



Review of the Employment Standards Provisions of *The Saskatchewan Employment Act* and Associated Regulations

Responses due by October 31, 2023

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Intent of the Public Engagement

The Government of Saskatchewan is looking for your feedback on a review of the employment standards provisions of *The Saskatchewan Employment Act* and the four associated regulations:

- *The Assignment of Wages Regulations*
- *The Employment Standards Regulations*
- *The Conditions of Employment Regulations*
- *The Minimum Wage Regulations, 2014*

The employment standards provisions of the Act were last substantively reviewed in 2012 when 12 pieces of labour legislation were consolidated into one comprehensive Act. There have been amendments to specific provisions in the intervening years. For example, inclusion of interpersonal violence and public health emergency leaves; expanding compassionate care and parental leaves; and expanding nomination leave to include running for band council.

Since the 2012 review, the employment environment has changed. World events, including the global pandemic, have resulted in the adoption of new work arrangements such as remote and gig work. In addition, workplaces are seeing a greater reliance on technology in order to gain efficiencies and be competitive in the global market.

The review of Part II and the regulations aims to identify: where updates are required; the concerns of Saskatchewan employers and employees; and any redundant requirements or unnecessary red tape. This review is part of the government's ongoing commitment to ensure a fair and balanced employment environment in the province.

While the discussion paper includes a number of topics, we encourage stakeholders to identify any issues or concerns with the provisions of Part II of *The Saskatchewan Employment Act* that will help ensure that employment legislation serves the needs of employees and employers in the modern workplace.

Please submit all written responses no later than October 31, 2023 to:

Employment Standards Review
Corporate Services Division
Ministry of Labour Relations and Workplace Safety
300–1870 Albert Street
Regina, SK S4P 4W1

You can also respond via email: legislation.labour@gov.sk.ca.

Topics for Discussion

Application of Employment Standards Provisions

Exclusion from Provisions

Part II of *The Saskatchewan Employment Act* applies to most provincially regulated employees and employers, with some exceptions.

Section 2-3 of the Act and section 3 of *The Employment Standards Regulations* exclude:

- family businesses that employ only the employer's immediate family members;
- employees whose primary duties consist of actively engaging in farming, ranching or market gardening activities except from the operation of egg hatcheries, greenhouses and nurseries, bush clearing operations and commercial hog operations (only wage assessment provisions apply);
- athletes while participating in their athletic endeavor; and
- sitters.

In addition, section 3 of *The Employment Standards Regulations* excludes some occupations covered by Part II, from specific provisions:

- employees who have a physical or mental disability or impairment and work for a non-profit organization or institution in programs that are educational, therapeutic or rehabilitative (exempt from minimum wage);
- commercial trappers and fishers (exempt from hours of work, layoff provisions and annual vacation);
- employees who perform services that are entirely of a managerial nature (exempt from hours of work, days of rest and overtime pay);
- teachers (exempt from hours of work, overtime pay, annual vacation and public holidays); and
- election officials (exempt from work schedule, overtime pay, annual vacation and public holidays).

There are also exemptions from certain provisions of *The Employment Standards Regulations* for various occupations, including firefighters, newspapers, oil truck drivers, roadbuilders, residential-service facility workers, retail workers, employees engaged in controlling or suppressing fires, live-in care providers and live-in domestic workers, construction workers, employees in the logging industry, employees in mineral exploration north of township 62, professional practitioners and those professionals while learning their profession (medical interns, students-in-law).

Questions for Consideration:

Are the current exclusions to the employment standards provisions appropriate?

Do you see a need to change the current exemptions? To which industries or occupations?

Youth Employment

The minimum age of employment in Saskatchewan is 16 years. However, youth 14 and 15 years of age are permitted to work if they have a written permission of one of their parents or guardians and have completed the Young Worker Readiness Certificate. Even though youth are able to work, there are certain restrictions on hours of work. For example, youth cannot work over 16 hours in a week in which school is in session or after 10:00 p.m. on a day before a school day (section 9.2 of *The Conditions of Employment Regulations*).

The director of employment standards can allow a variation from the youth employment provisions but only if the parent or guardian, employer and young person agree.

Youth employment provisions apply to all industries and occupations covered under Part II of the Act.

