

Alberta Employment Standards & Labour Code Review 2017

Presented to:

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**Restaurants
Canada**

The voice of foodservice | La voix des services alimentaires

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Introduction

Restaurants Canada appreciates the opportunity to provide foodservice industry input on the employment standards and labour code review. A review of Alberta's labour laws is critically important to the foodservice industry because of the labour intensive nature of the industry. Payroll costs represent roughly one third of all foodservice industry expenditures and are one of the few expenditures that an operator can directly control. Due to the labour-intensive nature of the foodservice industry, it is not surprising that many operators believe that inflexible labour laws are one of the biggest obstacles to creating industry growth and employment. Any changes in labour laws must result in performance and productivity gains not increased employer costs.

Alberta's foodservice industry contributes \$11 billion in sales to the province's GDP and 145,000 jobs to the province's workforce. The foodservice industry is the fourth largest job creator in Alberta providing a wide range of full-time and part-time job opportunities for the people of Alberta, and in particular, supports important entry-level jobs for women, students, young people and new Canadians. These entry-level jobs are invaluable stepping-stones for those entering or re-entering the labour force. Given the labour-intensive nature of the foodservice industry, labour laws have a significant effect on the industry's ability to hire, train and retain young workers. Increased costs due to intrusive labour regulations can result in staff cutbacks, fewer work hours, reduced compensation for other employees, cancelling plans for expansion, or even having to close the restaurant's doors altogether.

Restaurants Canada agrees that Alberta's labour laws should provide flexibility to both employers and employees, while ensuring minimum standards are maintained. Also central to any review of Alberta's labour laws is the impact of government regulations on businesses' ability to grow, create employment and to remain competitive.

Labour Law Principles

Restaurants Canada's positions on labour laws stem from six principles. Restaurants Canada believes employment laws should provide a basic level of employee protection, promote voluntary cooperation between employers and employees, respect individual choices, and be realistic, fair, and flexible.

While it may be tempting for governments to expand social services using employment laws and regulations by, for example, eliminating eligibility requirements for general or statutory holiday pay, this simply adds costs to business, reduces competitiveness and discourages investment. The limitations of labour legislation in meeting broad based societal objectives must be recognized as legislative interventions can have costly and unintended effects.

Restaurants Canada believes that by and large Alberta's current labour laws are working well. Certain improvements can be made to better reflect the demands of the modern world of work but any changes should only be implemented if they are consistent with a set of basic labour law principles.

The following six principles have guided Restaurants Canada's recommendations with respect to labour laws:

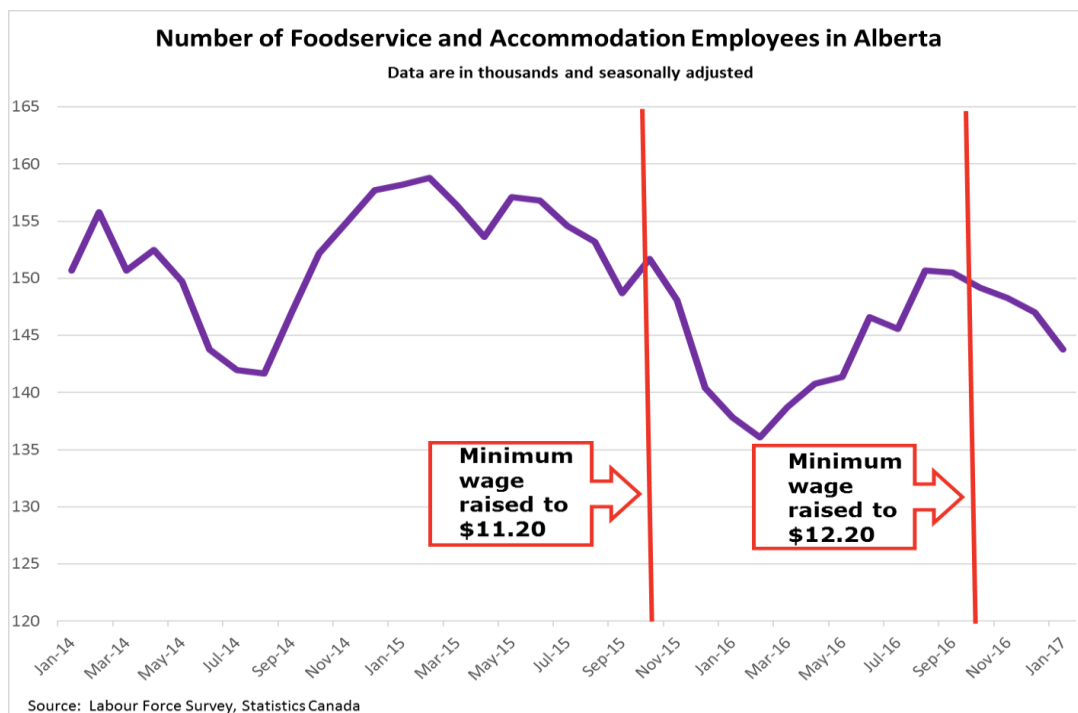
- 1. Employment laws should be realistic:** These laws must recognize the new ways in which work is being done so they facilitate new work arrangements and enable the province to remain competitive. They should also recognize the practical limitations of efforts to pursue social policy goals through the imposition of obligations on employers.
- 2. Employment laws should be flexible:** They should allow businesses to adapt to the needs of their customers and the aspirations of their employees, and to provide the kind of innovative solutions to problems that make businesses and employees successful and capable of providing jobs.
- 3. Employment laws should respect individual choices:** They should allow employees to make up their own minds about what kinds of workplace arrangements best suit their needs.
- 4. Employment laws should promote voluntary cooperation between employers and employees:** Employers and employees cannot succeed without each other's cooperation, and our employment laws should encourage (though they cannot require) the solution of problems through mutual agreement.
- 5. Employment laws should be fair for all:** The laws themselves should not give special advantages to anyone and they should be administered in a manner that contributes to the confidence the community has in the essential fairness of the laws.
- 6. Employment laws should provide a basic standard of protection for employees:** The laws should set a floor below which employment standards may not fall, to ensure a basic level of employee protection.

