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Briefs

Review of Child Labour Regulations Under the BC Employment Standards Act

Read the full submission here.

Submission to the BC Ministry of Labour on the *Employment Standards Act* and child employment

The British Columbia Federation of Labour (BCFED) appreciates the opportunity to participate in the review of child labour regulations under the *BC Employment Standards Act* (ESA). The BCFED considers the consultation process as a valuable opportunity to make recommendations to better protect children and youth in BC workplaces.

The BCFED represents more than 500,000 workers of our affiliated unions in all industries in British Columbia. The BCFED is recognized as being the voice for all workers in the province. Our connection to workers and their families across industries provides us with a unique perspective on the provisions of the ESA.

Background

On April 29, 2019, British Columbia's minister of labour introduced Bill 8, an amendment to the provincial *Employment Standards Act (ESA).* In compliance with child labour standards, specifically, the International Labour Organization's (ILO) Convention 138 on the minimum age of employment – and the Government of Canada's own 2016 ratification of the convention, Bill 8 raised the minimum age for child and youth employment in BC from 12 to 16.

The legislation prohibits hazardous work for persons below the age of 16, and compels government to both define hazardous forms of employment which should be prohibited from hiring children or youth, as well as define a list of acceptable tasks and occupations, termed "light work" in which youth aged 14-15 could be legally employed.

In this submission the ministry is asking parents, guardians, employers, businesses, organizations and youth for their perspectives on the following:

- what types of work are appropriate for children and youth;
- what special rules (if any) should there be for children and youth engaged in this work; and
- should there be exemptions and what might those be?

A list of "light duties" does not give employers a pass on their health and safety obligations, as all workers regardless of age have a right to a healthy and safe workplace.

Light work

ILO Convention 138 sets out the standard for "light work stating that it is work that is:[1]

a. Not likely to be harmful to (children's) health or development; and
b. Not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received."

The BCFED strongly agrees that schooling must be the priority for young people aged 18 and under.

Addressing child poverty

The government must continue to take bold action to eliminate child poverty. The ILO recognizes that child and family poverty is the largest factor in driving children and youth to work. Attempting to determine what may be considered acceptable employment for youth requires us to confront another question – why do young people work, and should they?

“Light work” in physical and physiological terms

From a physical and physiological perspective, any employment deemed “light work” must recognize that 14- and 15-year old youth are in a critical stage of physiological growth and development. Any jobs which require heavy lifting, strenuous (and potentially injurious) physical activity, use of potentially injurious tools, or operation of equipment which could cause serious injury must be excluded from the list of acceptable employment for youth.

“Light work” in social and psychological terms

From a social and psychological perspective, any employment deemed “light work” must not place unacceptable pressures on youth. These include pressures to engage in work that is unsafe, work that contravenes labour regulations, or work that exploits the child or youth in question.

It is essential to include this metric in developing legislation to determine what types of employment could be considered “light work.” Given their youth, relative lack of experience in the labour market, typical lack of access to information regarding workers’ rights, and their relative lack of economic security, young people are frequently exploited by their employers. This exploitation is not always illegal, but it nonetheless violates the dignity and humanity of the young person in question.

No one size fits all approach

A one size fits all approach, or the blanket approval of specific industries is not acceptable. Regulations must be specific about the tasks that can be performed within an industry. Not all tasks in offices, agriculture, sports and recreation, food services, grocery, and home and yard maintenance are safe and appropriate for children and youth to perform. For example, stocking shelves at a small

community grocery differs from stocking shelves with a fork-lift or lifting 50-pound bags at a major wholesale food store; and refereeing a soccer game differs from leading rock climbing or other adventure sports activities.

Family-owned businesses

Family-owned businesses should not receive special treatment under the law. The same rules must apply.

The BCFED strongly opposes any exemption for family-run businesses in the ESA or the *Workers' Compensation Act* (WCA) and Occupational Health and Safety Regulation.

Work Permits

The work permit process must be rigorous and should be only used in exceptional circumstances where the benefit of employment flows directly to the child or youth. Permitting must not be used to circumvent the new laws. The BCFED recommends that the permitting process include a statement from parent and from child/youth, the employer must provide the terms and conditions of the job, evidence of a health and safety program and specific job evaluation, work schedule and hours of work and evidence of the age appropriateness of the work.

Agriculture/farming

Resistance to tougher laws protecting children from working often comes from the agriculture sector. Though there may be acceptable "light work" for young people on farms, most agricultural work is high risk. Work involving the operation of machinery such as conveyors, tractors, harvesters, the application of agricultural pesticides, working unsupervised with large animals, work completed at heights, in confined spaces or on ladders, and work that puts ergonomic strain on young people's growing bodies must be prohibited.

