

The Canadian Mainstream and Beyond:

Reforming Alberta's Employment Standards Code

March 2017

*Alberta
Federation
of Labour*



Submission to the 2017 Workplace Legislation Review

Contents

- Introduction 3
- Employment Standards Fundamentals 4
 - Issue 1: Overtime..... 4
 - Issue 2: Overtime agreements 6
 - Issue 3: Statutory holidays and stat pay 6
 - Issue 4: Vacation time and pay..... 7
 - Issue 5: Rest between shifts..... 8
 - Issue 6: Maximum 12 hour work day 9
 - Issue 7: Breaks at work 9
 - Issue 8: Notice of Work Times and Schedule Changes..... 10
 - Issue 9: Compressed work weeks 11
 - Issue 10: Part time workers 11
 - Issue 11: Leave—Parental..... 12
 - Issue 12: Other leave provisions 13
- Terminations 14
 - Issue 13: Termination—Notice and severance pay 14
 - Issue 14: Unjust termination 15
 - Issue 15: Termination - by Employee 16
 - Issue 16: Termination— Temporary layoff..... 16
- Children and Young Workers in the Workplace 17
 - Issue 17: Employment of 12 to 14-year-old children and adolescents 17
 - Issue 18: Young workers between 15-17 years old 18
- Exemptions to provisions under the Employment Standards Code 21
 - Issue 19: Minimum wage exemptions and permits 21
 - Issue 20: Minimum wage exemptions for persons with disabilities..... 22
 - Issue 21: Farm workers exempted from the Employment Standards Code..... 23
 - Issue 22: Domestic Workers exempt from the Employment Standards Code..... 24
 - Issue 23: Exemptions to the Employment Standards Code—other occupations 24
- Enforcement of the Employment Standards Code..... 26
 - Issue 24: The complaint-driven system does not work 26
 - Issue 25: Almost zero prosecutions 26
 - Issue 26: Partial payments for wages or other monies owed 27
 - Issue 27: The appeal system is confusing and unbalanced 28
 - Issue 28: Fines 28
 - Issue 29: Ticketing/ Administrative penalties 30

Emerging Employment Standards Issues	31
Issue 30: Prohibition on gender-based wage discrimination.....	31
Issue 31: Deductions to earnings for retail, hospitality and restaurant workers	32
Issue 32: Advance floats for restaurant servers.....	33
Issue 33: Tip protection.....	34
Issue 34: Temporary employment agencies.....	34
Issue 35: Employer reprisals	36
Issue 36: Internships & Practicum	36
Issue 37: Temporary Foreign Workers	38

Introduction

The Alberta Federation of Labour (AFL) is Alberta's largest worker organization, representing more than 175,000 workers and their families across all industries and most occupations. Our connection to workers of varying stripes, situations and working conditions allows us to comment on the provisions of the Employment Standards Code and how it is enforced. We will draw upon feedback we have received from workers who contact our office on a daily basis, and from formal positions taken by our member unions regarding employment standards.

When considering changes to the Employment Standards Code, it is crucial to understand the importance of employment standards at a societal level. Employment standards exist to provide just and safe working environments for non-unionized workers at the workplace, as workers exist in a vulnerable position relative to their employers. Without standards to restrict employers' behavior and without a union to represent them, individual workers are at a severe disadvantage relative to their employers. The duty of the Employment Standards Code is to ensure that workers are not exploited due to this vulnerability and to ensure that all Albertans are not deprived of their constitutional rights while at the workplace. In the context of a rapidly changing workplace due to the influences of technological development and globalization, a growing number of workers are being placed in precarious working environments with unfair compensation and little job security. Precarious employment makes the employer-employee relationship even more imbalanced in favour of the employer and makes the rights that Albertans have on paper, an illusion in reality.

Despite the importance of this duty, the fact that Alberta has often lagged behind in establishing effective and proactive employment standards legislation, is shameful. The fact that successive governments have boasted about “the Alberta Advantage” while permitting child labour and tip theft is also shameful. The fact that the Employment Standards Code (the Code) has been previously reviewed twice in this century, but has not been significantly updated, is again shameful. The Alberta Federation of Labour hopes that this review will bring much needed changes and updates to the Employment Standards Code, and the new “Albertan Advantage” will be one that celebrates protections for workers.

While we have recommendations on specific sections of the Code and emerging issue areas, there are common themes that should be adhered to in the review of the code. The first is that exemptions to the code in any form—whether it is for an industry or a group of workers—should be an anomaly extended only to workers or industries with a genuine need for an exemption (such as overtime provisions for emergency workers.) Employment standards are only effective and meaningful if they apply to all workers equally. The second theme follows from the first, the common practice of allowing exceptions and permits through the Director should be stricken from the Code. Legislation and regulation cannot and should not be overridden in such a back door or bureaucratic manner. If an employer or industry wants to avoid meeting the criteria outlined within the Code they should be forced to seek such a change within the regulation—which will necessitate a public and fully transparent process to implement. The third theme is enforcement. No code of laws or regulations has any utility if the means or will to enforce them does not exist. If this government seeks to undo decades of inaction on workers' rights, a commitment to

employment standards enforcement is of paramount importance. The fourth theme is that for many vulnerable workers employed in precarious positions, we must go beyond rhetoric and find means of genuinely protecting them. We can't expect workers who fear for their jobs to make complaints about their employers and we can't expect that employers will follow the Code on their own volition. That system doesn't work. It falls on government to do better in their duty to protect Albertans at the workplace.

Employment Standards Fundamentals

This section will contain recommendations on a number of issues which represent the variety of standards the Employment Standards Code covers. Our recommendations are to bring Alberta into the Canadian mainstream in our approach to workplaces and working life.

Issue 1: Overtime

Alberta's overtime provisions within the Employment Standards Code are outside of the Canadian mainstream by allowing a 44-hour work week. Alberta also lags behind our provincial neighbors in protecting workers from employer imposed overtime.

AFL recommendation for overtime

1. Maintain standard work day of 8 hours.
2. Lower weekly hours from 44 to 40 hours. This will harmonize Alberta's weekly hours with most of Canada.
3. Provide double time for work over 12 hours per day or 50 hours per week.
4. Provisions allowing workers to refuse overtime, similar to Saskatchewan.

Background & rationale

Overtime is a key issue in employment standards because it governs a core element of the employer-employee relationship. It does so in two ways. First, it establishes the standard number of hours an employment relationship can encompass. It informs both the employer and the worker what they have a right to expect. Second, it places a premium on work demands that exceed this normal standard.

While the workplace has changed significantly, the classic nine-to-five job has become less common, there is still a need for a definition of standard work week. Workers have a right to know how many hours in their week need to be devoted to employment. When the employer wishes to encroach upon the worker's remaining hours, they should be expected to pay a premium for that encroachment. The rationale behind this concept is that the worker is not the property of the employer, and that asking for something beyond the usual arrangement demands additional remuneration. There is also the aspect that workers who exceed normal working hours tend to have a higher rate of accidents, especially when they are engaged in nighttime shift work.

Six of Canada's provinces have defined the standard work week as 40 hours, and eight hours per day. These numbers have long been seen informally as the "standard work

hours" in Canada. Alberta's legislation lags behind by allowing 44 hours per week. Employers have argued that the modern need for flexibility demands a loosening of overtime rules. While employment patterns clearly indicate that the standard work week is becoming less common, we must not exaggerate the trend. Over half of workers in Alberta hold "standard" jobs, and most industries continue to operate on a long accepted "business day." The government needs to balance a concern for reflecting modern trends with protecting the bulk of workers who retain the standard employment pattern.

More importantly, if we scratch the call for flexibility a little, we find the concern is not with ensuring the work gets done—it is with wanting to avoid the premium that comes with working extra hours. In short, the call for looser overtime provisions is a call for the government to lower labour costs. We must examine this motivation very carefully before continuing to accept it.

Instead, we believe our overtime provisions should be changed to reflect our provincial neighbors. It is often argued that we need to harmonize rules with other jurisdictions to allow for smoother trade and economic competitiveness. In that light, we recommend Alberta lower our work week to 40 hours—as B.C., Saskatchewan and Manitoba have. We should ensure that double time is paid when workers put in more than 12 hours per day, again as is the case in B.C.

Finally, to remain consistent with the concept of overtime—that of a demand in addition to the usual employment contract—workers should possess the right to refuse overtime. The right to refuse overtime allows the worker to choose whether they wish to earn premium pay, or maintain those hours for family or personal pursuits.

No worker who is unwilling or unable to work overtime should be forced to work, except in emergencies. Saskatchewan and Manitoba have taken the step to encode a worker's right to refuse overtime. Saskatchewan's provisions are particularly effective, as they do four things:

No employer can force a worker to work overtime, except in emergency situations. No employer can force a worker to work overtime, except in emergency situations. No disciplinary action can be taken against a worker who refuses overtime. Onus is on employer to prove "emergency situation" Defines an emergency situation as "sudden or unusual occurrence or condition that could not, by the exercise of reasonable judgment, have been foreseen by the employer." (Section 12(4))

Saskatchewan's provisions protect workers who attempt to maintain balance in their lives, but allow for the labour needed to address emergencies.

We believe this will not unduly inconvenience employers, as in any workplace there is a mixture of workers—those who take as much overtime as they can get, and those who value time away from work.

Issue 2: Overtime agreements

A worker is entitled to only one hour lieu time for every hour of overtime worked, while premium pay is 1.5 times the hourly rate. In effect, this steals from the worker their premium for working extra hours, and creates an uneven playing field for workers seeking alternate overtime agreements.

AFL recommendation on overtime agreements

1. Harmonize overtime agreements with paid overtime provisions. Workers should receive 1.5 hours time in lieu for every hour of overtime worked.

Background and rationale

In theory, overtime agreements provide a creative and flexible option for both employers and workers. Rather than paying premium pay, they can agree to time off in lieu of premium pay. We support flexibility of this nature.

However, in Alberta there is a flaw to the agreements. The premium of overtime pay (1.5 times the hourly rate) is greater than the simple proportional time off in lieu benefit (1-hour off for every overtime hour worked). It builds in an incentive for employers to sign agreements to avoid the extra pay per hour of overtime. Workers should not be punished for seeking alternative and flexible work agreements. Attaching a premium to time off in lieu will more fairly compensate those who seek alternate overtime agreements.

