

# Advocacy Win

---

March 2014

## Saskatchewan Employment Act

**Our Success:** The Saskatchewan Chamber of Commerce was the first business advocacy organization to aggressively lobby the Provincial Government to streamline and clarify employment related legislation into a single Act. The Chamber's evolving dialogue, which was sparked by the desire to streamline the rules and limit the resource waste facing employers involved in multiple dispute resolution processes, proposed the Saskatchewan Employment Code. Bring this proposal forward; the Chamber triggered the largest renewal of labour legislation in the province's history. This renewal resulted in the introduction of the Saskatchewan Employment Act, a single piece of legislation that consolidated 12 previously existing Acts. The action on the Employment Act is continuing for the Chamber as the organization works to ensure the 'Voice of Business' is heard while the regulations for this new legislation are merge, eliminated and enhanced.

### Introduction

Under previous legislation, it was expensive, time consuming, and an excessive use of resources for businesses to navigate the various pieces of legislation. The duplication of process and lack of clarity about which piece or pieces of legislation applied meant employers spent an unnecessary amount of time determining appropriate processes and/or unknowing failed to follow requirements. Additionally 'forum shopping', having a single dispute heard and evaluated by numerous third party dispute resolution bodies, was an ongoing issue. To resolve these issues the Saskatchewan Chamber proposed that the government combine all employment related legislation into a single Act. Following this recommendation, the Saskatchewan Employment Act consolidates 12 disparate pieces of labour legislation in an attempt to bring clarity, transparency, balance, and simplification to the employment relationship.

The Acts being modernized under into the Employment Act included:

- The Assignment of Wages Act
- The Building Trades Protection Act
- The Construction Industry Labour Relations Act, 1992
- The Employment Agencies Act
- The Fire Departments Platoon Act
- The Health Labour Relations Reorganization Act
- The Labour-Management Dispute (Temporary Provisions) Act
- The Labour Standards Act
- The Occupational Health and Safety Act 1993
- The Radiation Health and Safety Act, 1985

- The Trade Union Act
- The Wages Recovery Act

The elements of the Public Services Essential Services Act were initially not incorporated into the Saskatchewan Employment Act as that piece of legislation was in revision after it was ruled unconstitutional by the Court of Queen’s Bench for Saskatchewan on February 6, 2012. However, the Saskatchewan Employment Act Amendment Act (Essential Services Part VII) was introduced in December 2013 to incorporate a revised version of the Essential Services legislation.

The SCC CEO, Steve McLellan, was member of the Ministry’s Advisory Committee on Labour Relations and Workplace Safety, the group key is shaping the Saskatchewan Employment Act. Additionally the SCC provided a written submission on both the Act and the first series of consultation on regulations. As the second round of consultations on the Occupational Health and Safety regulations begins in spring 2014 the SCC will also participate.

### **Comparison to SCC Recommendations**

The below table outlines the Saskatchewan Employment Act and regulations compared to the Saskatchewan Chamber policy recommendations. The ✓ indicates areas of overlap between the two, although the logistics of each recommendation, as outlined more clearly in the accompanying text, contain some degree of variation. The ✗ indicates a recommendation where the Chamber policy does not align with the Saskatchewan Employment Act.

- ✓ Indicates a recommendation echoed in the Saskatchewan Employment Act
- ✗ Indicates a recommendation not echoed by the Saskatchewan Employment Act

|                  |   | <b>Chamber Position</b>   | <b>Saskatchewan Employment Act</b>  |
|------------------|---|---|---|
| Streamline Rules |  | Amalgamate related legislation where appropriate  | The Saskatchewan Employment Act consolidates 12 pieces of labour legislation  |
| Modernize        |  | General modernization of all legislation to incorporate more neutral language             | The Act condensed approximately 900 pages of legislation into about 250 pages   |
| Hours of Work    |  | Allow greater flexibility in hours of work.   | Under the Act no permitting is required for two arrangements: No permit required for 2 work arrangements: 8 hours per day - 5 days per week, and 10 hours per day - 4 days per week |
|                  |  | Remove requirement for a permit in the presence of mutual consent and minimal safety risk |   |

