

Going Further!

**Brief submitted to the Minister of Post-
Secondary Education, Training and Labour**

on the

Changes to the *Employment Standards Act*



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Introduction

Near 100,000 citizens live below the poverty line in the province. Many are minimum wage workers.

New Brunswick's *Employment Standards Act* offers minimal protection to the thousands of non-unionized workers making up the labour market.

The current minimum wage, and the different employment standards, must be improved in order to adjust to the new realities of the workplace, to counterbalance the attraction exerted by the other provinces on our workers, and to respond to the concerns of international organizations, such as the International Labour Organization.

If we want to ensure a decent life for the non-unionized workers in the province, who are covered by the provincial employment standards and who have families to care for, we must improve significantly their income and their employment norms.

A- Statutory review of the minimum wage 2016

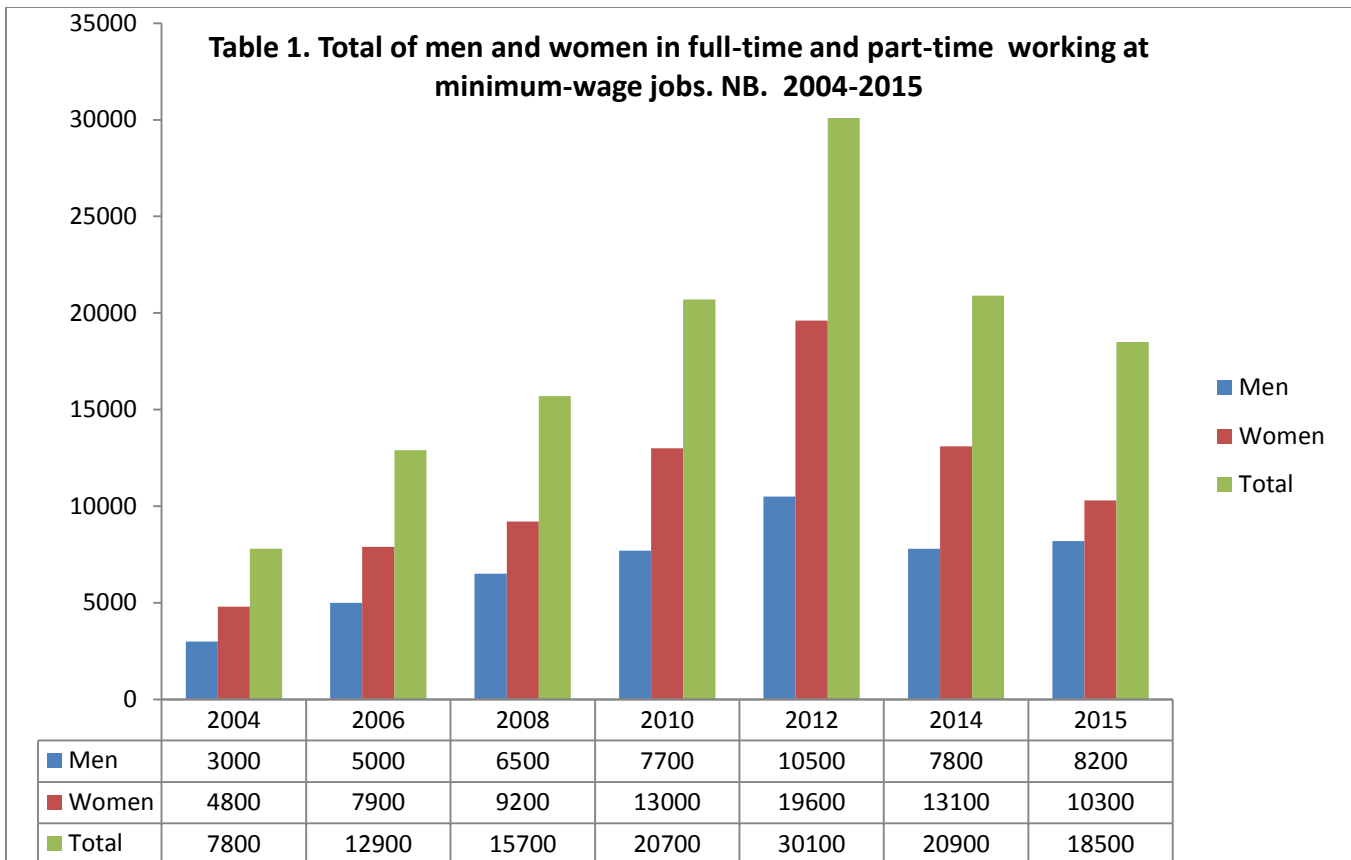
1-Minimum wage workers

a) Composition according to the sex

In New Brunswick, the number of minimum wage workers more than doubled in the last eleven years. In 2004, there were 7,800 workers who were in minimum wage jobs, either full-time or part-time, but this number kept increasing to its peak at 30,100 in 2012, then moved to 18,500 workers in 2015.

