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Via: Email

Employment Standards Review
Corporate Services Division
Ministry of Labour Relations and Workplace Safety
300–1870 Albert Street
Regina, SK S4P 4W1

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

On behalf of Unifor, I welcome the opportunity to provide comments on the Saskatchewan government's review of *The Saskatchewan Employment Act* and associated regulations. Unifor represents thousands of workers in Saskatchewan working in nearly every sector of the economy. While Unifor members benefit from strong collective agreements that are hard-won through bargaining, it is imperative that all workers in Saskatchewan can count on basic employment standards that protect their livelihood and guarantee decent working conditions.

As the discussion paper notes, the province confronts vastly different conditions compared to 2012, when the last review was conducted, in no small part due to the economic and social impacts of the COVID-19 pandemic, but also in light of rapid technological changes and the upsurge in gig and platform-based work.

However, Saskatchewan also notably lags other provinces in terms of labour market outcomes. The province currently has the lowest minimum wage in the country at \$14/hour, despite the fact that the provincial rate of inflation hit a high of 8.1% in June and July 2022, and stayed above the national average well into 2023. In 2020, 55,000 children in Saskatchewan – one in five – lived in poverty, amounting to the third highest child poverty rate in Canada. And the latest Statistics Canada Labour Force Survey (LFS) data for the month of September 2023 shows that more than one in five wage earners in Saskatchewan (21%) make less than the low-wage cutoff for the province (\$18.60/hour).

It's long past due for Saskatchewan's employment standards to be updated to reflect the realities of work today and to ensure that workers in Saskatchewan do not fall further behind their counterparts in the rest of the country. In what follows, I outline basic measures that would significantly improve some of the province's core statutory employment protections and help workers improve their living standards and working conditions. The government must act now to make sure that no worker in Saskatchewan falls through the cracks.

Exclusion from Provisions

Employment standards are only as strong as the consistency of their application and enforcement, and any exclusions or exemptions merely serve to undermine their power to protect all workers, irrespective of employment relationship, working conditions, or job status. As it currently stands, Saskatchewan's regime of employment protections contains a bewildering array of modifications and exemptions, many of which must be eliminated to ensure that workers are not falling through the cracks.

Particularly troubling are the current exemptions from the minimum wage for employees with a physical or mental disability, working for a non-profit organization or institution in programs that are educational, therapeutic or rehabilitative, as well as exemptions from the minimum wage for residential caregivers, janitors, building cleaners and farm labourers. Not only do these exemptions unfairly stigmatize workers with disabilities and devalue caregiving, cleaning and farm work, absolutely no worker in the province should be paid a wage less than the statutory minimum.

As we note below, hours of work provisions should also be strictly enforced to the greatest extent possible, and the onus should be on employers to adequately manage scheduling so that workers do not bear the burden of contending with unexpected or unusual circumstances arising during the course of their daily work. To that end, employers should only be able to deviate from hours of work provisions where collective agreements exist, and there should be no blanket exemptions for hours of work protections for residential caregivers/support workers, workers in construction/property maintenance, commercial fisheries, logging, teachers, salespersons, etc.

Definitions of an Employer and Employee

The current definitions of employer and employee in Saskatchewan need urgent updating to ensure that workers are not misclassified as independent contractors by employers seeking to circumvent statutory labour protections. As the nature of Canada's labour market rapidly shifts through the introduction of digital platforms and decentralized work, it has become more important than ever to review whether extant employee and employer definitions have remained relevant to current working environments and employment relationships.

Unifor's own experiences in the private sector has shown that the rapid increase of gig work is an extension of the longstanding tendency for employers to circumvent labour standards by misclassifying workers as independent contractors. In order to prevent the gig economy from institutionalizing a new class of disenfranchised and precarious workers through systemic misclassification, it is critical that Saskatchewan's employment standards be urgently updated to capture new kinds of employment relationships and working conditions.

Following the example of the Ontario NDP's *Preventing Worker Misclassification Act, 2021*, Unifor recommends that Saskatchewan adopt an ABC test to ensure that all workers are deemed employees unless employers can prove the following:

- A: The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

- B: The worker performs work that is outside the usual course of the hiring entity's business; and
- C: The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

In short, the burden of proof should lie with the employer to provide evidence that a worker is not their employee, rather than the other way around. Reversing the burden of proof acknowledges that there is a substantial power imbalance between employers and individual workers when it comes to filing complaints about misclassification.