Issue 3: Statutory holidays and stat pay

Provisions governing statutory holidays and stat pay are confusing and complex, leading to misunderstandings between employers and employees.

AFL recommendations on statutory holidays

1. Make all workers on the payroll eligible to receive statutory holiday pay.
2. Remove the usual day of working requirement for statutory holiday pay, as it creates confusion, misunderstanding, and sometimes abuse by employers.

Background and rationale

No Alberta worker refers to any of our nine statutory holidays as general holidays, so the first change in the Code should be updating the language so that workers know what the Code is talking about when they attempt to read it for themselves.

The section governing eligibility for stat pay is confusing and in dire need of updating. Every time a statutory holiday rolls around, employees and employers alike can be found scratching their heads as to what to pay to whom. Ask ten people in the restaurant or retail industry what the rules are and get at least twelve conflicting answers, from employers and employees alike. Honest mistakes are often made in interpretations of "usual work day" and length of service to be eligible for stat pay. In fewer cases, the complexity of eligibility and

prevalent misunderstandings among workers makes the situation ripe for abuse by unscrupulous employers.

It is time to remove the confusion and complexity around statutory holidays. The solution is actually simple: adopt the Saskatchewan model, in which all employees on the payroll are paid for the statutory holiday.

The Saskatchewan solution entitles all workers to statutory holiday pay if they are on the payroll of the employer at a proportion of their usual wages (1/20th of their monthly wages, which is equal to one work day). This system is simple, easy to understand and administratively straightforward.

The Saskatchewan solution also reflects what most employers do anyway-pay all their workers for the day. While some may complain about cost, we believe it is of marginal impact, given that there are only nine statutory holidays, and the percentage of workers who are in a grey zone of eligibility is very small.

We also believe workers should be entitled to statutory holiday pay regardless of which day of the week it falls on. It seems Grinch-like to deny Christmas stat pay because it happens to fall on a Sunday. Again, the small cost to the employer is exceeded by the ill-will created by being stingy.

Issue 4: Vacation time and pay

Alberta lags behind other Canadian jurisdictions in providing vacation time

AFL recommendations on vacation time and pay

1. After one year of employment, workers should be entitled to three weeks vacation per year. After five years, increase vacation to four weeks.
2. We recommend no change to four per cent vacation pay for the first four years of service, and six per cent for the fifth year of service and beyond.

Background and rationale

Much like rest breaks and days of rest, vacations are not just an employment frill – they are essential to maintaining a worker's mental health, productivity and wellbeing. It is the only time in the year where a worker can leave their work behind and spend extended time with family and friends.

Alberta lags behind other jurisdictions with the number of weeks offered for vacation. Currently, a worker can spend virtually their entire career-even with the same employer never getting more than three weeks vacation. Our neighbour, Saskatchewan offers three weeks after one year, and four weeks after 10 years continual employment. Most European nations offer at least four weeks holidays-and studies show that productivity per worker does not suffer as a result.

Statistics Canada indicates that Albertans take fewer vacation days than any other province. We do not consider this a point of pride. It is an indication that our work-life balance has tipped too much toward work.

The government can play a role in addressing this imbalance. A person's life is not only about their job. As a prosperous province, we have the capacity to offer greater vacation time without hardship on employers—most of whom already provide more weeks than the Code requires. The government can increase the number of weeks a worker receives to send a strong signal that the employment year is a balance between hard work and well deserved rest.

Issue 5: Rest between shifts

The Code must include rules guaranteeing a minimum number of hours between shifts. This is beneficial both for health and safety, and for the worker's quality of life.

AFL recommendations on rest between shifts

1. Implement a minimum of nine hours rest between each shift.

Background and rationale

Alberta currently provides no guidance on providing rest between shifts, except in the case of shift changes where an employee must receive 24-hour notice and at least eight hours rest between shifts. Allowing for sleep, transportation, eating, and personal grooming, requires a minimum nine-hour interval between shifts. This minimum rest period will ensure workers have the opportunity to maintain a work-life balance and prevent the negative impact of fatigue upon their health and job performance. Alberta's *Work Safe Bulletin* acknowledges the need for rest and especially sleep: "Although there is considerable variation among individuals, research indicates that on average, workers require 7.5 to 8.5 hours of sleep per day." Without access to sufficient rest, the cumulative effects of fatigue leads to physical and mental impairment—which can lead to significant safety issues at the workplace. It is well known that fatigue leads to human errors, some high-profile cases include the Exxon Valdez and Chernobyl disasters. While few errors will have such dramatic impacts, the general loss of productivity associated with workplace fatigue is not insignificant. Fatigue also increases injury rates, illness rates and generally poor quality of life. There is also evidence that workplace related fatigue can lead to long term sleep problems and health issues, that will endure even after the immediate causes of the fatigue are resolved or discontinued.

Many employers have already embraced the positive impact of allowing sufficient rest between shifts, but some industries continue to place workers in circumstances where insufficient rest between shifts is the norm. By implementing a minimum nine-hour break between shifts we prevent these workers from suffering the negative impacts of fatigue. Special provisions for larger rest-periods in the case of employees who have long work commutes should also be considered.

Issue 6: Maximum 12 hour work day

The maximum 12-hour work day should be maintained and not eroded through Director permits.

AFL recommendations on the 12-hour workday

1. Maintain the 12-hour daily maximum and remove the Director's right to issue exemption permits.

Background and rationale

There are very good reasons to maintain the current daily maximum of 12 hours per shift.

An international review of extended work days—a survey that included Canada, Germany, the United States, and Australia—found that extended work hours increase the risk of injury substantially. The study defined "extended work hours" as increasing work time from an eight-hour day to a 12-hour shift.

This review showed that extended work hours increased the risk of occupational injury. Especially working over 12 hours per day doubled the risk of injury.”

By removing the daily maximum, we risk creating health and safety hazards.

A 15- or 16-hour shift should not become a part of anyone's regular work schedule. There may be times when a shift of that length is required, but it should remain the exception. To that end, the current exceptions in the Code—urgent work, unforeseeable circumstances, serious interference with business—are sufficient to provide appropriate flexibility.

We also believe the right of the Director to issue a permit extending hours of work should be removed. If there are additional circumstances when an exception is required—such as seasonal work or weather conditions—those should be explicitly added to the section as exceptions. Legislation by permit is not acceptable.

Issue 7: Breaks at work

The language within the Code permits workers to work excessive numbers of hours before mandating a break.

AFL recommendation on breaks

1. A 30-minute rest break required at intervals to prevent a worker working more than five hours consecutively without rest.

Background and rationale

Rest breaks are a necessary protection for workers. They allow for meals and for a time when the worker can remove themselves from work to rest or do personal business. They improve productivity and allow a crucial mental rest for workers.

However, the wording of the Code allows for a 30-minute break during each shift in excess of five hours. This is significantly looser than other provinces, and could see a worker working eight or nine hours in a row without a rest break.

Alberta's language should be changed to closely resemble the language used in most other provinces, including Ontario, B.C., Saskatchewan and Nova Scotia. This would require a 30- minute rest break at intervals ensuring a worker works no longer than five consecutive hours.

This wording would have two effects. First it ensures breaks occur in the middle of an ordinary eight-hour shift-and not near the end when it is less effective. Second, it guarantees a second break if the shift is 10 hours or longer. Thirty minutes of rest for a 12-hour shift is inadequate. The second break would allow for a second meal or mental break that all workers need.

Issue 8: Notice of Work Times and Schedule Changes

Employers are not mandated to provide sufficient notice of shift changes which places a burden on workers.

AFL recommendation on notice of work times and schedule changes

1. Employers must provide a 1 week notice of a scheduling change.
2. Workers who arrive to work and have their shift cancelled must receive a minimum call out pay of three hours at their normal pay rate.
3. Require employers to pay a premium if an employee is on call but is not actually called into work.

Background and rationale

The current provision allows employers to switch an employee's work schedule with only 24 hours written notice. This places many workers in difficult situations especially when appointments must be rescheduled or alternate childcare arrangements must be made. These are not simple inconveniences; the current legislation makes it difficult for workers to manage their work-life balance and plan their daily lives. Moreover, it punishes workers for events and changes beyond their immediate control or, in some scenarios, their employers' inability to stick to a stable agreed upon schedule. Mandating employers to post their schedules at least a week in advance will help workers manage their work-life balance. Beyond work-life balance, there is also the aspect of income unpredictability. Workers deserve to know how much work is available and how much income they can expect from that work. A one week notice is not an undue burden on an employer and should be considered a basic minimum of a good workplace.

Furthermore, in the case where an employee reports for work but there is no work for them, Alberta should implement a minimum call out pay for employees akin to the practice in Saskatchewan. The current provision in Alberta allows employers the flexibility to send workers home with no compensation. This is not fair to employees who have committed time in their schedules to their work and have expectations about what work they will receive. While we appreciate that some industries require some flexibility in these cases, the employees' commitment should be honored with some compensation. A call out pay of at least three hours is a fair compromise that compensates workers for their commitment.

In a similar vein, employers should be required to pay a premium if they require an employee to be "on call" but are not actually called in. On call workers cannot be understood to be on their own time, as they cannot undertake any activities that would make them unavailable for workplace duties. They cannot travel, schedule appointments, or engage in many recreational activities. Workers that are on call are expected to be available to their employer and ready to work at a moment's notice, this imposition on the time of the worker and the flexibility it affords the employer should warrant some compensation to the worker.

Issue 9: Compressed work weeks

Compressed work weeks are a useful means of allowing greater flexibility at the workplace but need to be aligned according Canadian standards for overtime.

AFL recommendation on compressed work weeks

1. No change to the current section of the Code governing compressed work weeks.
2. Align maximum hours of work before overtime with the rest of Canada; and allow employees to earn overtime after 40 hours worked in a week.

Background and rationale

The AFL supports the concept of a compressed work week for some occupations; many workers find they provide more time for family and home obligations, less time spent commuting, lower child care costs, and more time off and predictability for themselves and their families.

The only change the AFL would make is that overtime should become payable after 40 hours of work in a week, not the 44 under the current Code. This would bring Alberta's standards in line with the majority of the rest of Canada.

Issue 10: Part time workers

Insufficient attention and protections are made explicitly available to part-time and precarious workers.

