

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

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Canadian Union of Public Employees
Saskatchewan Division
306-757-1009
www.sk.cupe.ca

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INTRODUCTION

The Canadian Union of Public Employees, Saskatchewan Division, welcomes the opportunity to participate in this review of Part II (Employment Standards) of *The Saskatchewan Employment Act*.

The Canadian Union of Public Employees (CUPE) is the largest union in Saskatchewan, representing over 30,000 public sector workers in health care, school boards, municipalities, universities, libraries, community-based organizations and various boards and agencies.

As the Government of Saskatchewan's consultation discussion paper points out, the province's employment standards legislation was last reviewed in 2012 when the Government of Saskatchewan decided to consolidate 12 separate labour statutes, including *The Labour Standards Act*, *The Trade Union Act* and *The Occupational Health and Safety Act*, into one consolidated statute, *The Saskatchewan Employment Act*, which became law in 2013.

Some additional amendments to Part II of the SEA have been made since this time, including welcome expansions of compassionate care and parental leaves and the introduction of paid interpersonal violence leave.

However, a more thorough modernization of employment standards is required given the emergence of gig work, new technologies and changing work arrangements, such as remote work, brought about by the global COVID-19 pandemic.

The provisions of Part II of *The Saskatchewan Employment Act* set out the statutory minimum of employment standards for the workers of this province. While collective agreements at unionized workplaces typically exceed these minimum standards, in some instances, a collective agreement may be silent on an issue, like layoffs, or a provision may simply refer to the entitlement set out in the SEA. So, while Part II of the Act mostly affects non-unionized workers, these employment standards set an important floor for all workers of Saskatchewan which employers must abide by.

APPLICATION OF EMPLOYMENT STANDARDS PROVISIONS

Exclusion from Provisions

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?

CUPE Saskatchewan agrees with the Saskatchewan Federation of Labour (SFL) submission that exemptions and exclusions to employment standards should be avoided and eliminated as much as possible to expand coverage to all working people and to simplify the administration and enforcement of these standards.

Youth Employment

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

While the minimum age of employment in Saskatchewan is 16 years, *The Conditions of Employment Regulations* allow “youth” of 14 and 15 years of age to work in certain industries (hotels, restaurants, educational institutions, hospitals and nursing homes) with the written permission of their parents or guardians and upon completion of the Young Worker Readiness Certificate. The same regulations restrict youth from working more than 16 hours per week in which there is a school day and from working after 10:00 p.m., on a day preceding a school day.

CUPE Saskatchewan submits that these restrictions on youth employment should not be weakened or made more flexible. If anything, they should be tightened and made more restrictive. The Young Worker Readiness Certificate should become more comprehensive given that young workers are more likely to suffer higher rates of workplace injuries and deaths. Statistics Canada has also found a strong correlation between long hours worked by students and high school dropout rates.¹

As a society, we have an obligation to ensure that children have the fullest opportunity to learn read, play, and participate in sports, music, art and other recreational activities. In short, children need time to be children. They should not be a source of cheap labour for business.

¹ Tracey Bushnik, Learning, Earning and Leaving: The relationship between working while in high school and dropping out, *Statistics Canada*, 2003, p. 10-11.

Recommendation: Maintain the current regulatory restrictions on youth employment, including continuing to require the written approval of a parent or guardian for 14 and 15 year olds to work, and expanding the Young Worker Readiness Certificate.

Definitions of an Employer and Employee

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

As the discussion paper notes, recent years have seen a shift towards more flexible work arrangements, such as remote and hybrid work, but also an increasing reliance on contract work and “gig workers.”

Gig workers typically enter into short-term contracts with firms or individuals to complete specific and often one-off tasks. The term “gig work” includes traditional independent contractors and other freelancers, but also includes a growing amount of people whose work is mediated through online platforms, such as Uber. Gig work is more prevalent among immigrants than among Canadian-born people. Since employers often classify gig workers as self-employed independent contractors and not employees, these workers often do not have the protections afforded to employees under Canadian labour statutes, including employment standards, minimum wage and occupational health and safety protections.

CUPE Saskatchewan agrees with the SFL submission’s call for a clear statutory definition of employee to prevent the erosion of employment standards in our province. This definition of “employee” should encompass “any person who performs labour or supplies services for monetary compensation, as well as a presumption of employee status unless the hiring entity can establish that the person is not an employee.” Adopting such a definition would extend employment standards protection to more gig workers and dependent contractors.