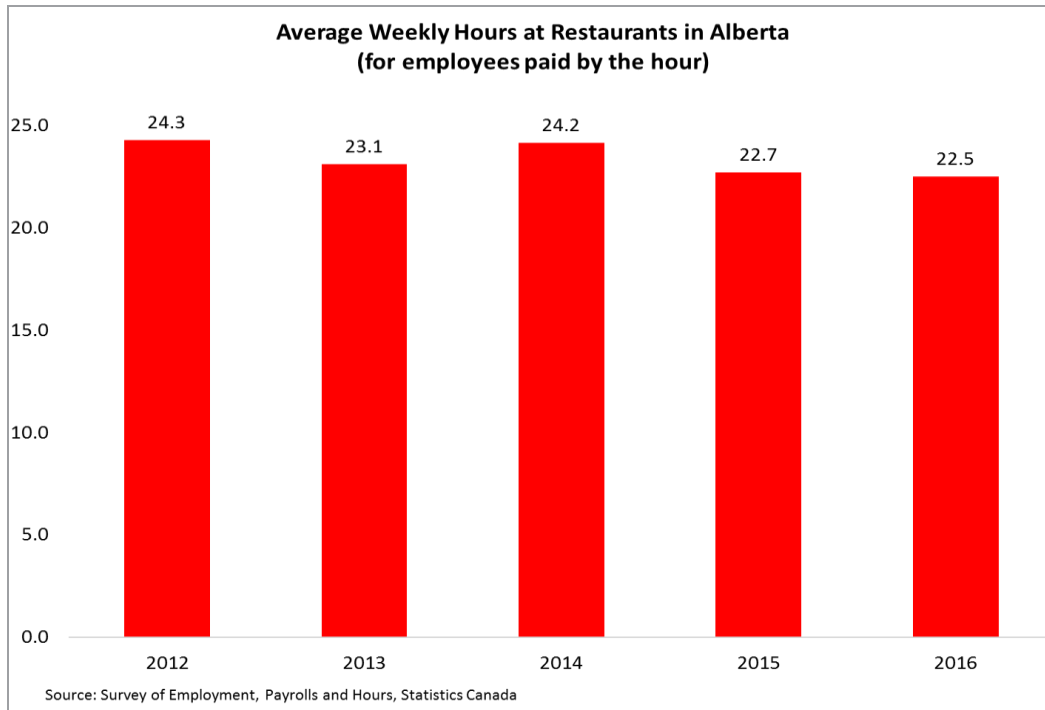
Current State of Alberta's Hospitality Industry

The current labour law review comes at a difficult time for Alberta's hospitality industry. The past couple of years have been extremely challenging for Alberta's hospitality industry. Small businesses are struggling to survive the combination of same store sales declines due to the economic downturn as well as significant mandated labour cost increases due to the government's ongoing aggressive minimum wage increases and the elimination of the liquor server wage as the government moves towards a \$15 minimum wage by 2018. As Restaurants Canada predicted, the impact of the provinces minimum wage policy during these tough economic times has resulted in restaurant closures, and a significant decrease in industry employment, both in terms of layoffs and reduced hours of work, as restaurateurs struggle to remain viable. Unfortunately, our Alberta members are predicting even further layoffs and reduced work hours once the minimum wage is increased another \$1.40 in October 2017 and yet another large \$1.40 increase in October 2018.

Given the current situation, our members are also postponing investments in their businesses for renovations as well investments in new restaurants which negatively impacts the economic and employment growth of other sectors of the economy, such as the construction industry.