AFL recommendation on part time workers

1. Add a provision that benefits and compensation should be provided in accordance to the work done, not the conditions of employment (whether an employee is full time or part time).

2. Explicitly state that part time workers have access to all parts of the Code, including statutory holidays, all forms of leave, minimum wage, and overtime pay.

Background and rationale

For decades, we have known that part time and casual work has been on the rise. While some workers voluntarily choose part time work, there are a growing proportion of workers who are forced into part time work because full time work is unavailable. The problems of workers that are forced into part time work arrangements are many. They often do not receive compensation that recognizes their work, they are often deprived of benefits, and accordingly must often work at multiple positions just to make a living.

Alberta can no longer ignore this group of workers and their struggle to achieve compensation and benefits that are commensurate with the work they perform. In Quebec, employers are prohibited from paying part-time workers less than full time when the workers are doing the same work in the same establishment. This rule however does not apply to workers making more than twice minimum wage. This is simple fairness that should be extended to Albertan part time workers. Ireland has similar provisions guaranteeing the same protections enjoyed by full-time employees are extended to part-time employees.

Issue 11: Leave—Parental

There are critical shortcomings in the current wording for maternity and parental leave in the Employment Standards Code.

AFL recommendations on parental leave

1. Adjust maternity/parental/adoption leave rules to allow continuation of benefit plans. Where applicable, seniority accrual should also continue as normal during the leave.
2. Waive notice periods for pregnancy and birth complications.
3. Lower the number of weeks required for eligibility to zero.

Background and rationale

The current wording for parental and maternity leave have three problems that must be addressed.

First, the status of a worker's benefit plans when they go on leave is up in the air. Many find themselves ineligible for extended health or dental benefits during their leave—at a time when such benefits might be needed the most. Saskatchewan possesses language that prevents this legal difficulty by ensuring a worker can remain on their benefit plan if they choose and pay any associated costs. We support a clause that allows for this option.

Second, there are no provisions for complications during pregnancy. Many other provinces waive notice periods or allow extensions on leave time lines if there is a complication in the pregnancy, birth or post-partum. Allowing for maximum flexibility for a mother with

medical complications is both humane and good business practice. The government should include language to protect women whose pregnancies suffer from complications.

Third, and more seriously, women are not eligible for maternity and neither parent eligible for parental leave unless they have completed one full year employment with that employer. This requirement is far too high. It can create the perverse situation where a woman is eligible for maternity benefits from EI, but not entitled to unpaid leave from her employer. This provision is also likely to be contrary to the Charter of Rights and Freedoms, and could be vulnerable to a challenge.

Other provinces range between no requirement (B.C., New Brunswick, Ontario have 13 weeks as a requirement and 20 weeks for Saskatchewan and Manitoba). Only one other province (Nova Scotia) requires a year. There should be no minimum employment requirement for maternity, paternity and adoption leave as pregnancy and parenthood are fundamental, natural activities that should never put one's employment at risk.

Issue 12: Other leave provisions

One of the evolving elements of employment standards in recent years, both in legislation and employer policy, is the recognition that the complex nature of life often creates conflicts between home and family commitments and work commitments.

AFL recommendations on other leaves

1. An emergency leave of five days per year, which can be accumulated for three years.
2. Leave of up to five days for victims of domestic violence
3. Bereavement leave of five days when a close family member dies.
4. Sick leave of at least five days per year when the employee has to miss work due to a minor illness, which can be accumulated for three years.
5. Jury duty leave when the employee is selected for jury duty.
6. Critically ill child leave when the employee's child is critically ill.
7. Death or disappearance of a child as a result of crime leave.
8. Citizenship leave to attend the employee's citizenship ceremony.
9. Organ-donor leave when the employee donates an organ.
10. Provision for leave to run for political office

Background and rationale

Parents have always struggled with the circus act of juggling child rearing and employment. And today more and more families are actively caring for sick or dying parents or other family members.

Legislation needs to catch up with these struggles. Just as legislation decades ago recognized the need to provide days of rest, we need to acknowledge that juggling family and work responsibilities is part of the modern employment reality. By protecting workers right to a life outside of work, we make more fulfilled and happy citizens. Moreover, Alberta's legislation should reflect the reality that practices that facilitate a healthy work place balance leads to greater productivity in the workplace.

Workers need protection to ensure that tending a sick child, or spending final days with a dying parent will not put their job in jeopardy. Just as we recognize that pregnancy should not force a woman to quit her job, neither should the care of family in emergency or crisis situations. Alberta should also follow Manitoba's lead by providing victims of domestic violence paid leave in order to get help (seek services, relocate etc.)

Alberta also needs to recognize the importance of legislating paid sick leave for illness. Employees without sick leave are forced to make a difficult choice, whether to stay home and risk their employment or suffer from an illness at the workplace. The public health benefits of paid sick leave are well documented by health care professionals and public health officials. The American Medical Association has associated the lack of paid sick leave in the United States with the spread of infectious diseases, delayed diagnosis of disease and a delay in receiving medical treatment—all of which leads to much greater social costs than the marginal benefit of forcing a sick person to go to work. Smart employers across the world have recognized this reality with voluntary paid sick leave, but not all employers have embraced the facts on this issue. Given the clear evidence on this issue, Alberta should endeavor to include paid sick leave within the Employment Standards Code.

Terminations

The ability of an employer to terminate a worker's employment gives them overwhelming leverage in the employment relationship. This leverage impacts every other aspect of the relationship and weakens the ability of workers to stand up for their rights. Precarious workers are so desperate to hold onto their jobs that they are often not willing to stand up to their employers to refuse unsafe work, claim their rightful pay or reject outright harassment.

Issue 13: Termination—Notice and severance pay

The provisions for termination are in need of reform. They are among the stingiest in the country, and offer too many loopholes for unscrupulous employers to avoid notice or severance pay.

AFL recommendations on termination by employer

1. Alter the notice period requirements to one week of notice per year of employment. Add additional notice for group terminations and removing all exceptions but emergencies.

Background and rationale

The number of weeks' notice required is out of step with other provinces, and with established common law regarding termination. Someone who has worked for an employer for almost two years is entitled to more than one week's notice. The table is also difficult to understand, as there is no consistent association of years to weeks notice. A cleaner calculation of one week for every year worked, to a maximum of 10 weeks is fairer, simpler and more reflective of our provincial neighbours and the courts.

We also believe enhanced notice should be required for group termination (layoffs). The disruption of a large group of workers being laid off is significant. With a group layoff, an entire community is affected. The extra human cost of group layoffs necessitates more notice to allow for planning, preparation and response. We suggest eight weeks for workplaces with 50 to 100 workers, 12 weeks for 101 to 300 workers and 16 weeks for layoffs of more than 300 workers.

The second area of concern is the stated exceptions to notice provisions. These are the loopholes that leave thousands of workers each year without proper notice, or right to wages, in lieu of notice.

In particular, the exception for workers employed less than three months has earned a notorious reputation. It is the tool used by many employers to avoid any responsibility. They hire a worker (especially in low skill jobs) for three months, and then let them go just before the three-month mark, and thus prevent paying a week's wages. This is often used in conjunction with efforts to avoid adding workers to benefit plans and other obligations.

None of the exceptions are sufficient to warrant waiving the notice period. Remember, this is not about the employer's right to terminate a worker, but merely how much notice (or wages in lieu of notice) they are required to give. Just because a worker agrees to a term contract of, for example, six months, that should not mean they lose the right to notice of termination. The phrase "just cause" is rife with opportunity for abuse, and the employment standards system is not adequately positioned to assess when such a term is being used appropriately. Our suggestion is to remove all exceptions, and allow the waiver of notice periods in emergency situations only.

Issue 14: Unjust termination

Employees that have been unjustly terminated have little recourse under the Employment Standards Code.

AFL recommendations on termination without cause

1. Remove or restrict the ability of employers to terminate employees without cause similar to s. III of the Canadian Labour Code which provides protection from unjust dismissal to Federal employees not under a collective agreement

Background and rationale

Terminations are unfortunately a substantive part of the workplace dynamic and in the best-case scenario, it is the final disciplinary step of many. Prior to firing, employers should be expected to take other disciplinary steps in the case of negligence or misconduct, and training in the case of incompetence.

However, the AFL is inundated with calls from workers who have been terminated arbitrarily according to the whims of the employer, with no employer attempts to take more conciliatory or constructive disciplinary actions. In more insidious cases, employees have been terminated due to discrimination on a number of grounds such as gender or ethnicity. Under Federal law, these workers are said to have been fired unjustly and have

access to legal recourse. Under Alberta's Employment Standards Code, no such protections are extended to workers that have been unjustly fired. As long as the employer follows the provisions regarding notice, they can dismiss an employee for almost any reason. Explicit language forbidding unjust dismissals within the Employment Standards Code is necessary to provide employees with greater job security and with better recourse to remedial action in the face of an unjust dismissal.

Issue 15: Termination - by Employee

Alberta is well outside the Canadian mainstream by requiring workers to provide notice of resignation and penalizing those that fail to do so.

AFL recommendation on termination by employee

1. Eliminate provisions in the Employment Standards Code that require workers to give notice of resignation.

Background and rationale

By law, Alberta workers must give notice of resignation to their employer based on the length of employment: one week if employed for more than three months but less than two years, or two weeks if employed for two years or more.

Employers in Alberta can financially penalize a worker who doesn't give notice that they're resigning by withholding pay for up to 10 days after the length of resignation notice requirements.

Workers should have the right to quit their job without financial penalties such as having their pay withheld, even temporarily. Workers do not need to give employers notice of resignation in British Columbia, Saskatchewan, Ontario, New Brunswick, Northwest Territories, or Nunavut. We fail to see any compelling reason why Alberta employers require notice of resignation, and why they should have the ability to penalize workers who fail to give the prescribed notice by withholding pay.

Issue 16: Termination— Temporary layoff

Alberta's provisions for temporary layoffs are currently sufficient.

AFL recommendation on temporary layoff

1. No change to temporary layoff provisions.

Background and rationale

Temporary layoffs are a special subset of termination. It is in both the worker's and employer's interests to allow a period of time when the employment relationship is maintained, despite a layoff, so that recall is easier and smoother. We believe 60 days is an appropriate length of time before termination pay must be paid. However, care must be

taken to ensure that employers are not using temporary layoff provisions to skirt cyclical or seasonal changes in their business.