Recommendation: That Part II of the SEA be amended to define “employee” to cover any person who performs labour or supplies services for monetary compensation, as well as a presumption of employee status unless the hiring entity can establish that the person is not an employee.

Hours

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?

CUPE Saskatchewan agrees with the SFL submission that the Act should be amended to strengthen protections and restrictions on working long hours. We disagree with any notion that the Act or regulations include any redundancies or red tape with respect to those requirements. These employment standards provisions must not be weakened in any way, but rather upheld through vigorous enforcement.

Currently, an employer must provide at least one week's notice of the work schedule to their employees. **We echo the SFL in calling for this notice of work schedule to be in writing. There should also be dedicated provisions to require advance notice of shift change.**

Recommendation: That Part II of the SEA require notice of work schedules be provided in writing.

Right to Disconnect

The emergence of the COVID-19 pandemic in March 2020 forced many employees to work remotely from home in order to curb transmission of the virus. Many employers have continued to embrace remote work, or some hybrid version of this arrangement, as the pandemic has receded.

As noted in the SFL brief, employers have promoted the proliferation of digital platforms, smart phones and apps as a way to reduce costs, intensify work, schedule staff in a more flexible manner, and boost productivity and profit-margins. This has blurred traditional lines between work and home.

While many employees prefer the flexibility and convenience of remote work, the constant connection with work beyond normal working hours can negatively impact the health and wellbeing of remote workers. These negative health results include anxiety, depression and burnout.

In 2020, the Government of Canada established the Right to Disconnect Advisory Committee to conduct consultations with a view to developing policies that would support better work-life balance and wellbeing for federally regulated workers.

Even before the pandemic, France, Italy and Spain brought in a legislated right to disconnect.

Ontario's *Employment Standards Act* was recently amended to include right to disconnect provisions. In this legislation "disconnecting from work" is defined to mean "not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work." Ontario's legislation also requires that a written policy addressing disconnecting from work is developed for workplaces of 25 or more employees.

As the discussion paper notes, Section 2-16 of the SEA requires workers to be paid for the time when they are at the disposal of the employer. This applies even when the employee does not actually have work to perform, such as requiring an employee to remain at work over the meal break.

Recommendation: That Part II of the SEA be amended to enshrine the right to disconnect for Saskatchewan workers and require a written policy for all workplaces with 25 or more employees.

Wages and Regulations of Tips

Are existing provisions clear and adequate? Is there a need to regulate the administration of tips and gratuities? If so, how?

Unfortunately, many low-paid workers in the service industry need to rely on customer tips to help make ends meet. Too often though, customer tips meant for workers are instead appropriated by the employer as a form of "tip theft" to pay for staff parties, cover the costs of debit and credit card transactions or simply to pad the company's profit margins.²

This is unacceptable. Tips and gratuities should be viewed as part of an employee's overall remuneration.

As the discussion paper notes, tips and gratuities are regulated in six Canadian provinces, but unfortunately not in Saskatchewan. This discrepancy must be fully addressed as part of this review.

CUPE Saskatchewan agrees with the SFL submission that this review should look to the provisions of Ontario's *Employment Standard Act* which prohibit employers from

² Celina Aalders, "Halifax advocacy group urges Nova Scotia to ban 'tip theft'," CBC News, June 28, 2023 accessed at <https://www.cbc.ca/news/canada/nova-scotia/tip-theft-halifax-worker-s-action-centre-1.6890276>

withholding tips or other gratuities from an employee, deducting from an employee's tips or gratuities or requiring an employee to return or give their tips or gratuities to their employer. The Ontario legislation also provides a detailed definition of “tip or other gratuity.”

Recommendation: That Part II of the SEA be amended to prohibit employers from withholding, deducting or appropriating employees' tips and gratuities.

PROTECTION WHEN ILL OR INJURED

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

The COVID-19 pandemic clearly exposed the weaknesses of our illness and injury protections in our employment standards legislation.

Early in the pandemic, the Government of Saskatchewan introduced job protection leave to provide expanded unpaid leave without the requirement of sick notes. But this initiative, though welcome, did nothing for workers without paid sick leave who could not afford to lose even one day of pay.

Throughout the pandemic, workplaces across the province were often the site of most COVID-19 outbreaks. For too many workers, the choice came down to staying home or going to work sick so they could pay for rent or put food on the table. This had catastrophic effects for these workers, their co-workers and family members.