Questions for Consideration:

Are the existing provisions adequate? Do you see areas where changes are required?

Definitions of an Employer and Employee

The Saskatchewan Employment Act defines an employer as any person who employs one or more employees (clause 2-1(g)). This includes every person who exercises control or direction of employees or is responsible for paying wages to employees.

An employee is defined in clause 2-1(f) of the Act as a person whom an employer permits, directly or indirectly, to perform work or services and receives or is entitled to wages. This includes interns, trainees, individuals on employment leave and deceased persons who were employees. A student learner is not an employee for the purposes of Part II.

During the last few years, there has been a shift toward more flexible work arrangements such as working remotely instead of an employer-provided workspace. In addition, there are hybrid work arrangements where there is a mix of remote and on-site work. Another trend that has grown over the last few years is reliance on contract workers and growth in the gig economy (who are typically treated as self-employed and exempt). The results of these arrangements are employer-employee relationships that often cross provincial or international boundaries.

Employment standards provisions do not apply if there is no employer-employee relationship. An independent contractor is not an employee; however, regardless of the classification and depending on the level of control an employer has over the contractor's work, it could be determined that an employer-employee relationship exists and Part II applies.

Employment standards provisions apply if the work or assignment is carried out substantively in Saskatchewan. However, our provisions do not apply if the employer-employee relationship is outside Saskatchewan, even if the employee performs incidental work in the province (e.g., attending a conference, meetings or an equipment quality control check). Saskatchewan's employment standards provisions would cover an employee ordinarily working at home in Saskatchewan for a company headquartered in another province. Jurisdiction is determined based on the facts of each situation.

Most jurisdictions do not reference contractors in their definition of an employee. Instead, the guidelines specify that independent contractors are not covered, unless it is found that an employer-employee relationship exists.

Quebec and Yukon include certain types of dependent contract workers in their definitions. New Brunswick and Manitoba exclude independent contractors.

Questions for Consideration:

Are the current definitions of an employer and employee sufficient and appropriate?

Hours

Sections 2-11 through 2-14 of the Act outline requirements regarding hours of work, schedules, overtime, days of rest and meal breaks.

The Act provides for two work arrangements: eight hours per day for five days; or ten hours per day for four days per week. Additionally, modified work arrangements can be entered into by the employee and employer (section 9 of *The Employment Standards Regulations*). This provides flexibility in the hours worked which can be averaged at 40 hours over one week, 80 hours over two weeks, 120 hours over three weeks and 160 hours over four weeks. These written work arrangements include specific restrictions including a requirement that these agreements cannot be more than two years in length.

Work Schedules

Employers must provide work schedules to their employees at least one week prior to the schedule starting, except in emergency circumstances. Such schedules must: cover at least one week; and state when work and meal breaks will begin and end each day.

Rest Period and Meal Break

Employers must provide employees with an unpaid meal break of at least 30 minutes within every five hours of work. An exception to this requirement is if an emergency circumstance exists or if it is not reasonable to take meal breaks. Although there is no requirement in the Act to provide a rest break, if an employer decides to provide one, it must be paid.

Employers are required to provide employees at least eight consecutive hours of rest in any period of 24 hours. Additionally, employers must provide one day off every week, which is considered any seven consecutive days; and in the case of retail trade industry, employers with more than 10 employees must grant employees two consecutive days off.

Right to Disconnect

The global pandemic has accelerated remote work and e-communications. Technology has enabled faster access and easier participation in work regardless of the employee's location. With convenience and productivity on the one side, challenges of balancing work and life demands also occur. Current technology allows employees to be accessible at any point in time and in any location.

The Act and regulations do not have specific provisions on the right to disconnect. Employees are paid for the time when they are at the disposal of the employer (section 2-16 of the Act). The meaning of “at the disposal of the employer” is any time that the employee is under the direction and control of the employer and is available for work, even if the employee does not actually have work to perform. Each situation is different. Depending on the level of control and direction of the employer, the time could be considered as being at the disposal of the employer or non-work time. The more control an employer has over the time when an employee must be available for work, the more likely it is compensable time.

Questions for Consideration:

Are the hours of work provisions appropriate and adequate? Do you see a need to change these provisions? How?