When we look at the workforce composition, we notice more women than men. In fact, that has always been the case: there are more women in low-paying jobs.

In 2004, there were 1,800 more women than men working at minimum wage but the gap gradually increased during the 2008 financial crisis, and the following years, to reach a peak in 2012 when there were 9,100 more women than men. Only in the last year did the gap almost reach the level it had eleven years ago (Table 1).



Source: Statistics Canada, Labour Force Survey, custom tabulation. Document received from the New Brunswick Post-Secondary Education, Labour and Training Department.

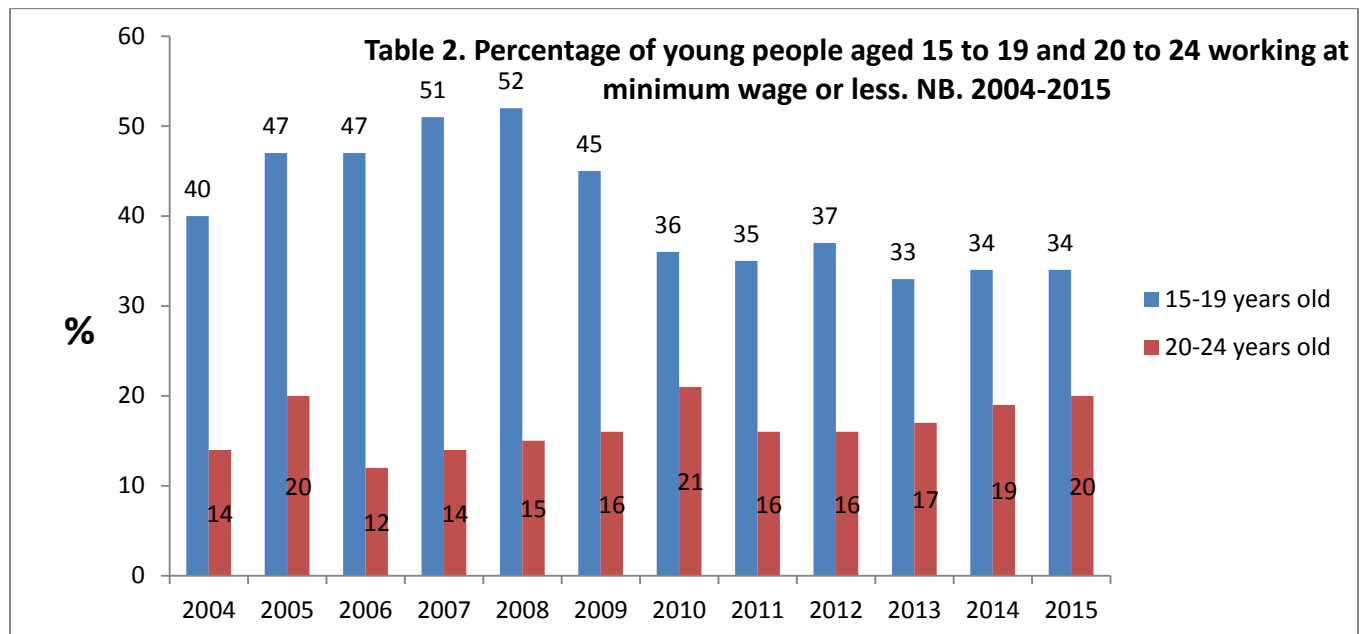
b) Composition according to age (young people)

On page 2 of the *Statutory Review of the Minimum Wage 2016*, we can read that, in 2015, more than half (54%) of minimum wage workers were between the ages of 15 and 24. By highlighting that percentage, they probably want to try to convince us that, since young people account for more than half of the minimum wage employees, maybe it is not that important to increase the minimum wage because that salary would not represent an income necessary to their survival.