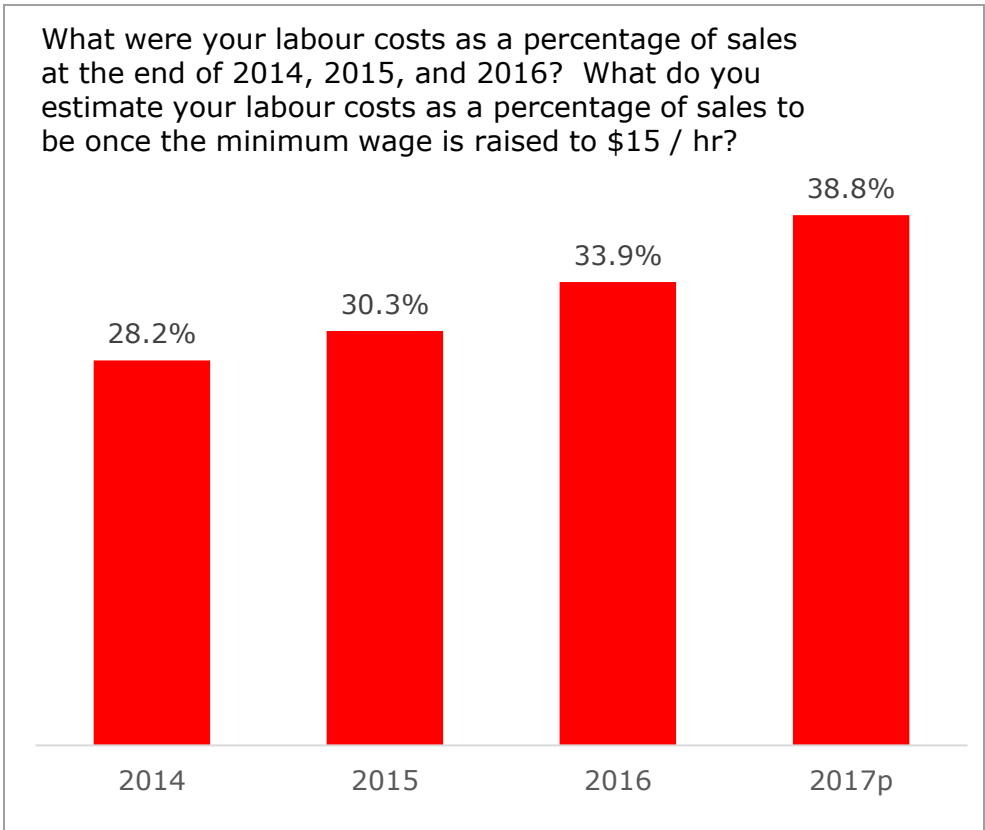
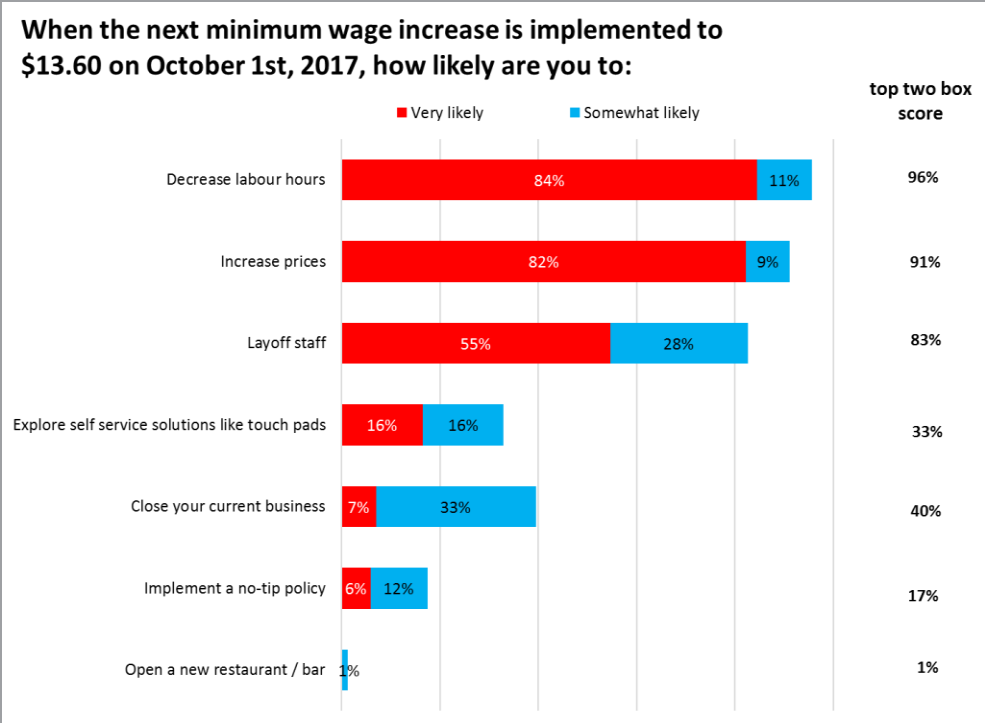
Restaurants Canada's economist has been tracking the employment impact of Alberta's recent minimum wage increases on Alberta's hospitality industry. Alberta foodservice industry employment has declined by 3.8%, or 4,700 jobs, in 2016 over 2015. Average weekly hours have also declined by roughly two hours a week between 2014 (24.2 hours per week) and 2016 (22.4 hours a week).





According to the 2016 Q4 Restaurant Outlook Survey seven out of ten Alberta operators reported a decline in same store sales with table service restaurants being the hardest hit with same store sales declining by 12.6%. A strong majority (58%) of Alberta operators also reported that they planned to reduce staffing levels over the next six months compared to only 6% of operators who plan to hire more staff. The combination of a weak economy and recent minimum wage increases have negatively impacted 84% of Alberta respondents.

Alberta members are extremely concerned with the impact the next two large \$1.40 increases (\$13.60 in 2017 and \$15 in 2018) will have on the viability of their businesses. The cascading effect of the increases is driving up total labour costs as a percentage of revenue. This results in further reductions in labour and menu price increases at a time when Alberta consumers can least afford it resulting in even less demand.



Given the current fragile state of Alberta's hospitality industry, **Restaurants Canada believes now is not the time to implement labour law changes that result in even further mandated labour cost increases and additional labour related red tape for the thousands of small businesses that make up Alberta's hospitality industry.** Restaurants Canada is also extremely concerned about the very short review timeline. A five-week consultation period is nowhere near enough time to thoroughly examine the many complex Employment Standards and Labour Relations Code changes being contemplated. A similar workplace review in Ontario is taking place over a two-year period. Many members who are actively engaged in running their day-to-day operations have expressed their frustration in government providing so little time for them to provide their input.

Employment Standards

Alberta's Employment Standards laws and regulations must take into consideration that employment in the hospitality industry does not fit into a 9-5 work schedule. The hospitality industry is made up of thousands of 24/7 365 day businesses that must schedule employees based on consumer demand at all hours of the day and night. Schedules must be flexible in order to accommodate peak consumer demand, which can often change quickly requiring scheduling adjustments. As a result, any Employment Standards changes being contemplated must maintain the flexibility to accommodate the on demand nature of the hospitality industry and not add additional labour costs and related red tape onto the backs of the mostly small businesses that make up the highly competitive, low margin, labour intensive hospitality industry.