Do these provisions adequately address the needs of the changing workplace?

Are there redundancies or red tape with respect to these requirements?

Wages and Regulation Tips

Employees must be paid their regular wage rate for the time they are scheduled to work or permitted to work unless overtime rules apply. Additionally, employers must pay employees who do not necessarily perform work but are at the disposal of the employer.

In the case of overtime, an employer must pay an employee at least 1.5 times the employee’s hourly wage rate. Overtime is normally payable after eight hours a day or 40 hours a week.

The Act includes provisions on how wages must be paid. Section 2-35 requires payment of wages in Canadian currency, by cheque, direct deposit into a bank account or as prescribed.

Tips and gratuities are not considered wages under the Act. Neither are there any provisions for the administration of tips in Saskatchewan.

Tips and gratuities are regulated in six Canadian jurisdictions. Employers are prohibited from withholding or deducting employees’ tips or gratuities in British Columbia, Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Quebec. The first four allow employers to adopt tip sharing practices for the benefit of all employees.

Questions for Consideration:

Are existing provisions clear and adequate?

Is there a need to regulate the administration of tips and gratuities? If so, how?

Protection When Ill or Injured

Section 2-40 of the Act prohibits employers from taking discriminatory action against an employee for being absent from work due to illness or injury of themselves or a dependent family member. The protection exists for short-term absences of up to 12 days in a year as well as for long-term serious illness or injury of up to 12 weeks. The period of absence can be extended to 26 weeks if the employee is receiving compensation pursuant to *The Workers' Compensation Act, 2013*.

All employees with 13 weeks of continuous employment with the employer can access this protection, but an employee must provide a medical certificate if requested by the employer. In a case of public health emergency, employees are exempt from the length of service and medical certificate requirements.

In Canada, the length of short-term sick leave ranges from three to 12 days. The federal government, British Columbia, Quebec and Prince Edward Island provide 10, five, two and one day of paid sick leave, respectively. Yukon introduced a paid sick leave rebate program that covers five days sick leave for eligible employees and self-employed. Five jurisdictions (federal, Quebec, Alberta, Manitoba and Saskatchewan) provide for a long-term sick leave.

Questions for Consideration:

Are the existing protections for illness and injury sufficient? Why or why not?

Employment Leaves

Sections 2-43 through 2-59.1 of the Act regulate employment leaves. Employees are generally entitled to employment leaves after being in an employer's service for more than 13 consecutive weeks. All leaves are unpaid leaves except for interpersonal violence leave.

Maternity, Adoption and Parental Leaves

Saskatchewan has several leaves that allow employees to take time off to take care of family responsibilities. Pregnant employees are entitled to 19 weeks of maternity leave for a birth of a child. An employee whose pregnancy terminates up to 13 weeks prior to the estimated date of birth due to a miscarriage or a stillbirth is also eligible for maternity leave.

Adoption leave of 19 weeks is also available for the primary caregiver of an adopted child. Further, an employee is eligible for up to 59 or 71 weeks of parental leave depending on whether they took a maternity or adoption leave.

Family Care Leaves

Employees also have access to leaves that allow them to provide care to their seriously ill family members. Employees are entitled to up to 37 weeks or 17 weeks of critically ill family care leave to support employee's child family member or adult family member respectively.

Compassionate care leave allows employees to take up to 28 weeks to provide care to a family member who is gravely ill and who has a significant risk of death within 26 weeks. Employees can also access five days of bereavement leave if the employee's immediate family dies.

Crime-related child death leave is up to 104 weeks and child related to disappearance leave is up to 52 weeks.

Other types of leaves available in Saskatchewan include:

- organ donation leave (up to 26 weeks);
- reserve force service leave (a reasonable period);
- nomination, candidate and public office leave for a reasonable period up to the term of office if elected; and
- citizenship ceremony leave (one day).

Interpersonal Violence Leave

In 2017, Saskatchewan introduced interpersonal violence leave for survivors of interpersonal violence. This leave was further extended to survivors of any form of sexual violence. Employees can take up to ten days (five days are paid) of leave to access support services or relocate to a new home.

Public Health Emergency Leave

In 2020, a public health emergency leave was introduced that applies during a public health emergency. This leave allows employees to take time away from work if required to self isolate or provide care and support to a child family member.