While the vast majority of unionized workers have access to paid sick leave, too many non-unionized workers, temporary workers and low-paid workers have no paid sick leave at all. As outlined by a November 2022 report by *The Globe and Mail*:

A Statistics Canada report from 2020 said just over 50 per cent of workers who had worked in the past two years had access to paid sick leave in their last jobs. Among temporary workers, only 40 per cent were paid while taking sick leave. According to a 2022 report from the Decent Work and Health Network, a nonprofit organization made up of health care workers, almost 60 per cent of workers in Canada do not have paid sick days. That proportion is 70 per cent among workers earning less than \$25,000 a year, according to the report.³

Some provinces had legislated paid sick leave in their employment standards prior to the pandemic. This included Prince Edward Island that provides one paid day per year after five

³ Vanmala Subramaniam and Chris Hannay, “Nearly three years into the pandemic, most provinces haven't made permanent changes to paid sick-leave laws,” *The Globe and Mail*, November 20, 2022

years of employment and Quebec which provides two paid sick leave days per year. While some jurisdictions, like Ontario, introduced temporary sick leave days, British Columbia became the only province to legislate five permanent paid sick days per year, an initiative that was directly linked to the pandemic. The federal government, for its part, increased paid sick leave provisions in *The Canada Labour Code* from three days per calendar year to 10 days per calendar year.

Some will argue that the requirement to provide paid sick leave is too much of a burden for employers, that it would cause bankruptcies and job loss. However, a 2021 report by the Centre for Future Work calculated that the impact of legislating 10 days of paid sick leave in B.C., would only amount to just 0.21% of existing business expenses and would have no measurable impact on overall competitiveness of profitability. When the benefits that will flow to business are considered, such as reduced contagion among co-workers and customers, better staff retention and stronger customer confidence, the cost impact is negligible.⁴

Saskatchewan’s existing protections for illness and injury are clearly insufficient by comparison with other jurisdictions. They also leave many workers vulnerable in the event of a future health crisis.

CUPE Saskatchewan recommends that the Government of Saskatchewan amend the SEA to require every employer to provide a minimum of 10 paid sick leave days per year to each employee.

Under Part II of the SEA, employees have job protection for long-term serious illness or injury of up to 12 weeks in a 52-week period. In contrast, *The Canada Labour Code* allows for a medical leave of absence from employment of up to 27 weeks for personal illness or injury. This leave period aligns with the recent extension of Employment Insurance sickness benefits from 15 weeks to a maximum of 26 weeks.

Recommendation: That Part II of the SEA be amended to extend job protection for long-term serious illness or injury to at least 26 weeks to align with the maximum EI sickness benefit period.

⁴ Jim Stanford, “Estimates of the Gross Cost of Paid Sick Day Provisions in British Columbia,” Centre for Future Work, November 2021, accessed at <https://centreforfuturework.ca/2021/11/15/10-paid-sick-days-would-have-little-impact-on-business-costs/>

EMPLOYMENT LEAVES

Are the employment leave provisions sufficient? Do you have any suggestions? Should bereavement leave provisions be clarified to explicitly include end of pregnancy?

Bereavement Leave

When a member of an employee's immediate family dies, a Saskatchewan employee with at least 13 weeks of employment with an employer is entitled to bereavement leave of up to five unpaid working days.

Several other jurisdictions allow for paid bereavement leave.

For instance, *The Canada Labour Code* provides for bereavement leave of up to 10 days, with the first three days paid leave.

Quebec's *Labour Standards Act* provides for two days with pay and three days without pay for death and funeral leave, while the employment standards statutes in Prince Edward Island and Newfoundland and Labrador each provide for one day of paid bereavement leave.

Recommendation: That Part II of the SEA be amended to increase bereavement leave to 10 days, including three paid days, when an immediate family member dies. The definition of "immediate family member" should also be broadened.

Furthermore, as the discussion paper notes, Part II of the SEA does not expressly allow employees who experience a loss of pregnancy to access the bereavement leave provisions of the Act. While the Employment Standards branch currently interprets a loss of pregnancy to be eligible for bereavement leave, CUPE Saskatchewan agrees that this current practice should be formalized with an amendment to the Act.

Recommendation: That Part II of the SEA be amended to expressly allow employees who suffer a loss of pregnancy to access the bereavement provisions of the Act.