The industry's workforce consists of a wide range of long-term full-time professional career positions as well as short term entry-level part-time positions providing invaluable work experience. The industry also experiences high employee turnover as it attracts thousands of voluntary part-time students and secondary income earners allowing them to earn employment and gratuity income while pursuing other priorities such as school or family responsibilities. The thousands of voluntary part-time employees in our industry appreciate the scheduling flexibility hospitality industry employers offer, allowing them to work at times they are available while balancing their other life commitments. Whether for a year or a career, our industry provides employment opportunities that cater to the modern world of work.

Promoting Family – Friendly Workplaces

Given the industry's scheduling flexibility, hospitality industry workplaces are an example of family friendly workplaces. We provide full-time career employment while catering to the needs of supplemental income earners in the modern family providing them with the scheduling flexibility they need to earn extra income while achieving their work life balance goals. Whether it be a mother looking to earn additional income while the kids are in school, or allowing young family members to earn an income and work experience without interrupting their education, we provide family friendly employment opportunities. Given these scheduling realities hospitality industry employers understand the work-life balance necessities of the modern family.

Our members promote family friendly workplaces by recognizing that unforeseen family situations come up from time to time that require employees to take time off to take care of family members. It is in the employers' best interest to accommodate reasonable unpaid leave requests as not doing so can result in costly unnecessary staff turnover. Furthermore, most hospitality industry employers are small businesses that have a close personal relationship with their staff and are compassionate to the personal needs of their staff.

Unpaid Job Protected Leaves

In principle, Restaurants Canada believes that unpaid job protected leaves should be worked out between the employer and employee. Hospitality industry employers already often allow personal leave for a variety of reasons with or without pay for a certain period of time and usually will permit longer job protected absences without pay. However, it would be overly complex and costly to mandate an ever-growing prescriptive list of specific unpaid job protected leaves. There will always be examples of equally valid reasons where unpaid job protected leave is warranted but not covered on the Employment Standards list. The Code cannot possibly cover all these potential personal leave circumstances.

Restaurants Canada received a number of member enquiries regarding the online Employment Standards questionnaire as they are frustrated by some of questions and limited answer options. They also point out that there are no questions that deal with the potential labour cost implications of some of the questionnaire proposals. It must be recognized that restaurant guests must continue to be served regardless of whether an employee is on job-protected leave or not. The employer must still replace the employee with at times difficult and costly short term replacements. If unable to do so, the employer may be left short staffed which could result in additional overtime labour costs or a decline in customer service.

Having said the above Restaurants Canada will respond to the online questions regarding job protected unpaid leaves as follows:

- **Aligning Job Protection for Unpaid Leaves with Federal EI Benefits**

Restaurants Canada does not object to aligning job protection for unpaid leaves with Employment Insurance benefits. Restaurants Canada supports requiring employers to protect an employee's employment during the period of maternity, parental, and compassionate care benefits.

- **Maternity, Parental, and Compassionate Care Leaves**

Restaurants Canada supports a minimum 26-week qualifying period for Maternity and Parental leave and a 90-day qualification period for Compassion Care leaves.

- **Notice Requirements for Compassionate Care Leave**

Restaurants Canada believes that employees should be required to provide a medical certificate and notice of leave as soon as possible before commencing compassionate care leave and two weeks' notice before returning to work. Requiring employers to schedule an employee who is returning from leave with less than two weeks' notice would be unfair to other scheduled employees.

- **Unpaid Job-Protected Leave for Parents of Critically Ill or Injured Children**

Restaurants Canada supports unpaid job-protected leave for parents of critically ill or injured children with a 90-day qualification period.

- **Unpaid, Job Protected Leaves for Family Responsibilities or Personal Emergencies**

As already mentioned, hospitality industry employers already provide both paid and unpaid job protected leaves and scheduling flexibility for employees for a wide variety of family and personal reasons. This is a good example of where employers and employees already work out mutually agreeable arrangements to deal with these unique situations.

If additional unpaid, job-protected leaves are added to the Employment Standards Code, **Restaurants Canada recommends that government should limit unpaid job-protected leaves to employees who have completed their 90-day probationary period and clearly define how employees qualify for the leave, the length of time permitted, and provide supporting documentation.**

- **Earned Sick Leave**

Restaurants Canada is strongly opposed to legislating earned sick days. The current system in dealing with sick employees works well as managers adjust the schedule as needed to replace hourly workers who call in sick. Legislating earned sick days will create a culture of entitlement and will act as an absenteeism incentive. There is evidence of considerable abuse of earned sick leave in those workplaces that allow them leading to lower productivity and higher labour costs. Once employees know they are entitled to a certain number of sick days they will take them as an entitlement regardless of their health. This will alter the current employee-employer relationship. Instead of focusing on getting well, sick employees will be expected to get doctors notes to validate their sickness, which is not the best use of their time while they are not feeling well. This will also add pressure to the health care system as doctors' offices and hospital emergency rooms will unnecessarily be clogged up by people who need a doctors note to qualify for earned sick leave.

Labour costs in the hospitality industry have already increased significantly due to Alberta's aggressive minimum wage increases and small businesses cannot afford the additional labour cost and administrative burden legislating earned sick leave will have on their operations. Additional costs to the employer will include; higher absenteeism, higher payroll and overtime costs, higher WCB premiums, and increased administration time dealing with earned sick leaves.

