working in accordance with a modified work arrangement or in accordance with an averaging authorization.
14. Eliminate the requirements for employers to acquire written permission from an employee every two years to continue a modified work arrangement.
15. Allow individual workplaces to determine if and how a right to disconnect policy fits into their operations without government involvement.
16. Refrain from moving away from the minimum wage indexing formula in the future, instead utilize government funded tools, such as cuts in personal income taxes for low-income earners.
17. Vacation pay should be calculated on wages (excluding any vacation pay) earned in the entitlement period.
18. Exempt pay-in-lieu of notice from vacation pay.
19. Avoid regulating in the area of tips and gratuities.
20. Do not implement any mandatory paid sick leave program that is funded by employers.
21. Avoid expanding or creating additional employment leaves.
22. The immediate family definition for bereavement leave should not be expanded.
23. The 13 weeks of consecutive service period requirement should be changed to reflect 90 days actively at work.
24. Workplaces should be able to extend the 90 day probation period if the employer and employee agree in writing,
25. Enable Employers to waive the two week notice period for employees who give termination notice and not requirement employers to provide pay in lieu of notice.
26. Group termination provisions should only apply to large employers (500+ employees) and the group termination requirements should be based upon the percentage of an employer's total workforce being terminated, starting at a minimum of 10%.
27. Do not grant any additional powers for Employment Standards Officers.



Regulatory change inevitably catches people by surprise. It is therefore incumbent upon the Ministry to ensure that as changes are evaluated and potentially instituted, they are not only well communicated but also undertaken with implementation timelines that give material consideration to the human resource and expertise challenges facing Saskatchewan's small and medium enterprises.

The Saskatchewan Chamber of Commerce once again thanks you for this opportunity. If you require any further information or if the SCC can help support your efforts in any way, please contact Kristin Mckee at kmckee@saskchamber.com.

Sincerely,

A handwritten signature in blue ink that reads "Prabha Ramaswamy". The signature is written in a cursive, flowing style.

Prabha Ramaswamy, CEO
Saskatchewan Chamber of Commerce