Children and Young Workers in the Workplace

Issue 17: Employment of 12 to 14-year-old children and adolescents

While the AFL appreciates that some children and adolescents desire employment and job opportunities, the jobs available to them should be highly restricted. Children employed in mainstream workplaces are more susceptible to workplace abuse and workplace injury, which no child should be subjected to. No children under 15 should be working in bar kitchens as a dishwasher or working with dangerous cleaning chemicals as a janitor—no Alberta child under 15 should be working in a mainstream workplace.

AFL recommendations on 12 to 14 year olds in the workplace

1. No person under the age of 15 should be allowed to work in a workplace in Alberta, with the exception of newspaper/flyer delivery and babysitting.
2. Director's permits are an inappropriate mechanism for setting public policy. The Director's ability to issue permits around child and adolescent workers should be revoked.

Background and rationale

Despite public opposition, employment of 12- 14-year-old children were expanded in 2005. Children weren't allowed to work in bar kitchens, but they were allowed to work in regular restaurant kitchens. The province had to scale back its original plans for expanding child labour in the face of public outcry. Rarely has the public spoken so clearly and loudly—especially in the dead of summer—on an issue of public policy.

In the intervening years since 2005, there has been a body of academic research peer-reviewed and published on the subject of Alberta's child and adolescent worker. Here is a summary of the peer-reviewed academic literature on the subject of child labour in Alberta.

In interviews with 20 working children or adolescents, most (19 out of 20) experienced Employment Standards violations. These violations included:

- a. Working too many hours, most commonly a four-hour shift on a school day.
- b. Receiving less than the minimum wage or minimum call-in pay.
- c. Working under age or in prohibited occupations or performing prohibited tasks.
- d. The majority of adolescents working in restaurants also reported illegal deduction for uniforms and that employers did not provide health and safety hazard assessments.
- e. Half of the workers reported multiple violations of employment standards law, although most were unaware that their treatment was illegal—reflecting a limited knowledge of their rights.

Surveys of Alberta children and adolescents in the workforce have found:

- a. In 2009, 6.3 per cent of children had jobs-that's 8,200 children aged nine to 11. A total of 78 per cent of the jobs done by children were clearly illegal (i.e. janitorial services). The remainder did jobs such as babysitting and yard work. A 2015 study indicated that 70 percent of 12 to 14 year olds were employed in prohibited occupations.
- b. The same survey found that 26,000 adolescent workers were employed. More than 21 per cent of these 12- to 14-year-olds worked in prohibited occupations (janitorial services, sports teams, working on a golf course). By contrast, 28.6 per cent of jobs appear to be legal types of employment (newspaper delivery, retail sales, restaurants, agriculture). The remaining 50 per cent of jobs again fall into the grey area of babysitting and yard work.

Surveys conducted in Alberta schools have found:

Administrative data gathered from 797 adolescents (aged 12-14) and 1,187 young persons (aged 15-17) in 2011-12 showed 43.7 per cent of adolescents (aged 12- 1) and 61.5 per cent of young persons (aged 15-17) in Alberta reported employment in 2011/12. Of those employed, 49.7 per cent of adolescents and 59.0 per cent of young persons reported at least one work-related injury in the previous year. This study also identifies widespread non-reporting of workplace injuries and seemingly ineffective hazard identification and safety training.

49.7 per cent of adolescents reported at least one work-related injury in 2013. Here is a breakdown of those reports:

- Muscle sprain, strain or tear: 45 reports
- Laceration: 111 reports
- Bruises: 105 reports
- Fractures or dislocations: 13 reports
- Burns: 59 reports
- Sexual harassment: 9 reports
- Chemical or biological exposures causing health problems: 9 reports
- Other forms of injury: 10 report

We believe the system as it stands places young Albertans in vulnerable and potentially dangerous situations. We believe there are inadequate checks to ensure these children are not being exploited.

In 2005, Albertans sent a clear message that they believe 12 years old is too young to work in restaurants. We believe the government has an obligation to hear that message.

There is a qualitative difference between a paper route and a 7-11. There is a difference between babysitting and waiting tables in a busy restaurant or working as cleaning staff. The Code needs to ensure 12 to 14 year olds are not working in a mainstream workplace. The provisions allowing the employment of children younger

Issue 18: Young workers between 15-17 years old

Provisions for young workers in the code are sufficient, but additional protections and training are needed.

AFL recommendations on 15-17 year olds in the workplace

1. The provisions for young persons (age 15 to 17) offer an appropriate balance of allowing employment opportunity to high school aged young adults, but with restrictions to ensure their safety and to prevent undermining their education. We propose no change to current provisions.
2. Targeted inspections for industries that hire adolescent workers between 15-17 years old.
3. Employers must provide a program of special training for 15-17 year olds on safety, harassment, and their rights at work.

Background and rationale

In 2005, the Alberta Federation of Labour recommended no changes to the rules governing young workers. At that time, we found the prohibitions on hours of work—designed to stop work from interfering with school life and periods of rest for young people—to be adequate. We reiterate that position here: We maintain the current restrictions on hours of work for adolescent workers are adequate.

However, we underline that the status quo for conditions of work for many young, minor workers in Alberta is utterly unacceptable and requires changes via the Code and this Employment Standards Review.

There is a growing body of research that shows young, minor workers are particularly vulnerable to abuses in the workplace. Specifically, illegal deductions, unsafe work, handling of hazardous materials, and sexual harassment are, according to recently published survey data, an unfortunate reality of working in Alberta.

From work done by Survey responses from a July 2013 study of Alberta minors in the workplace. Some of the survey responses are below:

“I was stuck fencing with a 12-year-old using five tonnes of equipment with no way to contact for help. I was the oldest one there. That's retardedly unsafe.” (15-year-old male)

“A manager tried to make me clean blood and I refused saying I could contract AIDS potentially.” (15-year-old female)

“I didn't have proper gear but was given a substitute gear.” (15-year-old male)

“I had my arm sucked into a machine and ripped open from my wrist to my elbow.” (16-year-old male)

“I was throwing the garbage out into the dumpster and liquid got in my eye but luckily a coworker was around to help me.” (16-year-old male)

“Nail gun to the foot.” (13-year-old male)

“I quit because my supervisors were drinking on the job and leaving me to work the kitchen which I wasn't legally allowed to be in.” (Grade 10, female)

“I was told to do work after passing out. My supervisor said too bad I had a job to do and I said no, I got fired.” (16-year-old female)

“We had no gloves for pulling out poison ivy.” (13-year-old male)

“I fell off a ladder, twisted my ankle pretty bad. But my boss didn't do anything.” (14-year-old female)

“I got told by an employee that everyone does drugs and if I told anyone I would not be allowed to work there in future.” (14-year-old female)

“I got knocked out by a T-bar lift.” (14-year-old male)

“Combine machine lit on fire.” (13-year-old male)

“I mixed the wrong chemicals so we opened the window to let it air out. It is a farm so it is hard not to get hurt.” (Male)

“I was asked to go out on an icy roof and I did because I didn't know if I had to.” (Grade 11, male)

“I stepped on a nail. Now it is recommended to wear boots and there was a huge clean-up.” (Grade 11, male)

Employment Standards breaches were commonly referenced in the survey data. Here are some of the responses from young people:

“They didn't pay me minimum wage and they would tell me to go home early when we weren't busy and not pay me my whole shift and they would call me at the last minute.” (Grade 10, female)

“I did not have any break and it wasn't good with my school. I didn't have much time to study because I had to stay with them late until they close the store. I could not get off work earlier.” (17-year-old female)

“I was getting \$9.05 an hour for hostessing (minimum wage was \$9.40). It's supposed to be \$9.05 an hour for people serving alcohol. And I wasn't serving alcohol. I didn't do anything about it.” (15-year-old female)

“Giving us short notice on our shifts; not giving us overtime pay. I know that my boss takes advantage of us, but I don't think I'd want to stand up to him 'cause then I'd get fired.” (Grade 11, female)

“I was underage, they gave me odd hours... and they wouldn't pay me by the number of hours I worked.” (Grade 10, female)

“On school nights I worked six-hour shifts even though I was only 14 at the time.” (Grade 11, female)

What this data shows is that 15- 17-year-old workers are particularly vulnerable to contraventions of the Code.

This does not suggest the need for an "awareness" campaign for workers. It suggests an utter disregard for the law on the part of employers, and that disregard has very serious consequences for young, minor workers-as serious as injury and sexual violence.

If there is any argument for Employment Standards to be able to initiate investigations, conduct spot inspections of workplaces that employ young people, to be able to issue on-site administrative penalties, and to toughen up prosecutions and fines, it must be these shocking stories from Alberta's teenaged workers under 18.

"I got sexual harassed (by another store associate) recently and my manager didn't do anything about it." (Grade 11, female)

"I've never been harassed by the people I work with but I have been sexually harassed by a lot of customers." (Grade 11, female)

"My manager was hitting on me." (Female)

"Sexual harassment when I was 13 (by employer). The harassment I didn't realize until a few months ago." (18-year-old female)

"I had a very sketchy boss. He was way too close and made me extremely uncomfortable. I quit." (16-year-old female)

"I was at work and one of the older men followed me to the washroom and tickled me then reached up under my shirt and grabbed my boob. I did nothing because I was only nine, so who would have listened to me?" (16-year-old female).

"Verbal harassment towards female workers; manager would call them bitches, etc." (Grade 11, male)

Exemptions to provisions under the Employment Standards Code

Exemptions are typically understood to be reserved for extreme cases that necessitate an alternate approach from the standard. However, when we are discussing access to basic standards and rights, such as those included under the Employment Standards Code, the use of exemptions should be *extremely* limited. Alberta's code is highly permissive of exemptions, which is inexcusable in a statute whose very existence is to provide minimum standards and protections to workers.

Issue 19: Minimum wage exemptions and permits

Minimum wage exemptions and Director's permits for minimum wage exemptions are inappropriate and create a patchwork of differing standards across Albertan workplaces.

AFL recommendations on Employment Standards exemptions

1. Eliminate the minimum wage exemption permits. The minimum wage must apply to all workers.
2. Eliminate the ability of the Director to issue permits. Any change to minimum standards must occur by changing legislation-guaranteeing a public debate.