Yet, we must make a clear distinction between those between 15 and 19 years of age who, mostly, are still in high school and live with their parents, and the young people between 20 and 24 who, mostly, have joined the work market and are independent.

According to the data in Table 2, the percentage of young people between 15 and 19 years of age working at minimum wage has decreased in the last eleven years. In 2004, they represented forty per cent (40%) of those workers and that proportion hit a peak in 2008 when they represented fifty-two per cent (52%). Since then we can observe a constant diminution and, consequently, in 2015, they only represented a third (34%) of that workforce.

In order to have a clearer picture of minimum wage young workers, we believe we should rather look at the data for the 20 to 24 age group, namely young people who are not in the secondary-school system and probably do not live with their parents anymore. We now can observe that the percentage of those young people has increased and was 6% higher in 2015 than in 2004.



Source: Statistics Canada, Labour Force Survey, custom tabulation. Document received from the New Brunswick Post-Secondary Education, Labour and Training Department.

2- Work places of minimum wage employees

On page 2 of the *Statutory Review of the Minimum Wage 2016*, we can also read that sixty-eight per cent (68%) of minimum wage workers in 2015 were in sales and services occupations.

An analysis of the data from 2008 to 2015 (Table 3) for the two sectors employing the greatest number of minimum wage employees, namely retailing and accommodations and food services, we can see, as shown in Table 3, that there has been no job loss for both sectors..

Small retailing businesses (0-99 employees) lost 123 jobs and medium businesses lost 385 jobs, but the businesses with 500 jobs and more has an increase of 579 jobs; so there was an overall gain of 71 jobs in 2015 in comparison to 2008.

Regarding accommodation and food services, we don't have the 2015 data but the 2014 data show an increase of 296 jobs for small businesses and an increase of 514 jobs for medium

businesses, while the businesses with 500 employees and more had an increase of 100 . Again, looking at the whole sector, there were 910 more jobs in 2015 than in 2008.

Table 3. Jobs in retailing, accommodations and food services, 2008-2015. New Brunswick. (persons)

	2008	2015	Job loss Increase	Total for each sector
Retail Trade				
0-99 employees	20,981	20,858	- 123	
100-499	3,490	3,105	- 385	
500 +	18,790	19,369	+ 579	+71
Accommodation and food services				
0-99 employees	15,667	15,963	+ 296	
100-499	3,630	4,144 (2014. Data for 2015 not available)	+514	
500 +	3,530	3,630 (2014. Data for 2015 not available)	+ 100	- 910

Source: Statistics Canada, Cansim 281-0042.

Table 4 is showing that while these two sectors have a large amount of minimum-wage workers, there was not a drastic impact of them like lobbyists from small and medium businesses would want us to believe.

Taking into account the economic impact of the 2008 financial crisis and the devaluation of the Canadian dollar in relation to the American dollar – two important factors which certainly had a negative impact on these two sectors which are very sensitive to what goes on in the United States – we can assume that minimum wage increases had a very small impact on job losses for small and medium businesses in the province.