Modernizing and Simplifying Existing Standards

For the most part, Restaurants Canada believes that the current Employment Standards code works well promoting employee – employer cooperation. Restaurants Canada believes most of the proposals presented in this section of the online survey are unnecessary and will lead to additional labour costs and red tape for small business employers. What is absent are any proposals to help small employers lower labour costs while still protecting employees. For example, the Employment Standards issue members have raised most often is the current minimum hours of work provision.

Minimum Hours of Work

Currently the Code requires employers to pay an employee for a minimum of three hours, regardless of the number of hours that the employee actually works. Having to schedule employees for a minimum of three hours, when the typical meal period is two hours, is a huge cost for foodservice operators, and inconvenient for employees. The three-hour minimum call-in reduces job opportunities for students and others who wish to work only the short, busy periods in a day when they can maximize their gratuities. Busy part-time employees such as students and mothers with children at home want to go home when the busy period is over instead of having to stay behind and fold napkins for an hour due to an outdated impractical employment standards provision. Also, the present three-hour minimum constitutes a penalty for employers who need to schedule employee meetings outside of regular operating hours. Most such meetings occupy only about one or two hours: however, the employer is required to provide each employee with three hours' pay. Finally, there is a conflict in the Code between the three-hour minimum call-in requirement and the adolescent provision where adolescents can only work a maximum of two hours on school days creating a situation where an employer must pay three hours for two hours of work.

Restaurants Canada strongly recommends changing the minimum call-in provision from three hours to two hours.

Banked Overtime

Restaurants Canada believes that the overtime provisions of the Code must allow for mutually beneficial hours of work and overtime arrangements for employers and employees. Employers and employees should continue to be allowed to institute “mutually agreeable” working hours that protect employees while providing the freedom to develop arrangements that are specifically tailored to the needs of the employees in a particular workplace. For example, by continuing to allow the practice of banking hours at straight time employers can accommodate employees’ short-term personal needs (such as doctor or dental appointments) by allowing them to take time off to attend to these needs, provided they make up the time later on or have banked the time previously. Changing the banked overtime provisions to 1:1.5 would remove this employee flexibility.

Restaurants Canada supports the current banked overtime provisions, which give employees the choice of whether they want to be paid at overtime rate, or take a day off with pay. Not only would changing this provision reduce employee flexibility, it also adds significant additional labour costs to employers.

Restaurants Canada opposes increasing banked overtime to 1:1.5, and believes that extensions to the allowable period to bank overtime should be permitted by mutual agreement between the employer and employee.

Compressed Work Weeks

Our industry is not a 9-5 weekday employer. The hospitality industry demands that employees be scheduled to accommodate customer demand making for irregular workdays and shifts. A compressed work week provides both employer and employee flexibility. **Restaurants Canada supports overtime being calculated after every 88 hours over a two-week cycle as this would align with most payroll periods.**

Rest Periods

Restaurants Canada believes the current rest period provisions are adequate. Our members believe providing employees rest periods is important in delivering guests fast friendly service. However, the timing of these breaks requires flexibility. For example, cooks and servers will often take a break either before or after peak meal times but can not take a break in the middle of a busy lunch rush without jeopardizing customer service. **Restaurants Canada recommends that the government continue to allow rest period exceptions for urgent work, accidents, unforeseeable circumstances, or if it is not reasonable for an employee to take a break.**

Regular/Irregular Work Days and General/Statutory Holiday Pay Eligibility

As mentioned, irregular hours and work days are normal in the hospitality industry. There exists a common misconception that restaurants are more profitable on statutory holidays as restaurants are generally busier on those days. It is important to point out that as a highly competitive, low margin, labour intensive industry, the reality is that most foodservice establishments actually lose money on statutory holidays but feel obligated to stay open to accommodate their customers. Previous industry surveys indicate that while average revenue increases by roughly 10-15% on a statutory holiday, labour costs more than double especially when factoring in the additional Canada Pension Plan, Employment Insurance, and Workers Compensation payroll costs on top of the additional wages employers must pay on a statutory holiday. This is ever more true today given the recent aggressive minimum wage increases leading to a \$15 minimum wage.

Restaurants Canada believes that those who work on the holiday, and those for whom the holiday falls on a regular work day, should be entitled to statutory holiday pay. However, the cost of paying all employees the average daily wage or providing a day off with pay would be unaffordable forcing many small businesses to close on general holidays despite customer demand to stay open. Eliminating the current regular/irregular work day distinction will have a significant negative impact on the viability of small hospitality businesses and will cause employers to reduce both full-time and part-time employment.

Restaurants Canada strongly recommends maintaining the regular/irregular workday distinction for calculating general holiday pay.

Restaurants Canada supports an easier to understand general holiday qualifying period as long as it does not result in increasing already high labour costs. **Restaurants Canada recommends changing the current qualifying period of 30 work days in the past 12 months to 90 days of employment service with the employer as it coincides with an employee's probationary period.**

Average Daily Wage Calculation

While some members would prefer to maintain the current average daily wage calculation of employees' wages earned in the nine weeks immediately preceding the general holiday divided by the number of days worked, other members support changing the average daily wage calculation to employees' wages earned in the 28-day period immediately preceding the general holiday. **Restaurants Canada recommends changing the average daily wage calculation to employees' wages earned in the 28-day period immediately preceding the general holiday as it is an easier calculation that is similar to how most other provinces calculate average daily wages.**

Deduction from Wages

Restaurants Canada recommends no changes to existing wage deductions provisions.

Employees must already agree in writing to any wage deductions they request be deducted from their wages on top of the mandated employer deductions for taxes, EI, CPP, WCB, etc.

