



SUBMISSION

Response to:

***Consultation Paper on
The Saskatchewan Employment Act
Associated Regulations (July 23, 2013)***

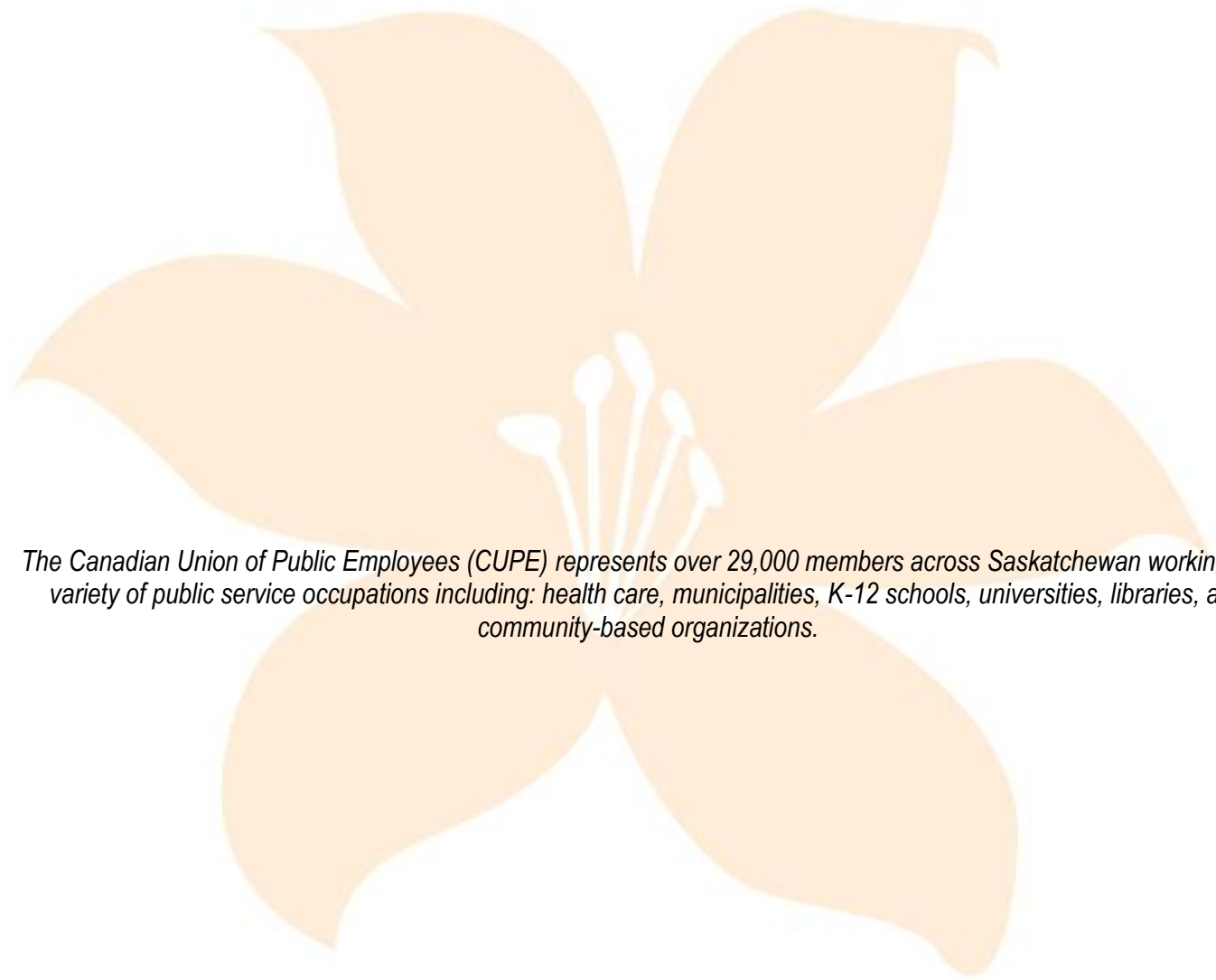
Presented to:

Honourable Don Morgan
Minister of Labour Relations and Workplace Safety

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The Canadian Union of Public Employees (CUPE) represents over 29,000 members across Saskatchewan working in a variety of public service occupations including: health care, municipalities, K-12 schools, universities, libraries, and community-based organizations.

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Introduction

Replacing every significant workplace-related law, *The Saskatchewan Employment Act* consolidates and makes significant changes to twelve (12) formerly separate statutes. Since receiving Royal Assent on May 15, 2013, *The Act* is set to come into force “on proclamation” – meaning a date in the future determined by the Minister (Lieutenant Governor in Council) upon issuance of an order-in-council proclaiming *The Act* in force as of a certain date.