Table 4. Total Employment by Sectors, New Brunswick. 2008 to 2015

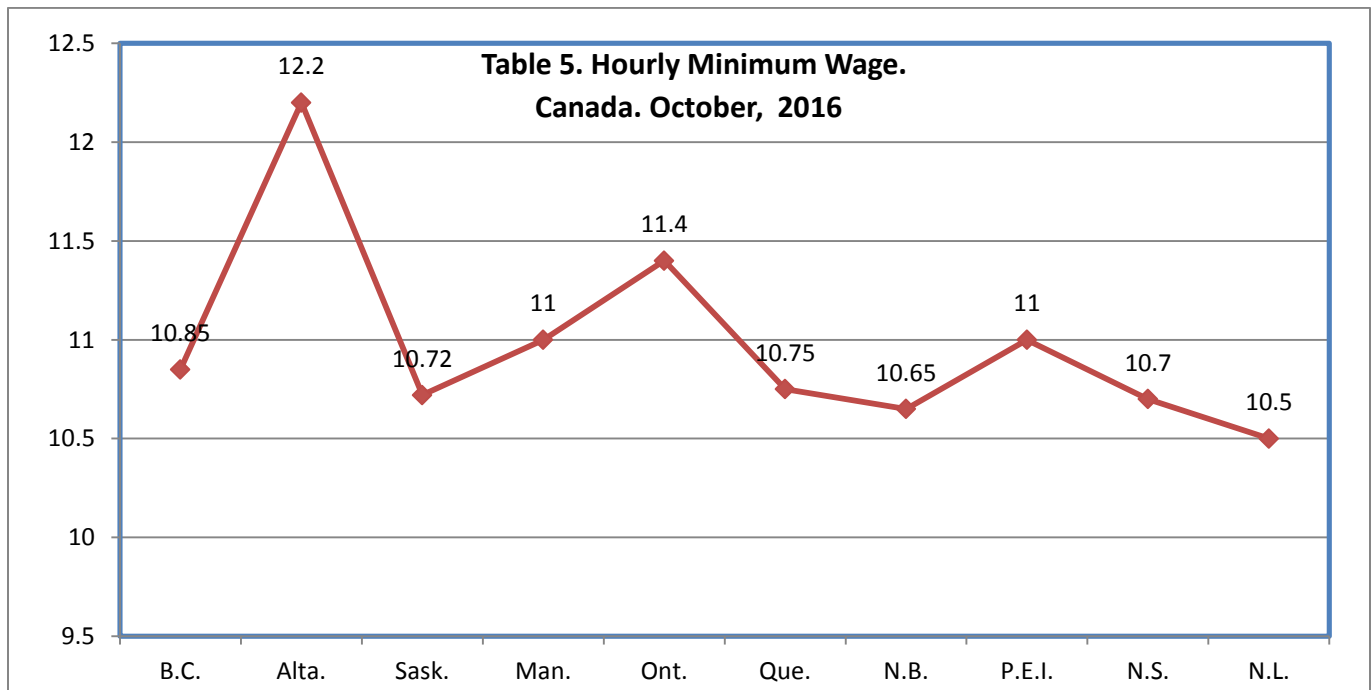
	2008	2009	2010	2011	2012	2013	2014	2015
Retail Trade	43,260	42,586	43,930	44,363	45,107	44,107	43,084	43,332
Accommodation and food services	22,827	24,325	23,558	23,096	22,921	23,362	23,324	23,646

Source: Statistic Canada. Casim 281-0042

3- Minimum wage increase and indexation

As of October 2016, New Brunswick ranked ninth for its minimum wage (Table 5). Minimum wage workers saw seven (7) increases of their hourly salary in the last nine (9) years (Table 6), but their income is still too low.

In 2008, the gross annual salary was \$16,120. Eight years later, it was only \$22,152 while the Market Basket Measure for 2014 was more than \$37,000 (Table 8).



Source: Current and forthcoming minimum hourly wage rates for experienced adult workers in Canada.

<http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt1.aspx?GoCTemplateCulture=en-CA>

Table 6. Minimum hourly wage increases and gross annual salary. 2008-2017. New Brunswick.

2008- \$7.75 (\$16,120)	2009- \$8.25 (\$17,160)	2010- \$9.00 (\$19,720)	2011- \$9.50 (\$19,760)	2012- \$10.00 (\$20,800)
2013- \$10.00 (\$20,800)	2014- \$10.30 (\$21,424)	2015- \$10.30 (\$21,424)	2016- \$10.65 (\$22,152)	2017- \$11,00 (\$22,880) projection

Source: Hourly Minimum Wages in Canada for Adult Workers. <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt2.aspx>. Front commun pour la justice sociale du N.-B.

The government proposes to increase minimum wage to \$11.00 per hour at the end of 2017 and index it to the cost of living.