According to Canadian Agricultural Injury Reporting's 2016 *Report on Agriculture-related Fatalities*, 42 young people between the ages of 10 and 19 were killed on farms between 2003 and 2012[2]. The report identifies the following as the top ten causes of fatalities on farms: run over, roll over, pinned or

struck, animal related, entanglement, traffic collision, struck by object falling or propelled, struck by non-machine object, asphyxia from grain or soil, and fall from height. Regulations must ensure that children are not exposed to any of these workplace hazards on farms.

Definition of sitter

There should be no exemptions to the ESA and, therefore, no separate definition that would exempt sitters from coverage under the Act. The BCFED supports the Migrant Worker Centre's call for no exemptions for sitters.

Conditions for Employment of Children in Recorded Entertainment

Prior to 2003, the Director of Employment Standards granted permission for producers of recorded media to hire children if and only if specific conditions were met. Under these conditions, producers were required to put child performers' best interests at the centre of their participation in their production. However, in 2003 the provincial government added regulations that:

- Dispensed with the requirement for producers to obtain a permit when hiring child performers of nearly any age, including infants as young as 14 days old, and
- Removed many of the rights that child performers and their parents/guardians previously enjoyed, such as adequate education conditions and protections for infants.

The BCFED recommends that the BC Ministry of Labour review Division 2 of the Employment Standards Regulations and develop new regulations that protect the well-being of children and infants working in the recorded entertainment industry.

Occupational Health and Safety

In BC from 2007 to 2017, almost 1,000 14- and 15-year old youth were compensated for workplace injuries costing the WCB more than five million dollars.[3]

A 2008 study of youth employment in Canada found in BC that 41.5% of children ages 12 to 14 were engaged in some type of work during the year; and the same study found that only 3.5% of these workers reported injuries. [4] This research provides evidence of the huge problem of under-reporting.

There are laws in BC that protect the occupational health and safety of all workers.

All employers in British Columbia must register with the WCB and must be compliant with the requirements of the *Workers' Compensation Act* and the Occupational Health and safety regulations (OHSR).

All workers are covered by health and safety legislation that requires employers to ensure the health and safety of all workers working for the employer.

WCA Division 3, Section 115 General duties of employers places the onus on the employer to ensure their workplace is safe and healthy for all workers:

1. *Every employer must*

a. *Ensure the health and safety of*
    i. *All workers working for that employer, and*
    ii. *any other workers present at a workplace at which that employer's work is being carried out*

All workers have the right to know about workplace hazards, the right to participate in health and safety, the right to refuse unsafe work and the right to no reprisals. Workers have the right to report any health and safety concerns to their employer or supervisor.

Employers are required to identify hazards, conduct risk assessments, investigations and implement corrective measures on all work, including work that may be considered "light duties."

Under *Part 3 Regulation 3.22 Young or New Workers*, an employer must ensure that before a young (any worker under 25) or new worker begins work they must be given health and safety orientation and training specific to that workplace.

It has been shown in research that protective legislation must be actively enforced particularly with young workers. They have a significant level of non-reporting of workplace injuries, for reasons such as internalizing fault, injuries are an expected part of the job, reporting is ineffective because changes are not made, and reporting can result in retaliation.

Hazardous work

Hazardous work is defined by the International Labour Organization (ILO) recommendation R190 - Worst Forms of Child Labour Recommendation, 1999 (No. 190) as:

3. Work which exposes children to physical, psychological or sexual abuse;

Work underground, under water, at dangerous heights or in confined space;

Work with dangerous machinery, equipment and tools or which involves manual handling or transport of heavy loads;

Work in an unhealthy environment which may, for example, expose children to hazardous substance, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and

Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Prohibited industries and tasks

Beyond the evaluation of specific types of employment, the provincial government must prohibit certain industries from employing any youth below the age of 16. Industries which involve heavy equipment, high risk of injury, or would regularly place youth workers in situations in which they could be harmed, must be banned from employing youth. A list of prohibited industries for youth under 16 must be developed and should include areas such as construction, forestry, mining, manufacturing, security, corrections and policing, industrial agriculture and industrial food production.

Further a list of hazardous work tasks should be established, and youth under 16 must not perform these tasks regardless of the industry: (not an exhaustive list)

Heavy lifting, working near propane or fuel, operating mobile equipment, using gas-powered equipment such as lawnmowers, power tools, sharp objects such as box cutters, meat slicers, pressure washers, scaffolds and swing stages, use or application of chemicals and pesticides, abatement of asbestos or other cancer-causing substances, exposure to radiation, work in extreme hot or cold temperatures, confined space, being subjected to workplace violence and sexual assault.

When and how much can 14- and 15-year old youth work

All countries who are signatory to the ILO Convention 138 have set hours of work for child and youth workers. Work should not interfere with schooling, and we support strict limits on the number of hours and times of day children and youth can be employed.