On July 23, 2013, the Minister of Labour Relations and Workplace safety released a “Consultation Paper on *The Saskatchewan Employment Act Associated Regulations*” requesting feedback on the new regulatory requirements established under *The Act*. The consultation paper focuses primarily on employment standards (formerly referred to as labour standards) and labour relations (issues related to unions and employers principally addressed under *The Trade Union Act*). While some regulations surrounding *Part III of The Act, Occupational Health and Safety*, are addressed in the consultation paper as they relate to the establishment of an asbestos registry, the consultation paper also makes clear that a separate process is to be established for the review of all *Part III - Occupational Health and Safety* regulations in the near future.

According to the consultation paper, the following timeline for regulations related to *The Act* will occur:

Regulations will be drafted once the review process is concluded. Once approved, the Regulations and The Saskatchewan Employment Act will come into force. It is anticipated this will occur in the fall of 2013.ⁱ

This submission, therefore, will address CUPE’s recommendations to the future drafting of regulations and, in particular, the areas of change to existing legislation initiated by *The Act* and where reference is made in *The Act* to reliance on regulation.

Accordingly, this submission is not intended to be entirely comprehensive and is provided without prejudice to any legal challenge, current or future, to *The Saskatchewan Employment Act*.

CUPE requests the right to provide further submissions if and when draft regulations are made available.

Discussion

Consultation after drafting and before approval of regulations

Before the approval of regulations and proclaiming *The Act* to be in force, it is imperative that the government engage in a consultation process to impacted stakeholders on the drafted regulations. The government's current consultation process only provides for input on the regulations before they are drafted and approved. The government has not contemplated any consultation process for regulations following their drafting and before their enactment.

The Act represents, in many cases, a significant change to existing minimum workplace protections for workers, rights of workers, processes related to labour relations and collective bargaining, and obligations of unions and employers. Indeed, the scope of the regulations formerly existing under twelve (12) separate statutes is too overwhelming for a single process – let alone a process that does not contemplate consultation after drafting regulations and before enactment. Indeed, it is instructive that the government intends to hold a separate review of regulations for *Part III of The Act – Occupational Health and Safety*. That level of detailed review comes closer to the expectations of true and meaningful consultation to ensure regulations benefit from the input of stakeholders for the purposes of balance and to prevent unintended consequences.

- CUPE recommends that the government hold an in-depth review of drafted regulations of *The Act*, with a separate process for each Part of *The Act*, as planned for *Part III - Occupational Health and Safety*.

Timing of regulations enactment

The government has stated that it intends, following the submissions received from its July 23, 2013 consultation paper, to draft regulations and approve them as early as fall 2013. CUPE observes that the rush to draft and enact regulations that enforce the significant changes made by *The Act* is likely to lead to problems and compromise important rights and protections of workers in Saskatchewan.

With over 126 references to regulations in *The Act*, it is imperative that there be opportunity for stakeholders to be consulted before regulations are enacted. Stakeholders cannot provide fully-informed feedback when they are not provided with the draft regulations. In absence of draft regulations, stakeholders are only aware of what currently exists in the twelve (12) separate sets of regulations that accompany the twelve (12) formerly separate statutes now consolidated in and amended by *The Act*. Accordingly, stakeholders are left to guess whether the government intends to continue some regulations from formerly separate statutes and speculate how the government intends to make use of its regulatory power to carry out the significant changes made to workplace-related laws in Saskatchewan under *The Act*.

- CUPE recommends that the government not approve and enact regulations for *The Act* until adequate consultation can be conducted.

CUPE's recommendations

1. Guarantee to index the minimum wage

Over 22,000 Saskatchewan workers are minimum wage earners, representing approximately five per cent of the paid workforce. Before the minimum wage was increased on December 1, 2012 to \$10.00 per hour, Saskatchewan had the lowest minimum wage of \$9.50 an hour in Canada.ⁱⁱ The Government of Saskatchewan also froze the minimum wage for two years with no increases in 2010 or 2011 despite average annual increases in the Consumer Price Index of 1.4 per cent in 2010 and 2.8 per cent in 2011.ⁱⁱⁱ

While the government states that *The Act* contains provisions that include indexation, Section 2-16 makes minimum wage subject to regulation with no guarantee that the minimum wage will be indexed each and every year and that the minimum wage indexing formula will be adequate to ensure Saskatchewan workers can earn a living wage.^{iv}

- CUPE recommends that the government raise the minimum wage to 75 per cent of the average industrial wage. This could be achieved through incremental increases over a five to seven year period in addition to regular annual indexation.
- CUPE recommends that regulations made for the indexing of minimum wage provide for regular annual increases (not decreases) and, furthermore, that every two years the minimum wage be reviewed by a Minimum Wage Board or committee of the Legislative Assembly to ensure indexation is adequate.