Personal Leave

The Canada Labour Code ensures that workers employed in federally regulated sectors can access five days of personal leave per calendar year, with the first three days paid if the employee has worked for their employer for at least three months. Personal leave can be taken for:

- Carrying out responsibilities related to the health or care of any of their family members;
- Carrying out responsibilities related to the education of any of their family members who are under 18 years of age;
- Addressing any urgent matter concerning themselves or their family members;
- Attending their citizenship ceremony under the *Citizenship Act*; and
- Any other reason prescribed by regulation.

Many of CUPE's collective agreements in Saskatchewan include paid personal leave or family leave. All workers would benefit from similar short-term leave provisions.

Recommendation: That Part II of the SEA be amended to allow employees five days of personal leave per calendar year, with the first three days paid leave.

LAYOFF AND TERMINATION

Are layoff and termination provisions adequate and relevant?

Saskatchewan's employment standards legislation has among the strongest layoff and termination provisions in the country. These provisions should not be weakened in any way.

On the contrary, CUPE Saskatchewan agrees with the SFL submission that our province's layoff and termination laws can be further strengthened to provide more security for working people.

Recommendation: That Part II of the SEA be amended to require 16 weeks' notice for a group termination, similar to *The Canada Labour Code*, up from the current 12 weeks' notice, and the establishment of a joint planning committee, including representatives of laid-off workers, to assist with labour adjustment and ensure that laid-off workers are paid the monies owed to them.

Recommendation: That Part II of the SEA be amended to require a minimum of two weeks' notice of individual termination, instead of one week's notice.

AUTHORITY OF EMPLOYMENT STANDARDS OFFICERS

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?

As noted by the discussion paper, 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 related to the employee being pregnant, absent from work due to illness or injury, taking a leave entitlement or other protected rights under the pertinent employment standards statute.

Recommendation: The SEA be amended to give employment standards officers the authority to reinstate an employee and pay lost wages due to discriminatory action.

MINIMUM WAGE

During the 1970s, Saskatchewan's minimum wage was among the highest in the country. In recent years, however, Saskatchewan's minimum wage has ranked as one of the lowest among all provinces and territories.

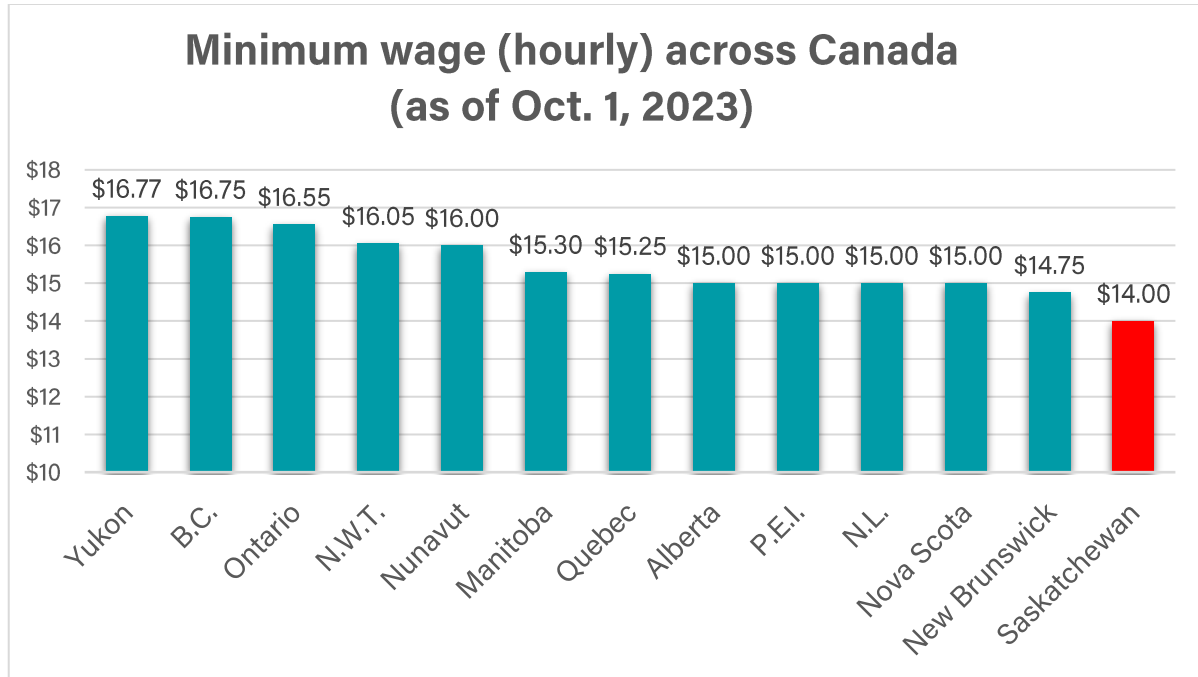
On May 3, 2022, the Government of Saskatchewan announced increases in the minimum wage to reflect "market adjustments" due to high levels of inflation. As a result of this announcement, the minimum wage would increase from \$11.81 per hour to \$13.00 per hour on October 1, 2022 and to \$14.00 per hour on October 1, 2023 and \$15.00 per hour on October 1, 2024.⁵