First, we completely disagree with the present government's proposal of wanting to wait until the end of 2017 to increase minimum wage, as mentioned on page 2 of the *Statutory Review of the Minimum Wage 2016*. The last increase was in April 2016, and workers should absolutely not wait a year and a half for the next increase. It would be very coherent to have the next increase in April 2017.

Secondly, indexing a minimum wage already too low will never get those workers out of poverty. In 2015, the minimum wage was \$10.30 and the inflation rate was 0.5%. If we had indexed the minimum wage for 2016 according to that rate, the increase would only have been \$0.05 (\$10.35 instead of \$10.65). Next year, if the minimum wage reaches \$11.00 and the inflation rate is 2%, the minimum wage for 2018 would only be \$11.22 per hour, which is well below the needs of those workers.

Thirdly, our minimum wage is too low in comparison to the cost of living. In 2015, the Common Front for Social Justice did a study on net income, total expenses and deficits of low-wage workers. We based our study on a salary of \$10.30 per hour, 40 hours a week for the whole year, which is certainly not the case for the vast majority of minimum wage employees.

As illustrated in Table 7, in the seven (7) scenarios we studied in 2015, everyone shows a deficit at the end of the year. The annual deficit was \$1,501 for a couple with one child and two minimum wage salaries, but could reach \$11,887 for a couple with one child and only one minimum wage salary. The situation in 2016 probably did not improve much.

Thus, it is clear we need to increase substantially that income if we want minimum wage workers, and their family, to have a decent income.

Table 7. Net Annual Income, Total Annual Expenses and Deficits – 2015 (\$)

Year 2015	Single individual	Single parent family + 1 child	Single parent family + 2 children	Couple 1 child 1 income	Couple 1 child 2 incomes	Couple 2 children 1 income	Couple 2 children 2 incomes
Net annual income	18,978	27,284	31,825	26,094	39,579	31,630	43,127
Total annual expenses	23, 489	32, 570	41,124	37,981	41,080	44,291	53,210
Deficit	-4,511	-5,286	-9,299	-11,887	-1,501	-12,661	-10,083

Source: *An Economic Reality: Living on Minimum Wage*. Common Front for Social Justice.

Taking into account the fact that the Market Basket Measure is more than \$37,000 for a couple with two children, whether they live in a rural or urban area (Table 8), it is clear that only couples who both work full time at the minimum wage, and who have two children, succeed in living above the poverty line. They are above the poverty line not because of their salary but because of other income (GST credit, Canadian Tax Child Benefit), from the provincial or federal government.

Table 8. Market Basket Measure (MBM) thresholds (2011 base) for reference family, by Market Basket Measure region and component, in current dollars and 2014 constant dollars. New Brunswick. (\$)

	2010	2011	2012	2013	2014
Rural areas	37,098	37,730	38,263	38,111	37,397
Less than 30,000 people	37,683	38,301	38,831	38,680	37,962
30,000 to 99,999	37,091	37,723	38,256	38,105	37,391

Statistics Canada. Cansim 206-0093

The proposal of increasing minimum wage to \$11.00 per hour is commendable but will not change significantly the economic reality of those workers. An increase of \$0.35 an hour (\$10.65 to \$11.00) would mean an additional gross income of \$728.00 in 2017, which is well below what those workers and their families need.

If the government is serious about changing the situation for minimum wage workers, it must then make the necessary decisions, and that means a substantial increase of the minimum wage as shown in Table 9.

Table 9. Minimum wage increases in New Brunswick. 2016-2021 (\$)

	2016	2017	2018	2019	2020	2021
Hourly minimum wage	10.65	11.00	12.00	13.00	14.00	15.00
Gross salary	22,152	22,880	24,960	27,040	29,120	31,200
Annual increase		728	2,080	2,080	2,080	2,080

Source: New Brunswick Common Front for Social Justice

Recommendation 1: *The government should increase the minimum wage to \$15 an hour in the next five (5) years.*

How to determine the minimum wage rate?

The government is now wondering which method would be best to determine the minimum wage rate. Four proposals are put forward:

- a) *maintain the purchasing power.*
- b) *maintain the relative level of pay between minimum wage and median wage.*

c) *keep pace with the minimum wage rates set in other jurisdictions.*

d) *full-time workers earn high enough wages to be above the low-income cut-off.*

We believe our minimum wage should increase significantly before deciding which method would be best to determine the minimum wage rate.