Youth Employment

Restaurants Canada agrees that young workers should balance the need to develop work experience with the need to gain an education and participate in other activities to support their overall well-being. The hospitality industry prides itself in providing first job experience for thousands of young Albertans. While the restaurant industry employs relatively few employees between the ages of 12-15, some small family businesses may argue that their children should be able to help at a young age as long as there is parental consent. **Restaurants Canada agrees with the list of non-hazardous appropriate adolescent jobs listed in the online questionnaire.** There may be other suitable jobs as well that are not listed which is why **Restaurants Canada supports the Director of Employment Standards continuing to have flexibility to be able to approve additional jobs for adolescents with parental consent.**

As mentioned during the minimum wage review, **Restaurants Canada also continues to recommend implementing a youth training wage** recognizing the initial costs in training inexperienced young workers to incentivize small businesses to continue to offer employment opportunities for young first time employees looking to gain initial part-time job experience while still attending school. This is especially true in a \$15 minimum wage environment. Many jurisdictions, both in Canada and other OECD countries have implemented age and experience based minimum wages for young employees.

Group Termination Notice & Graduated Notice Requirements

Restaurants Canada recommends that no changes be made to the current group termination provisions.

Members did raise termination concerns with respect to having to pay out the balance of wages owing to a terminated employee within three days. Three days is not enough time and creates additional red tape for an employer to process manually. Employers using modern automated payroll systems that are set up to pay on a periodic cycle are especially impacted. **Restaurants Canada recommends changing the three-day termination pay requirement from three days to the next regular wage payment date.**

Enforcement & Administration

Administrative Penalties

While supportive of administrative penalties in principle, members are concerned that they can be overly subjective, inconsistently implemented, and open to bias. In most cases administrative penalties are usually not worth disputing even if the employer believes the violation was issued in error and no violation occurred. Inspectors could also be unduly influenced to subjectively impose more penalties on certain types of employers or certain types of alleged violations. Members want to ensure penalties are backed up with real evidence rather than accepting allegations made by possible disgruntled employees. Therefore, Restaurants Canada supports administrative penalties where there is evidence of a clear violation and then only after an initial warning is issued to the employer for a particular infraction giving the employer the opportunity to correct the situation. Administrative penalties should also only be implemented with an affordable, fair and reasonable appeal process. Restaurants Canada also believes that employers who receive administrative penalties have their record of infractions re-set if they have no further infractions after five years. The implementation of administrative penalties should only occur after a comprehensive education campaign educating employers about their obligations under the Employment Standards Code.

Restaurants Canada supports administrative penalties where there is clear evidence of a violation after an initial warning is provided and that there is a fair and affordable appeal process and where an employer's record of infractions is re-set if they have no further infractions after a five-year period.

Restaurants Canada also supports the idea of progressive penalties as there is no excuse for employers who violate the rules repeatedly. Restaurants Canada would encourage using education and cooperation between inspectors and employers to resolve initial infractions and does not support mandatory violation fines for that reason. However, if an employer does not correct the violation and has three or more violations for the same offense, progressive penalties make sense. While there are very few bad employers who repeatedly violate the rules, those who do give all employers a bad name.

Restaurants Canada does not support mandatory violation fines or stacking penalties.

While the review is focused on Employment Standards enforcement on employers, some members point out that there is little enforcement on employee requirements. Employers, managers and co-workers are very frustrated when they are left to cover for employees who leave their employment with absolutely no notice. There should be some penalty on employees who do not provide at least two weeks notice of termination to employers. Some members would argue that employee should forfeit any balance owing to them if they leave employer without two-weeks notice. **Restaurants Canada supports implementing penalties for employees who do not provide employers with two-weeks notice of terminating their employment.**

Permits

Establishing prescriptive criteria for the Director of Employment Standards will unnecessarily restrict the Director's ability to use their judgement in special unique circumstances. **Restaurants Canada supports the existing discretion the Director of Employment Standards has to approve unique work situations and opposes establishing prescriptive criteria for the Director. Restaurants Canada also believes that the Auditor General should have the authority to review permits issued by the Director and make recommendations to assure those permits do not create undesirable exceptions to minimum standards.**

Options for Enforcement Tools

Restaurants Canada supports implementing new enforcement tools that are fair and balanced for both employers and employees following a comprehensive education campaign and does not oppose most of the tool options provided with the exception of extending the time period for employees to file complaints and extending the time period to recover earnings from an employer. Restaurants Canada believes that six months is already more than enough time for employees to file a complaint and recover earnings.

Labour Relations Code

As mentioned earlier in this submission, Restaurants Canada does not believe five-weeks is enough time to adequately review the Labour Relations Code revisions being considered. Restaurants Canada would offer the following comments on some of the Labour Relations Code issues being considered.

Assessing the processes used to let employees exercise their constitutional right to choose, change or cancel union representation in a timely and effective way

- **Secret Ballot versus Card Check Certification**

Restaurants Canada understands that what the above statement really means is assessing whether to replace the current democratic Secret Ballot vote certification process with a Card Check certification process that would limit an employee's democratic right to make an informed confidential decision.

The card signing certification system is ripe for abuse and intimidation, from false promises to a lack of transparency about the implications of a signing a card. In addition to the obvious democratic arguments, it is important to note that the voting process allows employees the opportunity to study the pros and cons of union membership, and to investigate the people and organization to which they will assign their rights.

Restaurants Canada understands the self-interest motivations of organized labour submissions arguing that statistics showing lost certification votes are proof that the rules need to be changed to make union organizing easier. It is, however, more likely proof of employee choice, showing that the system works. Signing a card at the insistence of an organizer or co-worker should never be considered on par with an opportunity to gather information, reflect and make an informed, anonymous choice free from repercussions. The often repeated organized labour allegation that lower unionization rates are a result of employer obstruction is simplistic and inaccurate. There are a number of reasons for lower unionization rates occurring including the transition away from an industrial economy, and the generational shift to millennials who vote with their feet.