For some leaves, employees may be eligible for employment insurance benefits under the federal *Employment Insurance Act*. Maternity, adoption, parental, compassionate care, critically ill family care and crime-related child death or disappearance are covered by the employment insurance legislation. As a result, provisions respecting these leaves are similar across jurisdictions.

Bereavement leave provisions vary across jurisdictions from three to 10 days. This leave is available to employees who have lost a family member. Alberta and Prince Edward Island explicitly covers miscarriage or stillbirth under the provisions. In Saskatchewan, employees who experienced a loss of pregnancy are eligible for bereavement leave (although not specifically stated in the legislation). Nova Scotia and Quebec have a separate end of pregnancy leave.

Saskatchewan is one of four jurisdictions with the highest number of leaves across Canada. It is also one of five jurisdictions that have an organ donation leave and citizenship ceremony leave and is the only jurisdiction that has a nomination, candidate and public office leave.

Questions for Consideration:

Are the employment leave provisions sufficient? Do you have any suggestions?

Should bereavement leave provisions be clarified to explicitly include end of pregnancy?

Layoff and Termination

Layoff

The Act contains requirements for the employer when laying off or terminating an employee. Clause 2-1(l) of the Act defines layoff as the temporary interruption by an employer of the employment of an employee for a period exceeding six consecutive workdays. This means that the Act allows for an interruption of employment of up to six days without the need to provide a notice of termination or pay instead of notice. These provisions do not apply to come-in care providers but do apply to live-in care providers (section 30 of *The Employment Standards Regulations*).

The length of time before notice is required differs across Canada. Nova Scotia, New Brunswick and Prince Edward Island provide for six days of layoff without notice, similar to Saskatchewan. Newfoundland and Labrador provide for one week. In other jurisdictions the period of layoff ranges between 45 days to six months.

Termination

Employers must give notice of one to eight weeks depending on an employee's length of service with the employer.

In addition, employees, with at least 13 weeks of employment with the employer, must give written notice at least two weeks before ending their employment.

Group Termination

There are additional rules that an employer must follow if there is a termination of employment of 10 or more employees within a four-week period. Written notice must be provided to the minister, each employee and any union representing any of the employees. The length of the notice period is dependent upon the number of employees impacted.

All jurisdictions, except for Prince Edward Island, have provisions regarding group termination notices. The federal government, Ontario, Manitoba, Alberta, British Columbia and Newfoundland and Labrador require a notice if employment of 50 or more employees are terminated. The three territories have a lower threshold at 25 employees. Quebec, New Brunswick and Nova Scotia are similar to Saskatchewan and require a notice if 10 or more employees are terminated.

Questions for Consideration:

Are layoff and termination provisions adequate and relevant?

Authority of Employment Standards Officers

Part II of the Act prohibits employers from taking discriminatory action against an employee due to the employee: being away from work due to illness or injury (section 2-40 of the Act); reporting an offence under a provincial or federal legislation (section 2-42 of the Act); taking a leave, being pregnant, requesting employer to comply with or seeking enforcement of employment standards provisions and others (section 2-8 of the Act).

If an employer takes discriminatory action against an employee, the court may, in addition to any penalty, in accordance with subsection 2-97(3) order the employer to:

- reinstate the employee;
- pay the employee wages retroactive to the date of the discriminatory action; and
- cease the discriminatory action.

Saskatchewan is one of four jurisdictions that do not provide officers or directors with the authority to reinstate an employee and pay wages lost due to discriminatory action.

Questions for Consideration:

Should the director of employment standards have the authority to order an employee's reinstatement and payment of lost wages due to discriminatory action, subject to standard appeal rights?

Summary

The government is asking your feedback on a review of Part II of *The Saskatchewan Employment Act* and the associated regulations. While specific topics for discussion have been provided, we are interested in your input on any employment standards provisions.

Please submit all written responses no later than October 31, 2023 to:

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Resources

- [*The Saskatchewan Employment Act*](#)
- [*The Employment Standards Regulations*](#)
- [*The Minimum Wage Regulations, 2014*](#)
- [*The Assignment of Wages Regulations*](#)
- [*The Conditions of Employment Regulations*](#)