2. Keep the weekend

Under Section 2-13(3) of *The Act*, Saskatchewan workers will lose the right to a weekend or two consecutive days off in every seven days unless their workplace (with 10 or more people) is specifically listed in the regulations. Previously, *The Labour Standards Act* (Section 13(2)) made it a legal requirement that every workplace with 10 or more employees “shall grant to every employee who is usually employed for 20 hours or more in a week a rest period of two consecutive days in every seven days, and one of those days is to be a Sunday wherever possible.” The Act, however, not only discontinues the Sunday provision, but it makes the right to a weekend or two consecutive days off solely subject to regulations.

- CUPE recommends that the government ensure through regulation that every establishment, class of establishments and/or categories of employees continue to receive two consecutive days off in every seven days.

3. Safeguard overtime pay

Unless protected in the regulations, *The Act* could take away the right to overtime pay. If overtime hours are banked, there is no guarantee in *The Act* that they be paid or redeemed at no less than the overtime rate of 1.5 times. Section 2-1(o) provides, however, that “overtime” and “overtime pay” is either paid at 1.5 times an employee’s hourly rate or “pay at a prescribed rate for a prescribed category of employee”. This appears to contemplate that for employees to be determined by regulation, overtime may be less than the standard statutory minimum of 1.5 times an employee’s hourly wage.

- CUPE recommends that the regulations safeguard overtime pay by clarifying banked overtime, including overtime banked from modified work arrangements, must be paid out or redeemed at the overtime rate.

4. Make voting rules that keep things fair

Voting to join a union should occur in a reasonable time frame. Currently, there is no specified period of when a vote should be conducted in *The Act*.

- CUPE recommends that the regulations provide for a time frame of seven calendar days to conduct certification elections to join a union.

5. Protect employees from intimidation

When Saskatchewan workers are exercising their right to join a union, they should be free from interference, intimidation, threats, and/or coercion by an employer. While general protection is provided in *The Act* under Section 6-62(1)(a), this protection is substantially compromised by the ability of employers under Section 6-62(2) to communicate “facts” and “opinions” during the period leading up to a secret ballot vote to join a union. Further, *The Act* does not provide any criteria or definition of what constitutes a “fact” or “opinion” to ensure that the general right to be protected from employer interference, intimidation, threats, and/or coercion is not eroded. In CUPE’s opinion, it would be appropriate for regulations to provide a guideline of what a “fact” or “opinion” is to ensure provisions of *The Act* are clear for everyone.

- CUPE recommends that regulations be made to clarify and provide definitions or criteria as to what constitutes an employer communicated “fact” or “opinion” to ensure that a worker is able to enjoy the full protection provided for in Section 6-62(1)(a) of *The Act*.

6. Prevent loss of pay from transaction fees

The Act contemplates that employers may pay wages to an employee by a means other than traditional forms of payment identified in Section 2-35 by providing, in Section 2-35(d), “by a prescribed means” clause. It is CUPE’s understanding that this clause is intended to allow employers to provide payment of wages to employees through pre-loaded debit cards or other payment methods in areas of geographic isolation where financial institutions and banks are not present. Under these circumstances, however, employees stand to lose part of their pay to transaction fees (such as ATM fees) conditional to access the payment where traditionally banking and financial institutions are not available or present in their communities.

- CUPE recommends that any additionally prescribed manner for payment of wages expressly prevent the loss of pay from bank and/or transaction fees employees are likely to face as a condition to access the payment of wages.

7. Respect the freedom of association of unions

Regulatory power under *The Act* to legally obligate a union to disclose “to each of its members any prescribed information” under Section 6-61(1)(c) runs afoul of the principle of freedom of association. This provision is both unnecessary and wholly intrusive. Unions are democratic organizations accountable to their membership, governed by a constitution, and consist of leadership elected by and from their membership. Matters of internal policy, including which information should be regularly disclosed, should exclusively be the subject of internal union decision-making and free from unnecessary government intrusion contemplated in the broad and over-reaching regulation power contemplated in Section 6-61(1)(c).

- CUPE recommends that the government refrain from any regulations contemplated in Section 6-61(1)(c). Concurrently, if any regulation is contemplated, it should be subject to extensive consultation with unions.

8. Require employee consent for modified work arrangements/public holidays

While *The Act* provides for two standard work arrangements, it also provides for modified work arrangements to be established by regulation under Section 2-19(1). Previously under *The Labour Standards Act* (Section 9(1)), modified work arrangements required the employer to complete and submit an “Averaging Hours of Permit” form if employees in a workplace were not represented by a union. The form required demonstrated employee consent by the majority of employees whose work schedules would be affected by the permit application seeking a non-standard work week. The previous permit process also provided the Director of Labour Relations the authority to require separate permit applications for each “job site or business location; and/or category of employee” to ensure the application of the modified work arrangement was not too broad or expansive. Additionally, the previous permit process allowed for average lost time work injury rates to be considered when an application was made to expand the normal working day hours beyond eight hours a day. First-time permits were granted for a year and subject to

renewal again with demonstrated employee support.^v Under *The Act* and absent of regulations, there are no such requirements in place to protect employees and ensure their consent is sought.

