CUPE | Canadian Union of Public Employees

Submission

to the

House of Commons
Standing Committee on Finance

Bill C-63
Budget Implementation Act, 2017, No. 2
Division 8

Canadian Union of Public Employees

November 2017

Introduction

The Canadian Union of Public Employees (CUPE) is Canada's largest union, with 651,000 members. CUPE workers take great pride in delivering quality public services in communities across Canada through their work in municipalities, health care, social services, schools, universities, communications, transportation, and many other sectors. CUPE represents approximately 20,000 workers under federal jurisdiction working from coast to coast in the broadcasting and telecommunications industries, as well as in airlines, airports, ferries, port authorities, rail, roads and highways, and transit systems that cross provincial or international boundaries.

On behalf of our members, CUPE is pleased to have the opportunity to comment on the government's proposed changes to the Canada Labour Code in Bill C-63, in the Budget Implementation Act, No. 2. CUPE welcomes the changes, but we are concerned that the proposed changes do not go nearly far enough in providing important protections and reasonable access to leaves for workers in federal jurisdiction. We believe that the federal government should be setting a high standard for the provinces to emulate. Unfortunately, in many areas the Canada Labour Code lags behind the best provincial standards and the changes being proposed in Bill C-63 do not bring the new federal standards up to the level of the strongest provincial standards.

In particular, CUPE has concerns about the changes proposed regarding the advance notice of schedules, the right to refuse overtime, the right to request flexible work arrangements, Leave for Victims of Family Violence, and Leave for Traditional Aboriginal Practices.

Advance Notice of Schedules

Clause 197 requires employers to give workers 24 hours written notice of a change to scheduled shifts or for the addition of a shift to an employee's schedule. While this change is a first step, it does not go nearly far enough to provide sufficient notice to workers.

Advance notice of working hours is important for workers to be able to plan their lives and participate in non-work activities. As the Final Report by the Special Advisors to Ontario's Changing Workplaces Review notes, uncertainty and unpredictability in scheduling may "make it difficult for employees to plan for child-care, undertake further training and education, maintain or search for a second job, make commuting arrangements, and plan other important activities. Consequently, uncertainty in scheduling practices may contribute to making work precarious."[1] Uncertainty over work schedules can also contribute to stress, conflict between work and family responsibilities, lack of sleep, and lower life satisfaction.

With advance notice limited to 24 hours, workers may still have difficulty planning other activities and making alternative arrangements for family care. Meanwhile, at the provincial level, there are examples of much stronger standards. Bill 148, which is currently before the Ontario legislature, would allow an employee to refuse any work that is not posted at least four days in advance.[2] Saskatchewan has adopted the standard of one week's notice of scheduling and any schedule changes.[3]

In addition to 24 hours being insufficient notice, CUPE is concerned that the broad scope of the exemption given to employers could render the requirement to give notice meaningless. Bill C-63 states that the requirement does not apply if the change:

> "is necessary to deal with a situation that the employer could not have reasonably foreseen and that presents or could reasonably be expected to present an imminent or serious
> (a) threat to the life, health or safety of any person;

(b) threat of damage to or loss of property; or
(c) threat of serious interference with the ordinary working of the employer's industrial establishment."

Threats to the life, health and safety of any person are very serious and it is completely understandable that workers might be called in with very little notice to deal with them. But why should "the ordinary working of the employer's industrial establishment" be considered the equivalent of a threat to life or safety? And why should the employee's time caring for family or pursuing further education or working at a second job be automatically deemed less important than the employer's normal standard of production? This exemption is far broader than the standards in Ontario and Saskatchewan, which are limited to emergencies and threats to public safety.

Recommendation One:
The requirement to give advance notice of changes to work schedules should be extended from twenty-four hours to one week.

Recommendation Two:
Clause 173.1 (2) (c) giving the employer an exemption on the grounds of interference with the ordinary working of the employer's industrial establishment should be deleted.

Right to Refuse Overtime

Clause 197 also gives employees the right to refuse overtime for the sake of family responsibilities. The new clause requires that employees first take reasonable steps to try and fulfill the responsibility by other means. CUPE is concerned that Bill C-63 does not define reasonable steps, but we are more concerned about the broad exemption to the right to refusal.

As with the requirement to give 24 hours notice, the right to refuse overtime does not apply if the overtime is necessary "to deal with a situation that the employer could not have reasonably foreseen and that presents or could reasonably be expected to present an imminent or serious…threat of serious interference with the ordinary working of the employer's industrial establishment."

Once again, CUPE has no argument that workers may be required to forego family responsibilities for the sake of threats to health and safety. But what kind of society are we if a child can be left waiting at daycare for Mom or Dad to pick them up because an industrial establishment would otherwise not be working as it ordinarily did?