Providing gig workers with rights of representation, bargaining, and successorship across an entire sector or multiple gig work platforms would further help to establish industry-wide labour standards and wage floors, which are responsive to the unique challenges of gig work in that area. We therefore recommend that the province lay out a clear legal framework to support gig workers and other vulnerable workers in fragmented, small, or low-union density workplaces to engage in broader-based bargaining.

Hours of Work

While Saskatchewan's hours of work provisions are stronger than a number of jurisdictions on paper, Sections 2-11 to 2-14 of the *Saskatchewan Employment Act* covering mandatory rest breaks, overtime, notice of scheduling and meal breaks can be waived in the case of "unexpected, unusual or emergency circumstances." These provisions are easily abused by employers, particularly in industries where employers can claim that operational realities entail frequent unexpected circumstances. We recommend that the suspension of these provisions in the case of unexpected and unusual circumstances be removed from the *Employment Act*, and that the legislation spell out exactly which criteria would need to be fulfilled to satisfy an emergency circumstance.

Employers in Saskatchewan are also able to apply for permits to vary these requirements, irrespective of whether their employees are unionized, which only serves to undermine the strength of the legislation and its purpose of providing baseline protections for all workers in Saskatchewan. Such variances should only be authorized where an agreement has been reached through collective bargaining, i.e., within unionized workplaces and with the consent of union members.

Right to Disconnect

Ontario was the first jurisdiction in Canada to add disconnect provisions to its employment standards legislation. However, the provisions are fairly weak, merely requiring employers that employ 25 or more employees to have a written policy on disconnecting from work, without establishing an actual right to disconnect. Saskatchewan should improve on the lead of Ontario by instituting a disconnect from work policy requirement within the *Employment Act* and requiring such policies to define specific hours when employees can disconnect from work and be free from the obligation to engage in work-related communications.

Wages

Although we recognize that the minimum wage does not fall within the purview of the current review of employment standards, Unifor calls on the government of Saskatchewan to set a higher target for the minimum wage, particularly in light of the cost of living increases over the past year. Workers in the province are falling further and further behind as their real incomes are eroded by the highest level of inflation seen since the 1980s.

The current minimum wage of \$14/hour – the lowest in Canada – is significantly below the living wage needed across the province, particularly in areas such as Regina and Saskatoon where the living wage hovered around \$18-\$19/hour in 2022, and it is almost certainly substantially higher today.¹ The government's target of \$15/hour by 2024 therefore needs to be urgently updated to reflect the impacts of inflation over the past year. We call on the government to immediately raise the minimum wage across the province to at least \$18.00/hour and to maintain its indexation to inflation.

Protection When Ill or Injured

One of the starkest lessons of the COVID-19 pandemic was that sick leave provisions across Canada were woefully inadequate to protect both workers and workplaces from the spread of infectious disease and other illnesses. As labour advocates have argued for years, unpaid medical leave is ineffective because workers often cannot afford to take any unpaid days off – a reality which proved disastrous during the pandemic.

Saskatchewan's current allowances for sick leave have fallen far behind other jurisdictions across the country. The province must follow the lead of the federal government and implement a minimum of 10 paid sick days for workers who have been employed for 30 days or more, including those who work for multiple employers. Unpaid protected medical or sick leave must be extended to a minimum of 26 weeks for all workers, not just those receiving workers' compensation. Since requiring a doctors' note for short absences is often onerous and encourages employees to work while ill, medical certificates should not be required for sick leaves that are 5 or fewer consecutive days in length.

Employment Leaves

Unifor recommends that bereavement leave be increased to a minimum of 10 days in the event of a death of an immediate family member, with a minimum of the first 5 days paid. Employees must be eligible to take bereavement leave from the date of the family member's death and up to 6 weeks after the funeral, burial or memorial service, instead of the one-week rule currently in place (from one week before to one week after the funeral). The rules around bereavement leave should explicitly cover loss of pregnancy, including stillbirth and miscarriage.