The question must be asked if organized labour supports the same card check system for decertification votes? Restaurants Canada believes organized labour would oppose a card check decertification process for the same reason employers oppose a card check system for certification. Most provinces support workplace democracy by providing employees a with a Secret Ballot vote on union certification. Alberta should maintain the current union certification process.

Restaurants Canada strongly opposes changing the current democratic Secret Ballot certification process with a card check certification system.

Whether it is appropriate to provide for the type of reverse onus provisions elsewhere in respect to certain alleged unfair labour practices.

The key word in the above statement is alleged. **Restaurants Canada strongly opposes any Labour Relations Code revisions that counter the Common Law principle of innocent until proven guilty. It is not appropriate for an employer to be assumed guilty until proven innocent with respect to any unfair labour practice allegations.**

The options available for dispute resolution in intractable disputes. This may include situations that involve unresolved first contracts, proven unfair labour practices, or the failure to maintain essential services that may lead to public emergencies.

■ **First Contract Arbitration**

The imposition of a contract is a blunt tool that should only be used in extreme circumstances. This takes away the ability of management, and the responsibility of unions, to bargain in good faith. If the stated intent is to give employees an opportunity to exercise their right to have input into their workplace, it makes little sense to impose a contract without allowing for the conversation to take place.

Restaurants Canada does not understand the need for first contract arbitration or what problem government is trying to solve. Currently employee/employer relations in Alberta are very harmonious with Alberta experiencing very few lost days due to strike and/or lockout. In most cases agreements are negotiated amicably and should this not be the case, the tools are already available through the Labour Relations Code should they be needed. There are very few examples of where First Contract Arbitration would have been useful in the province. This mirrors the experience in other jurisdictions where very few instances of First Contract Arbitration actually occur. Restaurants Canada also believes First Contract Arbitration distorts the principles of free collective bargaining and tips the balance during an organization drive and during contract negotiations towards unions. **Restaurants Canada opposes any Labour Relations Code changes regarding First Contract Arbitration.**

Reviewing current definitions of "employer" and "employee" to ensure they are consistent with today's workforce, including the manner in which bargaining rights may be maintained, adjusted, or changed as workplaces and ownership change.

In addressing the above statement Restaurants Canada will focus its comments on what may be considered related to joint employers and Sectoral Bargaining.

Related and Joint Employers

When discussing related and joint employers, many refer to the relationship between franchisees and franchisors as an example of related or joint employers when it comes to labour. The implication from some is that franchising is a business strategy to avoid liability for the employees involved in the execution of the strategy and direct selling of the product. This is a cynical and unfair characterization of the business model, through which entrepreneurs are able to expand and generate even more economic activity and employment. There is also a mistaken notion that franchisors have a direct input into hiring and personnel matters. This is not only untrue, it is impractical. Franchisors do not have the ability or inclination to interfere with the day-to-day human resources issues of franchisees. The franchise model enables small entrepreneurs to invest in and run businesses on a scale that would not be possible without the franchise concept.

The determination of joint or related employer status should be based on the actual employee/employer relationship. Expanding this definition to accomplish other goals will do nothing to improve workplace relationships. **Restaurants Canada strongly opposes the suggestion that franchisors and franchisees should be considered joint or related employers in the Labour Relations Code.**

Restaurants Canada also opposes collective agreement successorship provisions where a collective agreement is imposed on a new employer who has taken over a business. Having to abide by a collective agreement that was negotiated by a previous employer is unfair and could negatively impact an entrepreneur's decision to invest in a business jeopardizing numerous jobs.

Sectoral Bargaining

The intent of sectoral or broader-based bargaining is to facilitate an easier path for unions to organize workplaces and to save money on organizational and bargaining expenses. These should never be the goals of government. When it comes to employment issues, the primary concern of government should be representing Albertans in their workplace life and ensuring there is a legislative and regulatory framework that protects their right to a safe workplace.

Small businesses would be hurt the most by sectoral certification setting up a David vs Goliath scenario. Sectoral certification would make it easier for huge unions to organize against small workplaces. It would harm small and medium sized businesses that do not have access to the unlimited resources of large unions. It is also similar to card based certification in that it takes away an individual's right to determine how they want to be represented and who will provide that representation. With the wide range of issues in the workplace, it is doubtful that workers in one region have the same goals as those in another region. Even within the same franchise system, the issues will vary with each franchisee and their management team. Assuming that an agreement imposed by an outside party would be able to represent such a wide variety of unique localized issues is not supported by the evidence.

The power structure would not only shift to large multi-jurisdictional unions who have the resources to steamroll other, more representative unions, it also provides an advantage for large businesses over small businesses. One of the first considerations of collective bargaining is the ability to pay. In a sectoral model, the larger companies with the greater ability to absorb costs would enjoy a significant advantage over smaller, independent businesses without that flexibility. This will hasten the movement away from small business and further reduce employee choice as to the type of workplace they would like to be part of.

Restaurants Canada strongly opposes adding Sectoral Bargaining provisions to the Labour Relations Code.

Conclusion

There is no doubt that the workplace has changed radically over the years and we need to look at these changes with an eye to providing the best opportunities to employees to find the work/life balance and career growth that suits their needs. This must be made with fresh eyes, and not through decades-old systems that are rapidly losing favour with workers.