Quebec, which has a similar rule allowing workers to refuse overtime on the grounds of family responsibility, has no exemptions.[4]

In Saskatchewan, workers covered by the Employment Standards Act can refuse overtime beyond 44 hours a week, for any reason, with the only exemption being an unusual, unexpected, or emergency situation.[5] An "emergency situation" is defined as "a situation where there is an imminent risk or danger to a person, property or an employer's business that could not have been foreseen by the employer."[6] In Ontario, employers may not require an employee to work more than eight hours in a day without the written consent of the employee.[7]

Recommendation Three:
Clause 174.1 (3) (c) creating an exemption on the grounds of interference with the ordinary working of the employer's industrial establishment should be deleted.

Flexible Work Arrangements

Clause 199 gives employees the right to ask their employer for flexible work arrangements. However, CUPE is concerned that this new right is not a meaningful right at all. Employees have always been able to ask for flexible work, and many of them have done so. The new clauses do not require the employer to consider the request any more seriously than they did before; they simply require the employer to provide a response in writing. Bill C-63 offers multiple, broad reasons for which employers may say no and allows the Minister to proscribe additional reasons through regulations. In cases where the employer says no for one of the reasons contained in the Canada Labour Code or its regulations, an employee may not even make a complaint about the refusal. Workers who want flexible work arrangements are therefore no further ahead with this legislation.

On the other hand, the bill is completely silent about the many workers who are being made flexible against their will. No changes are being made to support temporary, casual, contract, and on-call employees who struggle with the lack of certainty, the insecurity, and the unequal pay and benefits frequently afforded to precarious employees. Instead of a symbolic gesture that fails to accomplish real change, the government should be making significant changes in support of the most vulnerable workers in the Canadian labour force.

Recommendation Four:
The federal government should introduce changes to the Canada Labour Code to protect workers and eliminate the abuse of precarious employment, including:

- Adopting a minimum wage of at least $15 so that every worker gets a decent wage in return for their labour.
- Outlawing two-tier contracts and requiring employers to provide equal pay and benefits for substantially similar work, regardless of employment status.
- Expanding the definition of employee and creating a legal presumption of employee status, so that the burden is on employers to prove a person providing services is not an employee, rather than placing the burden on the worker.
- Redefining temporary work so that positions cannot be considered to be temporary on a permanent basis.
- Establishing a right to compensation for workers for on-call shifts even if they don't get called in and minimum payments for shifts when workers are called in to work.
- Providing protections for workers in cases of contract flipping, so that regardless of who gets the contract, the same union, the same collective agreement, and the same working conditions remain in place.

Leave for Victims of Family Violence

Clause 206 provides a new leave of up to 10 unpaid days annually for employees who are victims of family violence or who are parents of children who are victims. The need to address family violence is a priority for CUPE, and we continue to negotiate collective agreement language for survivors and provide education for our members on this issue.

A recent survey by the University of Western Ontario and the Canadian Labour Congress shows that domestic violence is a serious workplace issue. Over a third of respondents reported experiencing domestic violence in their lifetime. Over 80 per cent of those individuals said it had a negative effect on their work performance, and over a third reported that coworkers were affected as well. Almost nine per cent lost a job because of the violence. Women, Indigenous workers, persons with disabilities and LGBTTQI workers were more likely than other respondents to have experienced domestic violence. These workers are also more likely to be in precarious or lower paid employment situations.[8]

The research makes it clear that survivors of family violence require stable, ongoing paid employment to enable them to leave violent relationships and seek safety. Family violence leave that is unpaid defeats the purpose of the leave to ensure financial security during an extremely disruptive and challenging time in a worker's life. Many survivors will not be able to afford to take it. At the provincial level, Manitoba provides five days of paid leave for survivors in its Employment Standards Act, which is combined with up to 10 days leave that can be taken intermittently, and up to an additional 17 weeks to be taken continuously.[9]

Clause 206 gives the employer discretion on whether or not to require that the leave be of not less than one day's duration. Employer discretion to deem part of a day as a full day is a hardship for survivors, who may typically require only an hour or two at a time to, for example, attend a medical or counselling appointment, quickly open a bank account or meet with legal counsel. Survivors require flexibility to be able to take partial days to address the many tasks they must carry out to ensure their safety.

Clause 206 also gives employers the right to request documentation as to the reason for taking the leave. This may be problematic for some survivors, who are seeking to complete the basic tasks of putting their lives in order. For example, it is unlikely that a survivor will be able to provide relevant documentation to show that she has met with a landlord to view a rental property or moved belongings into a new residence.