Interpersonal violence leave for survivors of interpersonal violence, including sexual violence and domestic abuse, should be increased to a minimum of 10 paid days, with the option to take an additional 20 days of unpaid leave during the calendar year. For

¹ <https://policyalternatives.ca/publications/reports/making-living-age-inflation>

many, ten days is insufficient amount of time to exit an abusive relationship, seek medical attention, find new housing, and/or obtain legal counselling.

Layoff and Termination

Following the federal model, the length of the notice period for group terminations should be set at a minimum of 16 weeks and notices of group determinations must be accompanied by the mandatory establishment of joint planning committees. The goal of the committee should be to develop adjustment programs that a) eliminate the necessity for the group termination or b) minimize the impact of the group termination and assist affected workers in finding new employment. The committee must be comprised of at least four members, half of whom serve as representatives of the employees served with the notice of group termination.

For individual terminations, Saskatchewan should require notice of termination for all new employees (rather than requiring 13 weeks of continuous employment to qualify). This notice should be increased to two weeks for those workers who have been employed for less than a year, with one week of notice added every year of employment thereafter.

In all cases, terminated employees who have been employed for 12 or more consecutive months should be entitled to severance pay at the rate of at least 5 days' wages for each year of completed employment. The provision that requires employees with 13 weeks or more of service to provide two weeks' written notice before quitting should be eliminated.

Authority of Employment Standards Officers

Employment standards officers in Saskatchewan should have the authority to make orders reinstating employees and requiring the payment lost wages.

Moreover, employment standards officers should be allowed to order reinstatement as the presumptive remedy whenever a termination due to discriminatory action or reprisal has occurred, except in circumstances where it is clear that a different remedy would be more appropriate for the employee. This would make the remedy more effective and more available, and serve as a better deterrent for such conduct.

Monetary Penalties and Enforcement

Without substantial penalties and effective enforcement, employers will be able to circumvent statutory labour protections in Saskatchewan with impunity. The government must commit more resources to conducting proactive inspections of employment standards and increase the limitation period for the filing of complaints to the Employment Standards Branch to two years from the date of the alleged violation. These measures will ensure that the onus does not simply fall on workers – who are at real risk of reprisal and intimidation – to seek enforcement of employment standards, while providing workers with enough time to seek counsel and/or avoid negative consequences for filing complaints.

As they currently stand, the penalties outlined in Section 3-79 of the *Employment Act* do not constitute effective deterrence for discouraging employment standards violations.

For example, individuals who are found to have obstructed officers and inspectors, made false entries or destroyed evidence, or failed to comply with orders and decisions face a maximum fine of just \$4,000. Those who have been found to take discriminatory action against a worker face maximum fines of just \$20,000 for their first offence. Such penalties cannot be reasonably expected to deter violations, particularly for larger employers. Saskatchewan should develop a schedule of monetary penalties and fines that starts at a minimum of \$10,000 for specific classes of offenses for the smallest employers (<10 employees), scaling to a minimum of \$50,000 per offense for larger businesses (>100 employees). These categories of penalties should be developed in consultation with labour unions and advocates.

Conclusion

Implemented quickly and effectively, the measures outlined above will go a long way towards making sure that workers in Saskatchewan are afforded critical employment protections while raising their standard of living. However, patching labour protections loopholes and updating the province's employment standards is not enough. I urge the government to expand the purview of its review to encompass Part VI of the *Saskatchewan Employment Act* governing labour relations in the province, as well as the *Occupational Health and Safety Regulations*.

Saskatchewan saw an uptick in the time loss injury rate in 2022 and there were 39 workplace fatalities in 2022 – a 26% increase from 2021. Simply put, any workplace fatality is unacceptable, and the province should be working with labour unions to determine how OH&S regulations can better prevent workplace injuries and fatalities, while improving proactive enforcement and increasing penalties for violators.

Unifor also calls on the government to introduce single-step certification and anti-scab ban as part of a broader overhaul of the *Employment Act*. We know that one of the most effective ways of safeguarding labour standards and improving working conditions is to protect the right to unionize. Single-step certification respects the democratic will of employees while ensuring that certification votes are free from employer intimidation. A ban on replacement workers prevents employers from undermining collective bargaining and discourages bad faith negotiating tactics. Both measures should form part and parcel of any reform that aims to protect and uplift workers in Saskatchewan.

If you have any questions about Unifor's recommendations laid out above, please feel free to contact me directly.

Sincerely yours,



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Unifor Western Regional Director

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