The restaurant industry is proud of its role in providing opportunities for youth and people who are new or returning to the workforce. It is these opportunities that provide training that will serve them throughout their lives, regardless of the field they choose.

A common expression is that people work in restaurants “for a year or for a career”. This illustrates the opportunity to provide transition employment with opportunities to advance in the industry, as well as full-time family supporting career employment opportunities.

Restaurant operators want to be allowed to continue to provide the flexible opportunities they always have. By layering additional bureaucracy and costs upon businesses, government will restrict these opportunities.

We do agree that workers’ rights must be protected. By strengthening enforcement and education tools, the government can do a lot to identify and prevent situations that harm employees financially or in other ways. Government must look at new and innovative ways to share information within governments and with governments at other levels to focus scarce government resources in the most targeted manner. Businesses large and small want to do their part to ensure that society moves forward, but they cannot be expected to be the solution to societal ills that are more appropriately and effectively addressed by governmental intervention. The restaurant industry does its part by providing opportunities for training and advancement to demographic groups that are often ignored by other employers. This should not be penalized by layering on additional costs and administrative burdens.

About Restaurants Canada

Restaurants Canada is a growing community of 30,000 foodservice businesses, including restaurants, bars, caterers, institutions and suppliers. We connect our members from coast to coast, through services, research and advocacy for a strong and vibrant restaurant industry. Canada's restaurant industry directly employs 1.2 million Canadians, is the number one source of first jobs, and serves 18 million customers every day.

Recommendations

1. Restaurants Canada believes now is not the time to implement labour law changes that result in even further mandated labour cost increases and additional labour related red tape for the thousands of small businesses that make up Alberta's hospitality industry.
2. Restaurants Canada does not object to aligning job protection for unpaid leaves with Employment Insurance benefits. Restaurants Canada supports requiring employers to protect an employee's employment during the waiting period of maternity, parental, and compassionate care benefits.
3. Restaurants Canada supports a minimum 26 week qualifying period for Maternity and Parental leave and a 90-day qualification period for Compassion Care leaves.
4. Restaurants Canada believes that employees should be required to provide a medical certificate and notice of leave as soon as possible before commencing compassionate care leave and two weeks' notice before returning to work.
5. Restaurants Canada supports unpaid job-protected leave for parents of critically ill or injured children with a 90-day qualification period.
6. Restaurants Canada recommends that government should limit unpaid job-protected leaves to employees who have completed their 90-day probationary period and clearly define how employees qualify for the leave, the length of time permitted, and provide supporting documentation.
7. Restaurants Canada is strongly opposed to legislating earned sick days.
8. Restaurants Canada strongly recommends changing the minimum call-in provision from three hours to two hours.
9. Restaurants Canada opposes increasing banked overtime to 1:1.5, and believes that extensions to the allowable period to bank overtime should be permitted by mutual agreement between the employer and employee.
10. Restaurants Canada supports overtime being calculated after every 88 hours over a two-week cycle as this would align with most payroll periods.
11. Restaurants Canada recommends that the government continue to allow rest period exceptions for urgent work, accidents, unforeseeable circumstances, or if it is not reasonable for an employee to take a break.
12. Restaurants Canada strongly recommends maintaining the regular/irregular workday distinction for calculating general holiday pay.
13. Restaurants Canada recommends changing the average daily wage calculation to employees' wages earned in the 28-day period immediately preceding the general holiday as it is an easier calculation that is similar to how most other provinces calculate average daily wages.
14. Restaurants Canada recommends no changes to existing wage deductions provisions.

15. Restaurants Canada agrees with the list of non-hazardous appropriate adolescent jobs listed in the online questionnaire.
16. Restaurants Canada supports the Director of Employment Standards continuing to have flexibility to be able to approve additional jobs for adolescents with parental consent.
17. Restaurants Canada also continues to recommend implementing a youth training wage.
18. Restaurants Canada recommends that no changes be made to the current group termination provisions.
19. Restaurants Canada recommends changing the three-day termination pay requirement from three days to the next regular wage payment date.
20. Restaurants Canada supports administrative penalties where clear there is clear evidence of a violation after an initial warning provided that there is a fair and affordable appeal process and where an employer's record of infractions is re-set if they have no further infractions after a five-year period.
21. Restaurants Canada also supports the idea of progressive penalties.
22. Restaurants Canada does not support mandatory violation fines or stacking penalties.
23. Restaurants Canada supports the existing discretion the Director of Employment Standards has to approve unique work situations and opposes establishing prescriptive criteria for the Director. Restaurants Canada also believes that the Auditor General should have the authority to review permits issued by the Director and make recommendations to assure those permits do not create undesirable exceptions to minimum standards.
24. Restaurants Canada supports implementing new enforcement tools that are fair and balanced for both employers and employees following a comprehensive education campaign and does not oppose most of the tool options provided with the exception of extending the time period for employees to file complaints and extending the time period to recover earnings from an employer.
25. Restaurants Canada strongly opposes changing the current democratic Secret Ballot certification process with a card check certification system.
26. Restaurants Canada strongly opposes any Labour Relations Code revisions that counter the Common Law principle of innocent until proven guilty. It is not appropriate for an employer to be assumed guilty until proven innocent with respect to any unfair labour practice allegations.
27. Restaurants Canada opposes any Labour Relations Code changes regarding First Contract Arbitration.
28. Restaurants Canada strongly opposes the suggestion that franchisors and franchisees should be considered joint or related employers in the Labour Relations Code.
29. Restaurants Canada also opposes collective agreement successorship provisions where a collective agreement is imposed on a new employer who has taken over a business.
30. Restaurants Canada strongly opposes adding Sectoral Bargaining provisions to the Labour Relations Code.