

Minimum Wages – Model Legislation Proposals

Section 16(1) of the Employment Standards Act simply states that “An employer must pay an employee at least the minimum wage as prescribed in the regulations.”

Section 15 of the Employment Standards Regulation currently states that the general minimum wage is \$9.50 an hour. This minimum wage regulation is scheduled to increase to \$10.25 an hour on May 1, 2012. However, there are separate minimum daily wage regulations for Home Support Workers and Live-in Camp Leaders, minimum monthly wage regulations for Resident Caretakers, minimum piece rate regulations for Farm Workers who hand harvest berry, fruit or vegetable crops, and a 75 cents per hour lower minimum hourly wage for Liquor Servers in Sections 16, 17, and 18.

The lower minimum hourly wage regulation for Liquor Servers was first introduced on May 1, 2011. And the hand harvesting piece rates for farm workers were frozen at their May 1, 2011 levels effective November 1, 2011. Historically all of these separate minimum wage rates have been increased by the same amount as the general hourly minimum wage, the exception now being the hand harvester piece rates that were announced to be frozen on March 9, 2012.

Hourly, Daily & Monthly Minimum Wages

Propose: That effective January 1, 2013 the minimum hourly wage be increased to \$12 an hour, and that thereafter, either in the Act or the Regulations, an independent Minimum Wage Review Commission or Panel be established with the responsibility and authority to review and order on an annual basis what the minimum hourly, weekly and monthly wage rates shall be in the Regulation. In determining what the minimum wages shall be ordered such a commission or panel shall be guided by such factors as average and median weekly and hourly earnings in the province, average provincial gross domestic product per capita, the provincial cost of living, the Low Income Cutoff for an adult and child in major metropolitan areas.

Liquor Servers

Propose: Section 18.1 of the Regulation establishing a lower minimum hourly wage for Liquor Servers be abolished so that all servers are covered by the general minimum hourly wage regulation.

Farm Worker Hand Harvesting Piece Rates

Propose: Section 18 of the Regulation establishing minimum piece rates for the harvesting of certain berry, fruit and vegetable crops be abolished so that all farm workers are covered by the general hourly minimum wage regulation.

In addition the regulation could state that in the event that an employer chooses to pay incentive piece rates for certain products at certain times of the

year, the rule should be (as in Ontario and under Temporary Foreign Worker programs) that such rates must be set at a level so that with reasonable effort farm workers can earn at least the minimum hourly wage for all hours worked.

In Ontario the rules provide that:

Harvesters can be paid on a piece-work basis, but the rate must be set at a level so that with reasonable effort they can earn at least the minimum [hourly] wage for all the hours they worked. The piece-work rate is set according to what is standard pay in an area for the particular crop.

Tips or Gratuities

The only reference to employee gratuities in the Employment Standards Act is under Part 3 – Wages, Special Clothing and Records in Section 21 regarding deductions not permitted from employee's wages:

(2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.

(3) Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this act applies to the recovery of those wages.

Therefore what is missing from the Act is a section dealing specifically with an employee's exclusive right to retain all tips or gratuities received for services rendered during the course of employment.

Propose: New section under Part 3 copied from the Newfoundland & Labrador Labour Standards Act, as follows:

Tips or Gratuities

(1) Tips or gratuities are the property of the employee to whom or for whom they are given.

(2) An employee shall not be required to share a tip with an employer, a manager or supervisor of the employer or an employer's representative.

(3) Where a surcharge or other charge is paid instead of a tip or gratuity, the amount paid shall be considered a tip or gratuity for the purpose of subsection (1).

(4) Where a surcharge or other charge is paid instead of a tip or gratuity, or where the amount of the tip or gratuity is itemized on the record of a credit card or debit card payment, the employer may deduct an amount required to be

deducted from income by an Act of the province or of Canada from the amount due the employee.

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