|   |   |   |  |
|---|---|---|--|
| Averaging Hours                                 | Will be in Regulations  | Chamber believes averaging hours this is not a one-regulation fits all situations and encouraged the development of industry tiers with regard to the time cycle over which hours can be averaged.  | The Act provides the ability to average hours over a predetermined time period   |
| Time in Lieu                                    |    | <p>Accommodate the concept of ‘time in lieu’.</p> <p>Overtime hours should be banked at a rate of one hour for one hour, however if time off cannot be arranged, the bank will be paid out at 1.5 times the hourly rate</p> <p>Employers should have the flexibility to determine their own time periods over which the time bank must be used.</p> | <p>The Saskatchewan Employment Act provides for the creation of time banks</p> <p>Will be in Regulations</p> <p>Will be in Regulations</p>   |
| Greater transparency in union finances          |  | Unions should be required to have their financial statements audited (based on the total initial contribution) by an external public auditing firm with the results made available to their members.  | The Act requires unions to provide audited financial statements and the results of votes to their members  |
| Greater freedom of choice for unionized workers |  | Members of unions in Saskatchewan should be allowed to opt out of paying union dues while still being allowed to work within a unionized environment and/or they should be allowed to indicate their preferences about what they would like their contributions being spent on.   | The Act retains the requirement to belong to the union where a union has been certified and to pay dues accordingly (the previous exemption from belonging to the union on religious grounds was maintained) |

|                              |   |  |  |
|------------------------------|---|--|--|
| <p>Union decertification</p> |    | <p>Union decertification should be as easy as certification</p>  | <p>Under the Act, applications to decertify can be made any time after the first 24 months of a certification order and 12 months after an unsuccessful application.</p> <p>Additionally, the Act enables employers or employees to decertify a union that has been inactive for three or more years</p>   |
| <p>Dispute Resolution</p>    |    | <p>Integrate the dispute resolution processes for The Labour Standards Act, The Trade Union Act and The Construction Industry Labour Relations Act into one common process</p> | <p>Under the Act, the Labour Relations Board will have administrative responsibility for the Adjudication and Appeal process. Employment standards and OHS appeals will still be heard by Adjudicators; however appeals from the decisions of Adjudicators will be heard by the LRB. Appeals of LRB decisions may be appealed to the Saskatchewan Court of Appeal.</p> |
| <p>Minimum Wage</p>          |  | <p>Minimum wage should not be indexed</p> <p>If minimum wage must be indexed limits should be established</p>  | <p>The minimum wage will be indexed based on the average change in the Consumer Price Index and the Average Hourly Wage for the previous year; but that Cabinet would continue to be the final decision make</p>   |
| <p>Holidays and Vacation</p> |  | <p>No increases in vacation time or statutory holidays</p>   | <p>Statutory holidays will be maintained at 10/year and vacation time will remain at three weeks/year for the first nine years and after completing 10 years of service increase to four weeks/ year</p>   |
| <p>Group Terminations</p>    |  | <p>Base the notice requirement periods upon the percentage of an employer's total workforce being terminated, not an absolute number.</p>                                      | <p>The notice requirements for group terminations were unchanged in the Saskatchewan Employment Act from the previous legislation</p>  |

|   |   |   |  |
|---|---|---|--|
| Essential Services Legislation                        |  | Provide greater clarity on essential services legislation   | The Saskatchewan Employment Act Amendment Act (Essential Services Part VII) addressed numerous aspects of the legislation. |
| Requirement for employees to provide two weeks notice |  | <p>The Chamber was not supportive of requiring employees to provide two weeks notices without any type of enforcement/disciplinary action also established</p> <p>The Chamber urged the Ministry to exempt employers from paying full severance to employees who have already provided notice should they be released earlier if there is mutual agreement</p>              | <p>The Act requires employees to provide two weeks notice</p> <p><b>Will be in Regulations</b></p>                         |
| Compliance Audit Fees                                 |   | A tier system of administration fees should be established, and fees should be calculated as a percentage of the amount of earnings alleged to be owing. Employers with minor compensation violations should be 5%. Employers with several compensation violations should be 10% and repeat violators, over a five year time period, should be 15% on their second offence. | <b>Will be in Regulations</b>  |

### Other Notable Elements about the Saskatchewan Employment Act

- In a unionized environment the Act changed the definition of employee to exclude those employees whose duties are confidential or managerial;