This announcement signaled a welcome, if temporary, departure from relying on the traditional indexation formula, set out in *The Minimum Wage Regulations*, 2014. This

⁵"Minimum Wage Will Increase to \$13 Per Hour This Year, \$15 by 2024," Government of Saskatchewan news release, May 3, 2022, accessed at <https://www.saskatchewan.ca/government/news-and-media/2022/may/03/saskatchewan-minimum-wage-to-receive-market-adjustment>

formula gives equal weight to changes to the Consumer Price Index and Average Hourly Wage for Saskatchewan.

Despite the Government of Saskatchewan’s recent larger-than-average hikes to the minimum wage, **our current minimum wage of \$14.00 per hour is still the lowest in the country**, as shown in the chart below.



A recent report by the Canadian Centre for Policy Alternatives, Saskatchewan Office, entitled *Making a Living in the Age of Inflation*, examines Saskatchewan’s minimum wage in the context of a growing cost-of-living crisis. This report, released prior to the increase in the minimum wage from \$13.00 per hour to \$14.00 per hour, recently calculated that a living wage for a family of four, with two parents working full-time, was \$17.80 per hour in Regina and \$18.95 per hour in Saskatoon.

As CCPA Saskatchewan concludes:

As in previous years, the 2022 living wage calculation again demonstrates the inadequacy of the Saskatchewan government’s current minimum wage of \$13 per hour and its target of \$15 per hour by 2024. Inflation has eaten into any gains the province’s previous minimum wage rate hikes may have made, and as the living wage rate makes clear, the government’s target minimum wage rate of \$15 per hour by 2024 was already inadequate in 2021, and even less so after almost a year and a half of punishing inflation.⁶

⁶ CCPA Saskatchewan Office, *Making a Living in an Age of Inflation: The 2022 Living Wage for Regina and Saskatoon*, September 2023.

Recommendation: That the Government of Saskatchewan immediately increase Saskatchewan’s minimum wage to \$15 per hour.

Recommendation: That the current formula set out in *The Minimum Wage Regulations, 2014* be revised to ensure that regular increases to the minimum wage adequately cover increases in the cost of living to provide a living wage.

PUBLIC HOLIDAYS

The discussion paper does not seek feedback on the provision of *The Saskatchewan Employment Act* that set out the list of public holidays.

The National Day for Truth and Reconciliation (September 30) is currently recognized as a paid, statutory holiday by the federal government, British Columbia, New Brunswick, Prince Edward Island, the Northwest Territories, Nunavut and Yukon. Manitoba will likely join this list of provinces and territories given the results of the recent provincial election.⁷

According to Statistics Canada’s 2021 Census, Indigenous people – First Nations, Métis, or Inuit – account for 17.0% of Saskatchewan’s population. After Manitoba, Saskatchewan’s population has the highest percentage of Indigenous people among the provinces.⁸

Given the above, and the tragic history of residential schools in our province, it is overdue that the Government of Saskatchewan make the National Day for Truth and Reconciliation a paid, provincial holiday.

Recommendation: That the SEA be amended to add The National Day for Truth and Reconciliation (September 30) to the list of paid, statutory holidays.

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⁷ Cameron MacLean, “Manitoba NDP, Liberals promise stat holiday on Orange Shirt Day if elected,” CBC News, Sept. 30, 2023, accessed at <https://www.cbc.ca/news/canada/manitoba/manitoba-ndp-liberals-promise-orange-shirt-day-stat-holiday-1.6983852>

⁸ Peter Zimonjic, “Indigenous population hits 1.8M, growing at twice rate of non-Indigenous Canadians: 2021 census,” CBC News, Sept. 21, 2022, accessed at <https://www.cbc.ca/news/politics/indigenous-housing-census-statscan-1.6589825#:~:text=The%20number%20of%20people%20identifying,to%20newly%20released%20census%20data.>