Background and rationale

Over the past decades, many aspects of the Code have become outdated, supplanted by evolving workplace practices and convoluted by piecemeal amendments. One of the ways the government has tried to cope is to issue Director's permits to allow certain practices, even if they breach a specific section of the Code.

Two consequences have arisen from this practice-neither positive. First, it has led to a checkerboard of regulation, where certain industries, and even certain employers, play by different rules than others. It has made the Employment Standards regime harder to understand and undermined the purpose of codified legislation.

Second, permits allow policy-making in employment standards to occur without public scrutiny or debate. A department official signs a piece of paper, and only the officials and the employer directly affected are aware that regulations have been changed. This lack of transparency is troubling. It leads to the government losing touch with the desires of Albertans, and leads to such policies as paying certain workers less than the minimum wage, and allowing 12-year-olds to work.

We believe there is no way to make a permit system work in Employment Standards. In health and safety, a director must evaluate if the request can achieve an equal standard of safety. In other words, they can ensure that the intent of the legislation-keeping workers safe-continues to be respected. There is no comparable criteria for Employment Standards. The maximum number of work hours should be seen as a firm number. Any deviation from that number is a loosening of the rules for a particular employer or industry. It is, by its very nature, an act of weakening worker protection.

A strong legal argument can be made that the practice of Director's permits is contrary to law. Under the hierarchy of legislation, lower level regulation cannot contradict the intent of superior legislation. Permits contradict the intention of the Employment Standards Code.

Issue 20: Minimum wage exemptions for persons with disabilities

The exemption for minimum wage for people with disabilities is based on prejudice and should be repealed.

AFL recommendations on minimum wage exemptions for persons with disabilities

1. Eliminate minimum-wage exemptions for persons with disabilities (Division 10). The minimum wage must apply to all workers.

Background and rationale

S. 67 of Employment Standards Code allows the Director to provide a special permit authorizing persons with a disability to be paid less than minimum wage. We believe it is fundamentally wrong to allow a certain group of workers, in this case workers with disabilities, to earn less than the minimum we set for all others. It is discriminatory and exploitative. It perpetuates the stereotype that people with disabilities are worth less than able bodied workers.

This myth is false and damaging.

A report from the Canadian Government's panel on labour market opportunities for persons with disabilities notes that employees with disabilities did not have any increase in workplace accidents, had on average equivalent productivity and had no increase in sick time. Additionally, the report noted the average cost of accommodating employees with disabilities was negligible.

We do not accept arguments by employers that they cannot afford to pay these workers the minimum wage. Even if a person with a disability has lower productivity, it is not justification for paying less than minimum wage.

Issue 21: Farm workers exempted from the Employment Standards Code

Alberta is far out of line with the rest of Canada. Manitoba, Saskatchewan, Ontario and British Columbia-provinces with large agricultural sectors-provide for Employment Standards protections for farm workers.

AFL recommendation on exemptions for farm workers

1. Extend Employment Standards protections to farm workers. Eliminate all exceptions for farm and ranch workers regardless of where they work.

Background and rationale

We are unimpressed by those who continue to argue for exemption, particularly those who raise the specter of the "family farm" as justification. While this may have made sense 26 years ago, when the Code was last reviewed, the rationale for this exclusion has long since evaporated. Farming has changed. It is now dominated by feedlots, factory farms and large industrial-style operations.

The law lags behind the times.

Agricultural workers perform difficult, physical work. The demanding nature of the work should increase government attention to those workplaces, not cause it to look away entirely.

We believe that the default position of the government should be that every worker automatically deserves all the basic employment protections, and that the burden of proof

lies with anyone who wishes to exclude a group of workers. In the case of farm workers, there is no good reason.

Our position regarding family farms is two-fold. First, we believe that including farm workers in Employment Standards does not add significantly to a family farm's financial or administrative burden. The number of workers they employ is small, and often for restricted periods of time. Much of the protection under the Code is about rest periods, days off and eligibility for unpaid leave. These are not hard costs, where the farmer pays out of pocket, but rather safeguards.

Second, if family farmers can make a case that they are unable to meet the requirements of the Code, we would be open to discussions about finding an appropriate balance between protecting workers and protecting family farms. We would want to ensure that no corporate agricultural producer is able to use a loophole aimed at family farms to avoid providing work conditions they are more than capable of meeting.

Issue 22: Domestic Workers exempt from the Employment Standards Code

Despite the vulnerability and precarity of domestic workers, Alberta continues to exempt domestic workers from basic statutory protections

AFL recommendation for domestic workers and Employment Standards

1. Extend Employment Standards protections to domestic workers. Eliminate all exceptions for domestic workers.

Background and rationale

Domestic workers are among the most vulnerable workers in the labour market. They are in private homes, usually working for single families with no human resources infrastructure. They are often newcomers to Canada, and are almost exclusively women.

This is a group of workers that is in dire need of government protection. We can think of no group of workers more in need of the rights and guarantees offered by the Employment Standards Code. Yet, currently they are left to fend for themselves.

The power imbalance between domestic worker and their employer is marked. The government has a responsibility to take active steps to protect these workers.

The argument that domestic employers cannot afford to abide by the Code carries no weight. If they have enough money to hire a nanny or housekeeper, then they are able to offer overtime pay, respect limits on work hours and other such basic measures. Such requirements are neither onerous nor difficult to achieve. Moreover, other Canadian provinces have extended employment standards protection to domestic workers. That Alberta chooses to continue to exclude a certain set of workers from employment standards regulation is completely unjustified.

Issue 23: Exemptions to the Employment Standards Code—other occupations

Exemptions should be an anomaly within the code and permitted only after a public debate on the merits of a potential exemption.

AFL recommendation on other exceptions to the Code

1. The default should be that all workers are covered by all sections of the Employment Standards Code, with as few exemptions as possible.
2. Adhere to a set of criteria that permits legitimate exemptions based upon the results of a public consultation and a vote within the legislature.

Background and rationale

Given the mandate of the Employment Standards Code to serve all workers, our preference is for the complete removal of exemptions. However, certain lines of work and industries do have a legitimate claim to exemptions. To guide this process of assessing potential exemptions we offer a set of criteria.

We see the criteria as follows:

1. The default is that all workers are covered by all sections of the Code.
2. The onus for demonstrating the need for exception lies with the industry or employer group requesting the exception.
3. No request will be considered unless it contains a legitimate practical issue, such as safety, reasonableness or unavailability. Cost implications for employers are not sufficient.
4. If a request is made, the government will initiate a multi-stakeholder process, including labour and representatives from industries not affected by the request, to discuss the merits of the request.
5. Before any decision to exempt workers is made, a full public notification and consultation will occur, so that every Albertan has the opportunity to comment.
6. Any exception will be legislated through the Code, so that it must be passed by the Legislature in a full and public debate. No Director's permits or quiet regulation changes.
7. No exceptions will be granted to employers using the Temporary Foreign Worker Program for any reason.

This allows for the presumption that all workers deserve equal protection under the Code, but allows for a deliberative and open process for assessing whether selected provisions create more problems for both workers and employers.

The key to our position is that there needs to be a substantive and objective reason for any exception. This reason needs to be verified by workers in the industry as well as employers. Any employer can make an argument for an exception, but we must be careful to ensure it is not a thin veneer to lower labour costs to gain a competitive advantage. Without permits all business and employers are subject to same rules, which create a fair and level playing field.

Enforcement of the Employment Standards Code

There are two aspects to enforcement of Employment Standards: how contraventions of the Code are discovered and then what is done about it when contraventions are found. The enforcement regime is the anchor of the entire system. The province could have the strongest, most forward-looking employment standards legislation in the country, but if there is no one to enforce it, the rules become a mockery. If the enforcement system is not designed to achieve specific goals, it will undermine and erode the legislative structure.

You can build the sturdiest boat, but if you do not waterproof it properly, it will still sink. That is the importance of the enforcement regime.

Right now, Alberta's enforcement arrangements are woeful. They are passive and skeletal. The end result is that few offenders are found, and even fewer suffer any real consequences for their actions. The AFL has identified four key problems within the enforcement regime, but notes that solutions must be systematic and comprehensive. As such, we will provide recommendations based upon the entirety of regime, and not issue by issue.

Issue 24: The complaint-driven system does not work

The only time an enforcement officer enters a workplace is when a formal complaint has been received. There are no pro-active inspections or audits of employers, even in industries with poor track records. Waiting for complaints to come to you is a method to ensure very little gets found and makes it difficult to track down problematic industries and systematic employment standards issues across workplaces. It is as ineffective as it is passive.

The complaint driven system also places an undue burden on workers. By waiting for complaints, we are relying on workers who are already in a precarious position due to a workplace dispute to pursue justice. Employees in this situation are afraid for their jobs, their wages and their future—especially if they are in a low-wage position or are part of a vulnerable demographic. The result is that many workers will never make a complaint and will suffer in silence. Workers should not have to apply after the fact for protections that should be guaranteed to them under the Employment Standards Code. Further, once a complaint is filed with the Employment Standards Branch, the average time to a resolution is over 200 days. For a worker trying to achieve justice, this is simply unacceptable.

Issue 25: Almost zero prosecutions

There are almost no prosecutions under the *Employment Standards Code* and very few cases where specific remedies have been applied for contraventions of the Code. In most cases, the remedy is direct-repayment of wages, correction of scheduling, etc. Often this is appropriate, as the goal is to prevent unfair practices. However, the system is not set up to

differentiate between an occasional honest mistake and an intentional flouting of the rules. Serial offenders, such as Buffet World a few years back, receive the same treatment as the mom and pop shop which made a sincere error. This is confusing, confounding and counterproductive. There needs to be a method for addressing contraventions in a manner that is correlated to its severity, frequency and intent. Currently, no method exists.

To remedy this problem, we need to further information and research on the state of employment standards and compliance in Alberta. Ontario's recent *Changing Workplaces Review* made significant efforts to understand the lack of prosecutions and enforcement by commissioning reports from a variety of sources. Work done by the *Closing the Gap: Employment Standards Enforcement* project has shed considerable light on how Ontario's employment standards system failed to accomplish its goals. Alberta should endeavor to collect similar information to better understand the gaps in our employment standards enforcement.

