

Memo

To: File **Date:** 19 March 2019
From: Reg
Topic: Notes for submission on Employment Standards Act Review

Below are notes/comments for the BCAC/sector responses to the Ministry of Labour review of the ESA. Here is a link to the consultation document.

https://blog.gov.bc.ca/app/uploads/sites/121/2019/02/Final_Revised-Draft_Consultation-Paper_ESA_Feb-27.v2.pdf

Theme 1 – Increased protection for Children

What is your view on increasing protections for child workers? Should government categorize some work as hazardous/unsuitable for children?

Notes

- BCLI (recommendations from the Law Institute) suggestion is to follow other provinces who require a permit for children under 14.
- Alberta youth employment rules do not apply on farms and ranches.
- Alberta also has a defined list of “light work” that is okay for younger people to do.
- Pesticides are currently restricted to 16+ year olds

Theme 2 – Transforming the Employment Standards Branch

What are your views on how we can address issues raised by the BCLI Report and stakeholders to improve the Employment Standards Branch and better serve workers and employers?

Notes

- Suggestion to focus on proactive investigations and enforcement rather than just complaints.
- More transparency in investigations
- Lack of oversight for temporary help (not sure what this means)

Theme 3 – Supporting families through difficult times with job protected absences

Should BC expand unpaid leaves and, if so, in what areas?

Notes

- Better align protected absences with federal EI requirements? Current BC Law doesn’t allow workers to take advantage of everything and keep their jobs.

Theme 4 – Strengthen worker’s ability to recover wages/monies owed

What are your views on steps that could be taken for strengthening workers’ ability to recover wages/monies owed?

Theme 5 – Clarify hours of work and overtime standards

What changes to the hours of work and overtime standards should we consider to improve the flexibility of BC's workplaces?

Notes

- Allow workers to decline overtime if it conflicts with personal obligations (family, education, professional appointments). Currently workers cannot decline OT.
- Recommendation to allow more flexibility in definition of work week (e.g. 4x10). Good for the non-farm employees
- Recommendations to changes in averaging agreements – for non farm workers. Want to keep this flexibility (both for the worker and the employer)
- Add “flex-time” provisions
- Recommendation to allow a worker to voluntarily work an extra 3 hrs/day(s) in one pay period without OT to make up time taken off (e.g. work 5 hrs one day and then work 3 hrs OT the next day to make up with out being paid overtime). GREAT IDEA. Many employers do this now, technically illegal.

Draft points to include in submission

- 🚩 **CRITICAL: Agriculture work is different than office or factory work and the exemptions for hours of work and overtime must be kept.** Work timing is subject to uncontrollable events such as weather. Crops are perishable and must be tended to or harvested at very specific times to ensure optimum quality and nutritional value. Animals must be appropriately cared for. You can't just stop working.

Theme 6 – Increasing fairness for terminated workers

Should any changes be made to the provisions concerning notice of termination or pay in lieu?

Other general commentsNotes / points to include

- There are a number of recommendations made in the BCLI report that do not directly align with the Consultation Paper. While government may not be specifically looking at this, I think that we should include comments on it.
- BCLI recommends a **systematic review of all exemptions** to the ESA (p.xix). Agriculture is exempted from some aspects, especially overtime. This recommendation is a large risk for farmers. See comments in Theme 5.
- BCLI recommends that piece rate pay be at least equivalent to the minimum wage (p.130).
 - 🚩 **Make a comment that piece rate pay structures are an important tool in some farm situations. We await release of the study completed in 2018 and further consultation with government regarding any possible changes.**
- BCLI recommends that the security deposit made by farm labour contractors be increased from 80 times minimum wage time number of employees licensed to 120. for (p.140-145). The reduction for a proven track record would be adjusted proportionally. Okanagan farms do not make much use of Farm Labour Contractors.