The BCFED recommends amending the current hours of work to follow international standards. These hours of work are based on the legal limits for children and youth working in the UK.[5] The limited hours on one weekend day are intended to ensure that 14 -and 15- year old youth have an adequate amount of time free from school and work.

- Not during school hours;
- Limited number of hours on school days:
    - Maximum of eight hours per week and a maximum of two hours on school days and one other day per week; and
    - Maximum of five hours on a non-school day;
- Limited time of day:
    - Not between 9:00 pm and 7:00 am;
- School holidays:

- Maximum of 25 hours per week with a maximum of 5 hours per day, weekdays and Saturdays;
- Maximum of two hours on Sundays; and
- Must have a minimum of a two-week break during school holidays in calendar year.

Conclusion

The BCFED appreciates the opportunity to provide our submission on the review of the BC Child Labour Regulations under the ESA. We are confident the Ministry of Labour will seriously consider this submission and implement our recommendations in support of improved working conditions for children and youth in BC.

Summary of Recommendations

Regulations must be developed based on the principle that children and youth 15 years and younger should be focused on their schooling. Any work performed by children and youth 15 years and under must be both physiologically and psychologically healthy and safe and be of express benefit to the child or youth.

Regulations must be specific about the tasks that can be performed within that industry.

The BCFED recommends that there be a list of both hazardous industries and hazardous tasks. The regulations must be clear that no child or youth under 16 may work in these industries or perform these tasks.

There must not be any special exemptions for family businesses or specific industries. All workplaces must be held to the same employment and occupational health and safety standards.

There should be no exemption to the ESA for sitters.

The BCFED recommends that the BC Ministry of Labour review Division 2 of the Employment

Standards Regulations and develop new regulations that protect the well-being of children and infants working in the recorded entertainment industry.

The BCFED recommends that the permitting process include:

- A statement from parent and from child/youth
- Terms and conditions of the job, provided by employer
- Evidence of the WCB young and new worker health and safety orientation
- Training regarding worker rights under the ESA
- Specific job and task evaluation
- Work schedule and hours of work
- Evidence of the age appropriateness of the work.

The BCFED recommends all employers who are employing workers under the age of 16 must validate and document the age of young worker.

All employers who are employing workers under the age of 19 must register with both the Workers' Compensation Board (WCB) and the Employment Standards Branch (ESB).

The BCFED recommends the WCB and ESB develop a proactive and ongoing monitoring and enforcement strategy to ensure compliance with occupational health and safety and employment standards requirements. Neither the WCB nor the ESB can rely upon a complaint-driven system. The results of this monitoring should be released to the public annually.

The BCFED recommends the BC Ministry of Labour implement an advisory group to monitor and make recommendations on the regulations. The group should be made up of representatives from ESB, WCB, employers, labour, and community groups to increase education, understanding and compliance with all laws that apply to the employment of workers under the age of 19 in BC.

The BCFED recommends the following maximum hours of work for 14- and 15-year olds performing light work:

- Not during school hours;

- Limited number of hours on school days:
    - Maximum of eight hours per week and a maximum of two hours on school days and one other day per week; and
    - Maximum of five hours on a non-school day;
- Limited time of day:
    - Not between 9:00 pm and 7:00 am;
- School holidays:
    - Maximum of 25 hours per week with a maximum of 5 hours per day, weekdays and Saturdays;
    - Maximum of two hours on Sundays; and
    - Must have a minimum of a two-week break during school holidays in calendar year.

Other suggested reading:

First Call BC. “Child Employment Standards Improvement Project: Update, FAQs, Case Stories and Background.” First Call BC Child and Youth Advocacy Coalition. May 2019.

First Call BC. “B.C. Child and Youth Employment Standards Policy Recommendations.” First Call BC Child and Youth Advocacy Coalition. August 31, 2019.

Migrant Workers Centre submission on amendments to *the Employment Standards Act* to Minister of Labour Harry Bains, August 31st, 2018

Canadian Paediatric Society position statement on child and youth injury prevention : a public health approach, Nov 2, 2012

Proposed child labour laws are naïve and dangerous, Bob Barnetson, Parkland Institute Alberta https://www.parklandinstitute.ca/proposed_child_labour_laws_are_naive_and_dangerous

[1] https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R190

[2] https://www.cair-sbac.ca/wp-content/uploads/2017/02/CASA-CAIR-Report-English-FINAL-Web.pdf

[3] https://firstcallbc.org/child-labour-in-bc/

[4] https://www.iwh.on.ca/journal-articles/employment-patterns-and-work-injury-experience-among-canadian-12- to-14-year-olds

[5] https://www.gov.uk/child-employment/restrictions-on-child-employment