Issue 26: Partial payments for wages or other monies owed

The AFL hears frequently from workers of situations where the enforcement officer has negotiated a partial payment for wages owing (or other owed money) to a worker. These negotiations have the effect of paying a worker a percentage of what is legally owed to them.

We have two concerns about this practice. First, in strict terms, the settlement remains in contravention of the Code. If a worker is owed \$1,000 in unpaid wages, and the officer negotiates a payment of \$500, then the worker is out \$500 of wages money they worked hours to earn but now must go without. This is contrary to the intent of the legislation.

Second, workers often express the sentiment that they felt pressured by the enforcement officer to accept the negotiated deal, even if they did not want to. This is of particular concern. An enforcement officer is in a position of authority and respect.

They are seen as the person protecting the worker's interest. If they tell a worker this is what has been negotiated, the worker is likely to accept, even if they feel they have a right to the full amount. From the government perspective, we believe this puts the enforcement officer in an awkward position-of mediator rather than enforcer.

We appreciate situations regarding lost wages can be complicated-and often a partial payment is the only option (or preferable to months of fighting over the residual). However, the government needs clear guidelines for how an enforcement officer will conduct themselves, and clear policy regarding when negotiated settlements are appropriate. At all times the final decision must clearly rest with the worker {both in legal terms, and in worker perception). We believe the default position must be full payment and only in a specific set of limited circumstances are partial payments even to be considered.

Should an employer genuinely be unable to provide what is owed, some means must be established to ensure workers are fairly compensated. There is currently 18 million dollars in unsatisfied Employment Standards judgments—which mean that there is 18 million dollars that workers are entitled to but are denied. The Ministry of Labour could create a

fund designed to provide compensation to workers in these circumstances so that in all cases justice can be served.

Issue 27: The appeal system is confusing and unbalanced

Few workers know how the appeal system works, and fewer access it. Stranger still is that an employer has a different appeal system than a worker. The employer system allows for more avenues of appeal, and for an external appeal body. This is not the case for the worker. The appeal structure is one of those examples where both justice and the appearance of justice not being done.

AFL recommendations on enforcement of the Employment Standards Code

1. Implement a program of "targeted industry" inspections for employers with a poor record of compliance with the Code.
2. A system for routine pro-active inspections of workplaces (not waiting for complaints.)
3. Constraints to the conflict resolution system, restricting opportunities for negotiated settlements for owed money, and guaranteeing the final decision remains with the worker.
4. Clearer appeal system applied equally to workers and employers. When an appeal is assessed the legal onus should fall upon the ministry that made the decision, not upon the worker.
5. To educate workers and employers to potential employment standards issues, encourage the development of employment standards stewards at workplaces or joint employment standards committees.
6. Provide a means for completely anonymous employment standards complaints
7. Create a fund to provide compensation to workers who by special circumstances are not able to receive the full amount of unpaid wages or compensation by their employer.
8. Employers who consistently violate the Employment Standards Code should forfeit the right to proselytize against collective bargaining and to insist on a certification ballot in addition to written evidence of employee support for it. This provision would better allow abused workers the means to address systematic employment standards violations through collective action and an incentive to employers to be proactive in bringing their practices to standards identified within the Code.
9. Fund and support a review of the gaps in employment standards enforcement along the lines of the Closing the Gap: Employment Standards Enforcement project in Ontario.

Issue 28: Fines

Fines are an integral aspect of the enforcement regime, as they incentivize employers to act according to the standards set out within the Code. Alberta's current levels of fines fail to deter negligent employers.

AFL recommendation on fines

1. Increase fines, including minimum fines and progressive fines for subsequent offences. We also call for greater prosecution of offenders.

Background and rationale

Fines are a controversial topic. Their appropriate level is a constant matter for debate and disagreement. We believe this arises from a misunderstanding of their purpose in legislation. Fines accomplish three functions in an enforcement regime. First, they are a direct penalty to the offender—an economic charge for willfully ignoring the law of the province. Second, they serve as a deterrent to other potential offenders. Fines are intended to make a person or organization think more carefully about the consequences of contravening law, and to consider the contravention less beneficial.

Third, and this is the piece often forgotten, fines are a symbolic statement about the importance of the set of rules to be enforced. The reason a penalty for murder is higher than property theft is because it reflects society's belief that a human life carries more importance than a stereo. The same logic applies to non-criminal enforcement. The level of the fines in Employment Standards is a symbolic reflection of the importance we place on protecting workers and ensuring minimum standards in the workplace.

On all three levels, the current levels of fines fail. They are simply too low to serve as an effective economic penalty, a deterrent or a strong symbolic statement. To correct this failure, we need to raise the maximum fine that can be assessed, to establish a minimum fine and to build in an element of progressivity (i.e. increased fines for subsequent offences). We recommend a maximum fine of \$1-million for a first offence, and doubling the maximum for each subsequent offence. We also believe a minimum fine of \$100,000 is required to send a strong signal.

At first blush, these figures may raise eyebrows. Some may charge they are far too high. We believe that upon closer examination of the enforcement regime, these figures are appropriate.

First, we need to remember that only the most serious offenders are taken to court under Employment Standards. They will either be single offences that affect many workers, have a particularly damaging impact or are notably unethical, or they will be serial offenders who intentionally flout the law for economic benefit. This means any fines imposed will only be for serious breaches of the Code.

Second, Employment Standards offences are by their nature economic offences. The person or organization is attempting to achieve an illegitimate economic gain through ignoring legal obligations—for example, they are shortchanging paycheques, making illegal deductions, not paying overtime or employing workers that are too young to be employed. These have an economic motivation, which requires a sufficient economic deterrent and penalty. A serial offender can pocket tens of thousands of dollars very quickly by breaking

certain provisions of the Code. A fine of \$30,000 or \$50,000 may not be sufficient to prevent the offence from being economically beneficial.

Third, judges always have discretion to assess a fine level they deem appropriate. While \$1-million may seem excessive for a small store owner (and we would agree it might be), a fine of that level may be the only way to catch the attention of Wal-Mart. A \$100,000 fine will not impact such a large corporation. We need to trust that judges will balance the seriousness of the offence with the circumstances of the offender.

In our mind, more important than the level of fines is the rigor in which prosecution is pursued. Currently, the fines in the Code are little more than theoretical. Almost no one has been prosecuted in years in Alberta. This is the quintessential "paper tiger." We need look no further than recent cases. Buffet World had dozens of employment standards infractions a few years ago and nothing came of it. The contractor for the Klondike Days midway was found repeatedly in violation of the Code, and no action taken.

This is a disgrace. Employers can thumb their nose at the rules laid out in legislation, and no one makes them accountable for their actions. We need a more stringent set of rules for when cases are forwarded to prosecution, and more cases need to be prosecuted each year to show both the public and those involved in work that the Code has significance.

A practical reform would be to follow the lead of Workplace Health and Safety in appointing prosecutors dedicated exclusively to Employment Standards cases. It has proven highly effective in health and safety. It built a level of expertise and the focus needed to effectively prosecute cases.

Issue 29: Ticketing/ Administrative penalties

The AFL is supportive of the concept of administrative penalties, more commonly known as ticketing.

AFL recommendations on ticketing/ administrative penalties

1. Establish a system of administrative fines (ticketing) that is proportionate to size of payroll.
2. Ensure ticketing only applies to employers, given the nature of the Employment Standards Code. Issuing an employee a ticket for failure to provide appropriate notice or failure to return after a layoff does not make any sense.

Background and rationale

While prosecution and stiff fines are effective methods of enforcement, they are only practical for the more serious offences—either in frequency or impact. The cost of taking a case to court, the level of due diligence to persuade a judge and then the difficulty of collecting the fine make pursuing this avenue against an employer that didn't give proper termination notice unfeasible. For these cases, an administrative penalty is the perfect vehicle. It allows for direct, immediate enforcement of the law, and in a manner that is cost effective. It can be done with existing infrastructure, in the same manner of a traffic ticket.

The key to making it effective is to ensure the penalty is sufficient to achieve the enforcement goal. We recommend linking the penalty to a percentage of payroll for employers. This way a small company is not overly burdened by a fine for a relatively minor infraction, while a large employer cannot laugh away the fine.

We also argue tickets should only be issued to employers. This is not to be unfair or biased. Our rationale is based upon the nature of provisions in the Code. The vast majority of requirements are obligations for an employer. The only measures aimed at workers are notice provisions (for termination or leaves), and failure to return to work after layoff. Neither of these items seems particularly well-suited for a ticket.

More pointedly, each of these provisions allows the employer an effective remedy should the worker breach the provision. They lose their right to pay in lieu of notice, or can be denied their request for leave. We fail to see how penalizing a worker further with a ticket will enhance any of the three purposes of fines-penalty, deterrence or symbolism.

The bulk of employment standards work is ensuring the employer-the party with the bulk of power-abides by its legal responsibilities to meet a minimum standard of employment. We should not get sidetracked by a theoretical debate about being evenhanded. It is a fruitless discussion, for enforcement in Employment Standards is, in effect, about dealing with employers who wish to avoid their basic obligations. The ticketing program should reflect that reality.

Emerging Employment Standards Issues

Alberta's labour market and the nature of work have changed considerably in the past 26 years. Retail, restaurant, and hospitality/service sector work has expanded dramatically. So has part-time work. Since the Employment Standards Code was last changed in 1987, women's participation in the workforce has tripled. In 1987, the Temporary Foreign Worker program was restricted to a few dozen workers in specialized roles. In 2014, there were more than 85,000 TFWs in Alberta.

We have therefore taken the opportunity to highlight ways in which Alberta can bring our Employment Standards Code into the 21st Century, particularly for women, young workers in the service industry, and to make sure TFWs are not being used by employers to drive down wages and working conditions for Albertans.

Issue 30: Prohibition on gender-based wage discrimination

Alberta is one of only four provinces (B.C., P.E.I., and Newfoundland) that does not contain language that prohibits gender-based wage discrimination in the Code.

AFL recommendation on gender-based wage discrimination

1. Following the path led by Saskatchewan, Manitoba and Ontario by implementing provisions prohibiting gender-based wage discrimination and implementing capacity to enforce remedies.