- CUPE recommends that regulations regarding modified work arrangements should require demonstrated majority employee support and, concurrently, protect employees from discriminatory action from the employer.

Previously under *The Labour Standards Act* (Section 40), if employees in a workplace were not represented by a union and the employer made an application to move the observance of a public holiday, an application requiring demonstrated majority employee support was required.^{vi} *The Act* does not provide for such a process to ensure employees are protected, however, the consultation paper does identify that “It is the Government’s intention to continue these requirements” referencing the previous process established under *The Labour Standards Act*.

- CUPE recommends that the government follow through on its intention to continue the requirement for demonstrated majority employee support for employer applications seeking to move the observance of a public holiday.

9. Preserve public holiday pay in modified work arrangements

If not preserved in the regulations made under Section 2-32 of *The Act*, public holiday pay may be reduced for employees with a modified work arrangement. In particular, there is no protection in *The Act* for employees with a modified work arrangement to receive public holiday pay that is equivalent to the hours worked regularly each day in the modified hours of work arrangement. For example, if a regular work day is a ten (10) hour day in the modified work arrangement, the public holiday pay should be equivalent to the wages of ten (10) hours.

- CUPE recommends that in cases of modified work arrangements, public holiday pay be equal to no less than a standard day’s pay in the modified work arrangement.

10. Restrict required information for leaves

The Act provides in Section 2-47(2) for regulations to be made regarding the type of medical evidence required to take a leave of absence recognized under *The Act* and what benefits are to be continued during an employee’s leave of absence.

- CUPE recommends that no further regulations be made regarding medical evidence required to take a leave of absence recognized under *The Act*.
- If further regulations are made, CUPE recommends there be significant limitations on the type, form and scope of medical evidence required to protect the confidentiality of employees. Specifically, regulations should ensure that required medical information is minimally intrusive and strictly limited only to legitimate

information required for business purposes. Furthermore, fees for the obtainment of information to satisfy any regulated required medical information should be covered by the employer.

11. Maintain layoff notice or pay in lieu thereof

While *The Act* continues to require an employer to provide written notice when laying off or terminating an employee and, where no notice is provided, pay in lieu thereof, there exists a provision in *The Act* to possibly reduce the amount of pay otherwise lawfully owed to an employee who has not received proper notice from their employer. Under Section 2-61(2)(b), where no notice is provided, pay in lieu of notice of the layoff or termination is to be triggered on “the date on which the employee was laid off” or “a date to be determined in the prescribed manner.” The reference to a date “in the prescribed manner” contemplates a possible reduction in the amount of pay owed in lieu of notice that should have otherwise been provided to an employee.

- CUPE recommends that if no proper written notice is provided by the employer as obligated under *The Act*, regulation should not provide for a reduced pay in lieu of notice but, rather, that the maximum pay in lieu of notice provided under Section 2-60(1) should apply. This would ensure that employees remain protected and employers are encouraged to fulfill their legal obligation to provide notice or, consequently, provide pay in lieu thereof that is equal to or greater than if notice would have been properly provided.

CUPE makes the above recommendations without prejudice to any legal challenge that may be taken against or under The Saskatchewan Employment Act and/or any related legislation.

Endnotes

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- ⁱ Government of Saskatchewan. Ministry of Labour Relations and Workplace Safety. (23 July 2013). Consultation Paper on The Saskatchewan Employment Act Associated Regulations. p. 1.
- ⁱⁱ Johnstone, Bruce. (12 July 2013). Leader Post. Minimum Wage: NDP says regulations overdue. C 1.
- ⁱⁱⁱ Government of Canada. Statistics Canada. Consumer Price Index by Province: 2008 – 2012. Available online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/econ09i-eng.htm>
- ^{iv} Government of Saskatchewan. (4 December 2013). News Release. Saskatchewan Government Introduces New Employment Legislation.
- ^v Government of Saskatchewan. Ministry of Labour Relations and Workplace Safety. Averaging of Hours Permit Instructions and Application Form. Available online: <http://www.lrws.gov.sk.ca/averaging-hours-permit-application>
- ^{vi} Government of Saskatchewan. Ministry of Labour Relations and Workplace Safety. Application for Permit under The Labour Standards Act, Section 40(b): Authorization - Move a Public Holiday. Available online: <http://www.lrws.gov.sk.ca/move-public-holiday-permit-application>

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