Recommendation Five:
Bill C-63 should be amended to provide survivors of family violence with ten days of paid leave that can be taken intermittently, to be followed by 17 weeks of unpaid leave.

Recommendation Six:
Survivors of family violence should be able to take the leave in partial day increments.

Recommendation Seven:
Bill C-63 should be amended to expand eligibility for the leave to include the child of a spouse and a person's adult child.

Recommendation Eight:
Bill C-63 should be amended to give the Minister power to regulate under what circumstances an employer may ask for documentation and what kind of documentation is reasonably practicable for survivors to obtain and provide, and consult widely with women's organizations and service providers to survivors of domestic violence in order to determine what is practicable and non-intrusive documentation for a survivor to provide.

Leave for Traditional Aboriginal Practices

Clause 206 provides a new leave of five days of unpaid leave for traditional Aboriginal practices. While this recognizes that Indigenous workers have distinct needs, the practices of hunting, fishing and harvesting listed in the clause are limited. CUPE has negotiated contract language for our Indigenous members that, for example, provides access to leave to participate in traditional ceremonies, carry out cultural responsibilities within their communities, and to vote in band and community elections.

The clause states that employers may require Indigenous employees to provide documentation "that shows the employee is an Aboriginal person" and defines Aboriginal as "Indian, Inuit or Métis." The legal determination of Indigenous status has been highly contested and has tended to marginalize and exclude Indigenous women in particular from claiming their Indigenous rights. We are very concerned therefore that the determination of a worker's Aboriginal identity should not be left up to employers. The federal government should consult widely with Indigenous governments and organizations on what documentation is acceptable.

Recommendation Nine:
The government should consult widely with Indigenous governments and organizations on this bill and the requirements to provide documentation proving Aboriginal identity, the range of Indigenous practices to which the clause applies, and the entirety of this section to ensure it properly recognizes and respects the rights of Indigenous peoples.

Revising the Canada Labour Code

CUPE also wants to note our concern that these changes to the Canada Labour Code have been included in an omnibus budget implementation bill. The Liberal government was elected on a promise that they wouldn't use omnibus legislation and it is disappointing to see the government break their promise again and again. Changes to the Canada Labour Code deserve fulsome scrutiny and debate, and we do not believe they can be adequately scrutinized and understood when included in a bill that also includes changes on matters as diverse as tax measures, trade rules, international financial institutions and international development funds, the Northern Pipeline Act, financial contracts and bank loans, and judicial compensation.

Recommendation Ten: That Division 8 be separated from the Budget Implementation Act and studied and voted on separately.

CUPE believes that the federal government should set a high standard for the rights and protections of workers and be an inspiration to the provinces to do the same. We urge the federal government to review the whole Canada Labour Code with an eye to strengthening the rights of workers and providing greater protection and security, particularly for the most vulnerable workers.

Conclusion

CUPE believes that the changes to the Canada Labour Code contained in Bill C-63 do not go far enough to provide security and reasonable access to leaves for all workers in federal jurisdiction. We recommend that the federal government conduct a more thorough overhaul of the Canada Labour Code to provide greater rights and protections for federally-regulated workers and in particular, precarious workers. CUPE stands ready to work with the federal government in creating a federal legislative and regulatory regime which provides strong protections and sets a robust example for the provinces to follow.

End Notes

[1] C. Michael Mitchell and John C. Murray, *The Changing Workplaces Review: An Agenda for Workplace Rights,* Final Report of the Special Advisors to the Changing Workplaces Review, May 2017, https://goo.gl/hxyGfE.
[2] Bill 148, *Fair Workplaces, Better Jobs Act, 2017*, 2nd Sess, 41st Leg, Ontario, 2017, cl. 11, (third reading).
[3] *The Saskatchewan Employment Act,* SS 2013, c S-15.1, s 2-11.
[4] *An Act Respecting Labour Standards,* CQLR, c N-1.1, s 122 (6).
[5] *The Saskatchewan Employment Act,* SS 2013, c S-15.1, s 2-12.
[6] Government of Saskatchewan, *Rights and Responsibilities: A Guide to Employment Standards in Saskatchewan,* 2014, p. 5.
[7] C. Michael Mitchell and John C. Murray, *The Changing Workplaces Review: Special Advisors' Interim Report,* July 2016, https://goo.gl/fEo9Pm.
[8] Western Education Center for Research and Education on Violence Against Women & Children, Canadian Labour Congress, and Western Faculty of Information and Media Studies, *Can Work Be Safe When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace,* 2014, https://goo.gl/BhW63F.
[9] *The Employment Standards Code,* CCSM c E110, s 59.11.

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