Background and rationale

It is a longstanding and universally regarded principle that men and women should be paid the same wages for doing the same job. Unfortunately, in too many workplaces, we continue to see an unjustified wage gap between male and female workers. Women are over-represented in precarious employment, part time employment and employment in non-standard work environments (which features few benefits or limited job security). We need provisions to explicitly make such discrepancies illegal and empowering enforcement officers to order remedies.

Current provisions in the Human Rights Code are not sufficient to address the issue of discriminatory wages. The complaint process is cumbersome and time consuming. The need for a worker to single themselves out through the complaint process is too much to ask when addressing a topic such as unfair wage gaps. Our position is that the Employment Standards Code is the ideal place to enforce rules regarding wage discrimination.

Issue 31: Deductions to earnings for retail, hospitality and restaurant workers

The Code makes illegal any deductions for error, cash shortages and other losses. However, each week the AFL offices get another phone call from a worker whose employer is attempting to make an illegal deduction. In these cases, the worker's choice is very stark. Pay it, or fight it and lose hours. Often, the employer finds creative ways to deduct wages- by reducing hours, changing shifts or other punishments.

AFL recommendations on deductions to earnings

1. Adopt the B.C. Code provisions on special clothing, and ensure that all forms of required clothing are covered by the provisions.
2. End the loophole for "dine-and-dash" funds.
3. Outlaw deductions for losses and reprisals for losses.
4. Specific penalties should be outlined in the Code for attempts by employers to make illegal deductions.

Background and rationale

Deductions to earnings in the service industry happen in a multitude of different ways. The language around deduction of earnings needs to be strengthened. First, it needs to outlaw both deductions and any reprisal directly attributable to the loss. While an employer has a right to discipline for lack of performance, reduction of working hours is just another way to recoup financial losses. Second, it must ensure that all forms of deductions-whether preceding or following the loss-are illegal.

This language should ensure collective deductions (e.g. dine-and-dash funds) are also forbidden. Many restaurant employers require workers to contribute to a "dine-and dash" fund, which is used to pay shortages. These acts are officially legal, but clearly their intent is the same as deducting amounts from a paycheque. A fund collected from workers for future losses is no different than retroactively deducting wages.

These changes merely ensure the intent of the current provisions are met by closing loopholes found by employers intent on making workers pay for honest mistakes or customer action.

There should also be specific penalties stipulated for attempting to make illegal deductions.

The other shortcoming is that the Code allows employers to charge workers for their uniforms, and only prohibits profit-making. There are two difficulties with this language.

First, many clothing retail employers require their workers to wear clothing sold at the store. It is unclear whether this practice contravenes the current provisions. The employer is making a profit on the clothes, even if an employee discount is offered, and they require the use of such clothes. However, it is uncertain if these clothes are "uniforms" or "special clothing." The Code provisions need to be clarified to ensure that any form of clothing required by the employer are included in deduction provisions.

The second concern is that under current provisions, the worker continues to pay out of pocket for something that is a job requirement. We consider this unfair. The employer has the right to impose clothing rules for safety or other reasons (including universality of appearance), but should be expected cover the cost of this requirement. The B.C. Code contains a provision that ensures that no worker pays for the purchase, cleaning or maintenance of special clothing required to be worn at work. This provision properly reflects the balance of employer right to set dress codes with the obligation to pick up the expense of such policies.

Issue 32: Advance floats for restaurant servers

The recent trend of requiring servers to 'self-float' places an unreasonable burden on workers that should be shouldered by the employer.

AFL recommendation on advance or self-floating

1. Prohibit the practice of self-floating, ensuring restaurant employers provide servers with a necessary float at the beginning of their shift.

Background and rationale

A recent trend in the restaurant industry is to require servers to provide their own float at the beginning of their shift. A float is a medium amount of money that serves as the basis for providing change to customers when they pay their bill. Traditionally, employers would provide the server with a set amount of money for their float, which must be returned at the end of the shift. The shift to "self-floating" -where servers use their own money to provide change-may seem insignificant at first. But it sets up a crucial difference regarding the relationship to floats, cash shortages and financial responsibility.

First, it is an unreasonable financial burden on a server to have access to a certain amount of cash to provide for the float. Many servers work few shifts, have multiple employers or do not have ready access to cash. The employer is in a much better position to provide float money.

Second, it is a subtle shift of responsibility for shortages (customers leaving without paying, etc.). Now, any lack of balance that results in the float not being fully funded comes directly out of the server's pocket. Before, while there were often disputes about float

shortages, at least it was the employer's money that was short. Now, if a server wants to be repaid for a shortage (to which they have a legal right), they need to persuade the employer to provide them with cash to make up the difference. This rarely happens. The AFL has received numerous phone calls from servers complaining about this practice. All of them report that self-floating results in the worker paying for shortages.

It is a way for employers to avoid complying with the provisions around wage deductions.

Issue 33: Tip protection

Alberta does not have any tip protection legislation.

AFL recommendation on protecting tips for servers

1. Identify tips as a form of compensation or wage within the Employment Standards Code.
2. Enshrine with the ESC the principle that tips are meant exclusively for the worker that earned them by adding this to the ESC "An employer shall not take any portion of an employee's tips or other gratuities."

Background and rationale

Tips are a unique form of compensation that is exclusively meant for the worker. While the AFL believes that there should be no exemptions and that all employers should pay the same minimum wage, special protections are necessary to ensure that workers receive tips that are rightfully theirs. Currently in Alberta there is nothing protecting workers that rely upon tips, which increases the opportunities for employers to create and enforce practices that deny workers their rightful compensation.

Some restaurant employers demand servers submit a percentage of their gross sales, often about four per cent, which means they must turn over \$40 for every \$1,000 in total billings whether they get tips or not. Others restrict the ability of workers to collect tips collected through electronic point of sale technology (debit or credit transactions). Workers reliant on tips are often required to split tips with multiple other employees—sometimes even including the employer.

The ambiguity surrounding tips requires attention from the Employment Standards Code. A number of Canadian provinces have created tip theft legislation. Most recently Ontario passed Bill 12, which identified what tips are and specifically forbade employers from collecting tips. Alberta should endeavor to find a similar solution.

Issue 34: Temporary employment agencies

Temporary employment agencies have profound effects on precarious workers and the labour market. Employment standards need to account for and mitigate those effects.

AFL recommendation on temporary employment agencies

1. Require employment agencies to obtain a license, and prohibit charging workers for receiving agency services.
2. Distribute liabilities both severally and jointly to hiring agencies and employers who use their services
3. Restrict the capacity of employers with high rates of ES and OH & S issues to use hiring agencies
4. Impose a cap on the proportion of workers at a workplace that can be temporary workers
5. Prohibit hiring agencies from charging employers a fee when they elevate a temporary worker (employed through that agency) to a permanent position with that employer.
6. Require employers to make all employees who work in a position for three consecutive months a permanent employee.
7. Require employers to provide benefits to employees based upon the work and time they serve, not according to their temporary/permanent status.

Background and rationale

Hiring agencies that specialize in providing employers with temporary workers are becoming more prevalent in the labour market. They present a rosy picture: providing necessary ‘just in time’ labour to employers while supporting worker flexibility. Many workers are attracted to hiring agencies with the belief that once they get a temporary job, there is a chance that it will lead to permanent employment. The reality is that hiring agencies are associated with an increase in precarious work for many low skill workers and create a second tier of workers. Temporary workers hired through hiring agencies receive low compensation, no benefits and have little to no job security compared to permanent employees. The story of temporary worker Angel Reyes, a 61-year-old father of three who was featured in a Toronto Star article on temporary work, is a strong example of the problem with employers using temporary labour. He has worked at the same job for five years, at minimum wage, but is still technically a temporary worker. While this is an extreme case, it highlights the absurdity that is currently permitted across Canada. The recent death of a 23-year-old temporary worker in Ontario also highlights the often unsafe environments that temporary workers are thrust into.

In Alberta, temporary labour is a growing industry. We have seen a proliferation of agencies setting up shop and servicing employers looking for temporary workers. With this growth has come abuse and questionable practices. It is not uncommon for agencies to charge both the employer and the worker for their services. Some of these agencies are shady operations, shortchanging workers and taking advantage of lax rules to make a fast buck and disappear.

Manitoba and Saskatchewan have both passed imaginative legislation regulating the Employment Agency industry. In both provinces, an employment or temporary labour agency must be licensed before it can operate. There are also clear prohibitions on charging workers for the agencies’ services. Manitoba prohibits employment agencies from providing replacement workers during a strike or lockout. Ontario has also begun to provide a legislative framework for managing hiring agencies, most prominently by making both the hiring agency and the client employer severally liable for ESC violations.

There is a great need to regulate these agencies. The workers who utilize agencies to find work are among the most vulnerable workers in the labour market. Their connection to the labour market is tenuous, and often their skill levels are below that of many workers. These workers need added protection from preying agencies who profit from their enduring precarity within the labour market. While in Saskatchewan and Manitoba, there is separate legislation to address this issue, we believe language can be incorporated into the Code to offer equal protection to these vulnerable workers.

Alberta's legislation should focus on providing equal protection and rights to temporary workers commensurate with the work they perform. The fact that they are temporary workers or hired through an agency should not impact the employees' access to benefits and equitable compensation. Notice of termination, severance, leave benefits and all other rights afforded by the Employment Standards Code should be explicitly extended to workers employed through a temporary hiring agency. A secondary focus should be to promote job security for temporary workers. While hiring agencies often tout the "flexible" working arrangements that they offer to workers, stable employment is far preferable. Alberta should endeavor to make it easier for workers to become permanent employees by capping proportions of temporary workers in the workplace and through thresholds on how long a worker can be considered "temporary".

Issue 35: Employer reprisals

Stronger language and penalties are needed to discourage employer reprisals while workers submit an Employment Standards Complaint.

AFL recommendation on employer reprisals

1. Provide an explicit set of penalties for contravention of section 125, and allowing a worker to act to protect a right provided under the Code.

Background and rationale

Most employment standards acts across the country contain language protecting a worker from employer reprisal, punishment or discrimination when they make a complaint to the Employment Standards branch, or provide evidence at an inquiry, or request something to which they are entitled under the Code. Alberta is no different on this matter (section 125).

However, here in Alberta it is simply a theoretical right, as the section has no avenue for a worker to pursue this protection, and there is no specific penalty applied to this provision. It also does not address what happens if a worker requests a right under the Code, and is refused.