Recommendation 2: *We should not decide which method to use to establish the minimum wage rate before that salary reaches \$15.00 an hour. After that, we must index the minimum wage to the cost of living.*

B. Coverage according to the *Employment Standards Act*

The Common Front for Social Justice agrees with the changes to the *Employment Standards Act* proposed by the government: change the definition of an ``employee``, include persons working in a private home and agricultural workers.

We are, however, extremely disappointed by the lack of proposals regarding the standards related to overtime rates, sick leave, banking of overtime hours, uniforms, statutory holidays, protection in the case of layoffs, etc.

In 2015, we drafted a document, entitled *Proposed Changes to the New Brunswick Employment Standards*, in which we explained the changes needed to make our employment standards more equitable for the workers. We included the document as an attachment.

Our recommendations.

Sick leave: Current Situation: Five (5) days a year, unpaid, when the person has worked for the employer more than 90 days.

Recommendation 3. *After 90 days with the same employer, the worker is granted, every month, half a day of paid sick leave and up to five (5) leave days per year. The sick leave days are not cumulative.*

Pay Equity. Current situation: Equal pay for equal work.

Recommendation 4. *We propose to add the principle recommended by the Pay Equity Coalition: Equal pay for work of equal or comparative value, applied to the private and public sector.*

Overtime. Current situation: The minimum rate for overtime is \$15.45 per hour.

Recommendation 5. *For all hours exceeding the standard work week, the employee receives the hourly wage plus an additional premium pay of 50% of regular wage.*

Banking of overtime. Current situation: No regulation.

Recommendation 6. *Overtime hours could be compensated in time rather than money. In that case, remuneration is equivalent to 1.5 times the employee's hourly rate. The remuneration must be according to a written agreement made before doing the overtime work. Hours taken from the overtime bank are to be taken when the employee would normally work and within three (3) months of overtime worked or within 12 months, according to the agreement with the employer.*

Uniforms. Current situation: No regulation.

Recommendation 7.

- *Company issued uniforms must be supplied free for employees who work for a minimum wage.*
- *Any upkeep or charges for employees who make more than the minimum wage cannot bring their pay to below the minimum wage.*
- *Where it is mandatory to wear a uniform with a logo, the employee cannot be required to pay for it or for the cleaning.*

Layoffs without notice of termination. Current situation: When an employer does not give the employee any notice of termination, the employer must grant the employee an amount equal to the salary he would have earned during the notice period.

Recommendation 8. *When the employer does not give layoff notice to the worker, he must pay wages and, also, the benefits accumulated during the notice period.*

Transition measures for group termination. Current situation: No regulation

Recommendation 9. *The employer must give the Minister responsible, a 30-day notice before terminating a group of employees. The Minister must establish a joint planning committee of employer- employee representatives and union representatives (if applicable) to develop an adjustment program for the workers.*

Severance pay. Current situation: No regulation.

Recommendation 10. *When the employee has worked for at least 12 consecutive months, he/she is eligible for a severance pay of two (2) days of wages per year of employment or up to 5 days of wages, whichever is greater.*

Statutory holidays. Current situation: Seven (7) statutory holidays New Year's Day, Good Friday, Canada Day, New Brunswick Day, Labour Day, Remembrance Day, and Christmas Day.

Recommendation 11. *One extra statutory holiday in February.*

Complaints and Enforcement. Current situation: the worker has to deposit a complaint.

Finally, we wish to underline that the complaints and enforcement are not pro-workers. During the number of years that the Common Front has been existence, we have received a number of calls from non-unionized workers complaining that their employer was not following the Employment Standards. Each time, we explained they had to make a formal complaint; each time they refuse because of fear of reprisals from their employer.