# Previous Policy

---

2011

## Improving Labour Legislation

### Background

A policy resolution had previously been adopted by the Saskatchewan Chamber of Commerce to create a comprehensive and unifying piece of labour and employment legislation, proposed as a Saskatchewan Employment Code. The key Acts to integrate in this Code are The Labour Standards Act, The Trade Union Act, The Occupational Health and Safety Act, The Workers' Compensation Act and the Construction Industry Labour Relations Act. The purpose of the proposed Saskatchewan Employment Code would be to create greater clarity between common legislation and to merge dispute resolution processes, thus avoiding "forum shopping" and other issues. The principles behind the proposed Code are improved clarity, transparency, balance and fairness, timely due process, and process simplification. Another key principle is that the new legislation is not intended to remove the rights of workers, but rather to make the administration of those rights more effective and efficient.

### Issue

It is expensive, time consuming and an excessive use of resources to have businesses navigate the various existing pieces of legislation. Further, moving a dispute from one forum (tribunal/resolution process) through a successive series of forums, typically without a change in outcome, adds to the cost of doing business in Saskatchewan. The opportunity for unifying legislation has three components:

- a) Combining the various tribunals/dispute resolution processes into one Employment Relations Board.
- b) Combining the existing employment/labour-related Acts into one overarching Act.
- c) Improving the merged legislation by seeking opportunities to improve the processes within the new legislation.

This new policy looks to make the desired changes in more manageable steps. There is also an opportunity for immediate action as the provincial government is currently reviewing The Workers' Compensation Act. A Committee of Review has been formed, with representation from the business sector.

## **Recommended**

In order to move closer towards the goal of creating integrated and overarching employment legislation (a Saskatchewan Employment Code), the Government of Saskatchewan should take the following steps:

- 1) Add to the Workers' Compensation Act Committee of Review's mandate a process to consider merging the tribunal/dispute resolution process of The Workers' Compensation Act with The Occupational Health and Safety Act into a new Workers' Safety Act (or other named Act) and also consider improvements to the processes.
- 2) Begin merging The Labour Standards Act, The Trade Union Act and The Construction Industry Labour Relations Act into one common Saskatchewan Employment Act, including the integration of all dispute resolution processes.

# **Previous Policy**

---

2010

## **Saskatchewan Employment Code**

### **Background**

Provincial labour and employment related legislation provide a variety of forums to resolve disputes and complaints that arise out of the employment relationship. The Labour Standards Act, the Trade Union Act, the Occupational Health and Safety Act, the Worker's Compensation Act, the Construction Industry Labour Relations Act each provide a dispute resolution external to the workplace. In addition there are another set of legislative acts that affect the employment relationship for both unionized and non unionized workplaces (e.g. Minimum Wage Act, Saskatchewan Immigrant Nominee Program and Temporary Foreign Worker Program etc.). The multitude of legislation and potential forums for resolution are not conducive to clarity, transparency, balance, fairness, timely due process and simple ease of business operation.

### **Issue**

The duplication of process and lack of clarity about which piece or pieces of legislation apply, or even where to find the applicable legislation, means that employers and / or employees are confused about which piece of legislation actually applies and therefore may be forced to address a question, complaint or dispute in a number of forums at a significant cost in terms of time,

effort and resources. It may also mean that a dispute may not be over until all of the possible venues available to adjudicate a matter have been exhausted.

In the initial proposal for the combined legislation, no rights that exist under the current legislative regime will be lost by employees, unions or employers. Once the legislation is merged and the dispute resolution provisions are clarified under the proposed act, then a comprehensive review of the merged provisions can be undertaken in an open, transparent consultation process.

Consistent with the objectives of Enterprise Saskatchewan and the goals outlined in the Saskatchewan Chamber of Commerce Growth Strategy - both of which are aligned to promote a growing Saskatchewan, the proposed comprehensive and unifying legislation will improve: competitiveness, investment attraction, job growth, labour force retention and attraction, overall population growth, and a sustainable and growing tax base.

### **Recommended**

- 1) That the Government of Saskatchewan combine all current "employment relationship" types of legislation and regulation into one overarching Saskatchewan Employment Code.
- 2) That the Government of Saskatchewan combine all current dispute resolution type boards / panels (Labour Relations Board / adjudicative panels - Labour Standards / OHS etc) into one Employment Relations Board to hear all disputes under the combined legislation.