The language in this section needs to be toughened, to ensure it is able to protect workers in real life situations.

Issue 36: Internships & Practicum

Employers are increasingly taking advantage of unpaid internships. We believe these practices can be beneficial to some young people, but in times of stagnant wages, high

student debt, and slower growth of full-time jobs compared to part-time employment, internships are another way that young people are being shortchanged in Alberta as elsewhere in Canada.

AFL recommendations on internships

1. Amend the Employment Standards Code definition of "employee": a person receiving or entitled to wages for work performed for another, who was hired and receives training from an employer.
2. Amend the Employment Standards Code definition of "work": labour or services an employee performs for an employer whether in the employee's residence or elsewhere.
3. Insert a definition of "internship" in the code
 - a. An internship is considered "work" and therefore is subject to the minimum wage.
 - b. An "internship" is on-the-job training offered by an employer to provide a person with practical experience. If the duties performed by interns fall within the definition of "work" contained in the Act the intern falls within the definition of "employee", and the agency using the services of an intern falls within the definition of "employer," internships will be considered "work" for the purposes of the Act.
 - c. Distinguish an "internship" from a "practicum" in the Act. A practicum is hands on training that is part of a formal education process and done for school credit.
 - d. A practicum is not considered "work" and therefore not subject to the minimum wage.
 - e. Employers who hire "practicum" students must abide by hours of work, breaks, and rest periods between shifts.
 - f. Employees who are doing both practicum and internship hours with the same employer must be subject to the same hours of work, breaks, and rest periods between shifts as contained in the Employment Standards Code to prevent overwork and abuse of the unpaid practicum system.
 - g. Employers who hire interns and practicum students should be subject to spot inspections, proactively undertaken by Employment Standards, in order to ensure the Code is followed.

Background and rationale

According to the Canadian Intern Association, Alberta has the least clarity around internships. Alberta's Employment Standards Code provides for a minimum wage for most employees (Reg 14/97.) An "employee" is an individual employed to do work who receives or is entitled to wages. It is unclear what "entitled to wages" means and therefore unclear whether interns in Alberta should receive a minimum wage.

Alberta's system of internships is murky and reviewed on a case-by-case basis. This is no way to conduct public policy that affects so many young people. Alberta must update its Employment Standards Code to reflect economic reality.

Alberta's Employment Standards Code should be amended so that paid interns are considered "employees" and therefore the Employment Standards Code, including the minimum wage, breaks, rest periods between shifts, and vacation time and pay all apply. Further, Alberta should be explicit in the difference between a "practicum" for school purposes and an "internship." Practicum students' hours of work, time between shifts, and breaks should be governed by Employment Standards, and proactive inspections should be performed by Employment Standards to ensure this is the case.

If a student is doing practicum and internship hours at the same establishment, the student's cumulative daily hours of work, time between shifts, and breaks should be subject to Employment Standards.

Alberta's lack of clarity around internships and hours of work contributed to the death of NAIT practicum student Andy Ferguson. He was working his practicum hours in addition to internship hours, leading him to work day and overnight shifts. Mr. Ferguson died in a car accident in November 2011 after falling asleep at the wheel after working 16 hours. His family has since become an advocate of reform for internship standards and practices.

We have advocated for Alberta to harmonize its labour and other policies with other jurisdictions. In this case, we have a ready-made model in British Columbia to govern internships.

No Alberta employer should profit from unfair advantage over British Columbia by abusing unpaid internship programs. Therefore, our AFL recommendations rely on the system in place in British Columbia.

Issue 37: Temporary Foreign Workers

Workers that enter Alberta through the Temporary Foreign Worker Program (TFWP) are among the most vulnerable workers in our province. TFWs are workers that have little power relative to their employer, because they rely upon their employers for their right to work and remain in Canada. For this reason, temporary foreign workers will often not speak up to their employers to ensure their workplaces are fair and safe. The history of this program is a litany of abuse towards temporary foreign workers and labour market distortions that weaken all workers' rights. While the TFWP is ultimately a Federal initiative, Alberta should strive to protect all TFWs who choose to work within Alberta's workers to the fullest extent.

AFL recommendations on employment standards and temporary foreign workers

1. Proactive, targeted inspections by Employment Standards officers of worksites where employers hold a valid Labour Market Opinion, Accelerated Labour Market Opinion, or are participating in the Alberta Pilot Project for skilled TFWs.
 - a. Biannual inspections targeting industries know to use high volumes of TFWs

2. Give Employment Standards Officers the resources and the power to conduct unannounced inspections of housing arrangements employers make for Temporary Foreign Workers. Employers are legally required to provide "adequate housing" for Temporary Foreign Workers.
 - a. Empower officers to report non-compliance to notify the IRCC
 - b. Educate officers about human trafficking
3. Allow employment standards code complaints to be processed without evidence of the employee seeking a solution with their employer
4. Expand the period by which unpaid wages can be recovered from six months to two years
5. Ensure TFWs receive benefits (such as EI and personal leave) in accordance with the work they perform and not based upon their status as a temporary worker
6. Replace employer specific work permits with sector specific work permits.
7. Allow provinces the ability to restrict or ban temporary foreign workers from being hired by non-compliant industries and companies, or in regions with high unemployment.
8. Adopt the "Manitoba Model" for Temporary Foreign Workers and so-called brokers within the Employment Standards Code. Actions include:
 - a. The definition of "employment agency" should be broadened to include the following: arranging visas, settlement services, etc. Recruiters have been managing to avoid prosecution by saying that they are charging \$10,000 for activities such as "settlement services" (arranging visas, arranging Alberta Health opening bank accounts, etc.) not for "recruitment."
 - b. Employment agencies and recruiters should have to register with Employment Standards, in addition to requiring all employers who hire TFWs to also register with Employment Standards (based on the "Manitoba Model," see below).
 - c. Charging fees to temporary foreign workers-either directly or indirectly must be prohibited. The prohibition must come with tough enforcement for non-compliance.
 - d. Agencies should have to provide security (like posting a bond) to protect jobseekers from financial harm. The Manitoba government has successfully implemented a program such as this and we believe that Alberta should also. In Manitoba, anyone registered to provide recruitment services-which include "settlement services"-must provide a surety of \$10,000.
 - e. The definition of "settlement services" must be expanded to include all services relating to accommodation which would include buying furnishings for the housing arrangements made by the employer.
 - f. Make proactive enforcement, payroll inspection monitoring of recruiter activity, status of work permits, and labour market needs monitoring much easier by emulating Manitoba in requiring all employers wanting to recruit foreign workers to register with the Employment Standards Branch, Business Registration Unit. The immigration application of a foreign worker does not proceed unless the employer hiring them is registered.
 - g. When registering, employers are be required to provide information about their company, the types of positions they are recruiting and information about any third parties that will be involved in the recruitment process. Any

third party used to recruit must be licensed as a foreign worker recruiter by the Employment Standards Branch.

- h. Employers are responsible for paying any recruitment fees.
- i. The names of all individuals or businesses holding a valid license from Employment Standards are accessible to the public. In Manitoba, names are posted on the Employment Standards website

Background and rationale

As discussed in the previous section on enforcement, it is often difficult for workers to stand up to their employers in the face of employment standards violations. Temporary foreign workers face even greater challenges in standing up for their rights at the workplace, as their circumstance leaves them uniquely vulnerable to poor employers who hold overwhelming leverage over them. Further, most foreign workers have a limited understanding of Canadian workplace values and the rights afforded to them under Canadian law. This vulnerability makes the protection of temporary foreign workers under the Employment Standards Code a priority.

Our priority is to extend to TFWs the rights that should be afforded to them as workers employed in Canada—not upon their employment or legal status. It follows then that TFWs should have full access to all the protections and benefits available under the Employment Standards Code and the Charter of Rights and Freedoms.

An integral aspect of the precarity of low wage TFWs is the use of employer-specific work permits. Unlike domestic workers, TFWs risk their legal status in the country by attempting to exercise their mobility rights by leaving an employer. This reality ensures that TFWs will often endure poor working conditions and abuse, as any risk to their employment status will also endanger their legal status in Canada. By allowing sector specific work permits, we will provide TFWs access to an integral workplace right and give them access to better negotiating power relative to their employer. We should also endeavor to

Beyond this modest change, the AFL also supports the Coalition for Migrant Worker Rights Canada's recommendation for permanent residency to be extended for all migrant workers. This change would change the dynamic of the program from a system of allowing a rotating cycle of precarious temporary workers into a steady stream of new Canadians that will serve Canada's long term cultural and economic strategic objectives. This change is more consistent with Canadian values and priorities.

A secondary consideration regarding TFWs is enforcement. The precarity and special vulnerability of TFWs makes them particularly vulnerable to abuse. This abuse has been well documented, and has led to successive waves of reforms to the program. The most recent changes proposed by the Standing Committee on Human Resources, Skills and Social Development and the Status of Person with Disabilities will do little to address TFW

abuse and may actually make things worse by removing some of the programs safeguards, such as Labour Market Impact Assessment. A greater volume of inspections, compliance reviews and stiffer penalties are required. Manitoba is a leader on this front, regulating TFW broker services and conducting proactive inspections. Alberta can and should make these steps to protect TFWs from abuse and punish unscrupulous brokers and employers. However, ultimate responsibility for making the enforcement regime more effective lies with the Federal Government.

The AFL would also like to draw attention to the corrosive impact of guest worker programs on the Canadian labour market. While the program mandates that TFWs are paid the prevailing wage for that occupation, many unscrupulous employers find alternate means of paying TFWs low wages. An example of such activity was uncovered through an AFL Freedom of Information request, where we discovered employers were using outdated wage information to drive down TFW wages. In some cases, the wage data being used was eight years old and no longer relevant to the local wage market. Other means of clawing back TFW wages include: deductions for food and lodgings, requiring TFWs to perform work not in their employment contract, and working extensive overtime. All of which has knock on effects throughout the labour market and the economy. Wage gouging exploits TFWs and drives the wages down of all workers in that labour market, as it makes hiring domestic workers less attractive compared to TFWs. Further, companies that employ low paid TFWs will have a competitive advantage to a company that does not. Lastly, easy access to guest workers does not incentivize us to invest in the training and skills that Canadians need to fill gaps in our labour market—gaps that were used to bring in guest workers.

COPE 458/Unifor 445