We strongly support the NB Coalition for Pay Equity recommendation

Recommendation 12. *Therefore, we recommend that the Act take a proactive approach and allows for samples auditing of employers to ensure their compliance to the Act, even in the absence of complaints. We also recommend an obligation on the part of the employer to post the Act's article 28 - Unjust dismissal and related unfair employer action. We believe that the government should ensure a vigorous enforcement of this article.*

C- Statutory Review of the *Employment Standards Act*: Employment protections for young workers

We agree with some of the changes proposed by the government regarding employment protections for young workers:

- amend section 39 of the *Employment Standards Act* to include ``education`` and apply to youth under the age of 18
- increased the age of work restrictions from under 14 years old to under 16 years old.
- complete a comprehensive review of the restricted industries in the *Employment Standards Act*.
- require employers to obtain written consent from a parent or legal guardian to employ a youth under the age of 16
- review participation in artistic performances to determine whether employment provisions for entertainers under the age of 16 should be added to the *Employment Standards Act*
- increase to 4 hours per day the number of hours worked during a school day and increase to 8 hours per day the number worked during a Non-school day.
- the maximum of hours per week worked during a school day should be 20 hours and 40 hours for Non-school days.

We are aware that the labour market now requires workers to have a higher education and, often, young people compromise that education by working during their studies, particularly high school students.

We still think the situation has improved, as indicated in Table 2.

One of the challenges facing young people from poor families is the lack of income. Often the young student's job enables his family to survive. Limiting the number of work hours per week could then have a negative impact. Yet, that impact could be offset if the minimum wage becomes a decent salary and there is more money in scholarships intended for community colleges and universities.

Recommendation 13. *Increase to four (4) hours on school days and 8 hours on non-school days the time a student under 16 years old can work*

Recommendation 14. *The total number of hours worked in a week should not exceed 20 hours during the school week and 40 hours during a non-school week for a youth under 16 years old.*

Conclusion

Minimum wage and minimal employment standards are the only tools able to protect non-unionized workers in their workplaces.

Therefore, the provincial government has a huge responsibility to ensure those standards offer the best protection possible.

We are extremely worried about the lack of recommendations, as to multi-year minimum wage increases, in the review of the *Employment Standards Act*. We are even more worried by the fact the recommendations regarding the areas covered by these standards are limited to two sectors only, that is domestic workers and farm workers, and do not affect a series of standards (time and a half, sick leave, uniforms, etc.) which, presently, better meet the needs of a changing workplace.

List of recommendations

Recommendation 1: The government should increase the minimum wage to \$15 an hour in the next five (5) years.

Recommendation 2: We should not decide which method to use to establish the minimum wage rate before that salary reaches \$15.00 an hour. After that, we must index the minimum wage to the cost of living.

Recommendation 3. After 90 days with the same employer, the worker is granted, every month, half a day of paid sick leave and up to five (5) leave days per year. The sick leave days are not cumulative.

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Recommendation 5. For all hours exceeding the standard work week, the employee receives the hourly wage plus an additional premium pay of 50% of regular wages.

Recommendation 6. Overtime hours could be compensated in time rather than money. In that case, remuneration is equivalent to 1.5 times the employee's hourly rate. The remuneration must be according to a written agreement made before doing the overtime work. Hours taken from the overtime bank are to be taken when the employee would normally work and within three (3) months of overtime worked or within 12 months, according to the agreement with the employer.

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Recommendation 8. When the employer does not give layoff notice to the worker, he must pay wages and, also, the benefits accumulated during the notice period.

Recommendation 9. The employer must give the Minister responsible, a 30-day notice before terminating a group of employees. The Minister must establish a joint planning committee of employer employee representatives and union representatives (if applicable) to develop an adjustment program for the workers.

Recommendation 10. *When the employee has worked for at least 12 consecutive months, he/she is eligible for a severance pay of two (2) days of wages per year of employment or up to 5 days of wages, whichever is greater.*

Recommendation 11. *One extra statutory holiday in February.*

Recommendation 12. *We recommend that the Act take a proactive approach and allows for samples auditing of employers to ensure their compliance to the Act, even in the absence of complaints. We also recommend an obligation on the part of the employer to post the Act's article 28 - Unjust dismissal and related unfair employer action. We believe that the government should ensure a vigorous enforcement of this article.*

Recommendation 13: *Increase to four (4) hours on school days and 8 hours on non-school days the time a youth under the age of 16 years old can work.*

Recommendation 14: *The maximum of hours per week worked during a school day should be 20 hours and 40 hours for non-school days for youth under 16 years old.*

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