

FIGHT FOR LUTTER POUR **+ JUSTICE**



Proposed Changes to the New Brunswick Employment Standards

New Brunswick Common Front for Social Justice

November 2015

Introduction

The Common Front for Social Justice (CFSJ) is a bilingual provincial organisation that for the last eighteen years, has been working to reduce poverty in New Brunswick. It focuses on four major areas:

1. The situation of non-union workers
2. Employment insurance
3. Social assistance
4. Pay equity

Throughout the years, the CFSJ organized, among other things, campaigns to increase the minimum wage, oppose the reductions to the Employment Insurance program, improve the living conditions of welfare recipients, and has supported the demands of the Coalition for Pay Equity.

Today, the CFSJ wants to particularly target the working poor, namely the thousands of men and women who, day after day, contribute to a part of the economy. Often, these workers receive inadequate pay and the provincial employment standards are the only thing protecting them in their workplace.

Minimum wage workers

In 2014, 6.7% (20,900) of the New Brunswick workers received minimum wage, and almost all (19 800) worked in a non-unionized workplace, namely in the sectors of retail sale, lodging, food services and culture. Almost half had full-time jobs (9,600) and almost half (48%) were 20 years old and more. Moreover, 13,100 were women compared to 7,800 men¹.

It is important to note that the number of minimum wage workers having part time jobs more than doubled between 2004 (2.5%) and 2014 (6.7%).¹

Why do we need to make changes to the employment standards?

There are three main reasons:

- First, employment should allow the worker and his or her family to live above the poverty line. The minimum wage for 2015 (\$10.30) translates into a net annual income that barely covers the basic needs of a single person, a single family or a couple with children. When we analyze the net annual income and the annual expenses of those three categories of workers, it is clear that they arrive at an annual deficit; they are living in poverty.² In order to get out of poverty, they need a decent salary.
- Secondly, in 2014, there were 46 500 workers at minimum wage working in part-time jobs in the province; more than half of them (34,200) were women. They worked an average

of 17.2 hours per week.¹ Those workers can be found mainly in the retail, cultural, accommodation and food services sectors. Those workers need a better income and more protection.

- Thirdly, given that the vast majority of workers are not covered by a collective agreement, they don't have any organisation to defend their rights and must rely of the employment standards set by the province. Those standards impact all dimensions of their work life and are minimal. Even worse, some employers do not respect them and some employees are not informed of their rights. Therefore, it is important to take advantage of the changes to the minimal standards of employment to launch a campaign in order to inform the public and raise employers' and workers' awareness regarding their rights and obligations.

Our proposals

Our proposals are tied to minimum wage and its indexation, sick leave, pay equity, overtime, deductions for uniforms, remuneration in the case of layoff of a group of employees, severance pay and statutory holidays.

Our proposals apply on a pro rata basis to part-time and casual employees.

1. Minimum wage

Actually : \$10.30 per hour

Our recommendation: \$15.00 per hour

Rationale: Hourly minimum wage in the province increased to \$10.30 on December 31st 2014. Back then, the minimum wage of the province could be compared to half of the other provinces. However, since the present government has not planned any increase before 2017, the province now ranks last among all the Canadian provinces (Table 1). What is even more disturbing is the fact that no increase is planned before two years.

Table 1. Minimum wage in Canada - 2015 (\$)

| BC | AB | SK | MN | ON | QC | NB | PEI | NS | NFL |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 10.45 | 11.20 | 10.50 | 11.00 | 11.25 | 10.55 | 10.30 | 10.50 | 10.60 | 10.50 |

Source : <http://srv116.services.gc.ca/rpt2.aspx?lang=eng&dec=6>

Minimum wage workers should be able to live above the poverty line. When we analyze the net annual income of a minimum wage worker and his annual expenses, it is obvious that such a salary does not enable him to live above the poverty line. The situation is even more catastrophic when the worker has a family.²

In 2014, almost 15% of the people using food banks had employment income or received employment insurance benefits, which meant they had previously worked.³ It is this kind of data that highlights the desperate situation of low-salary workers.

In order to reduce poverty and give a decent salary to the workers who contribute to the employers' profits, to the economy and to society, the provincial government must increase minimum wage in order for it to attain \$15 per hour. It must be indexed it to the cost of living thereafter to make sure workers do not lose their purchasing power.

A reasonable minimum wage not only has an impact on the workers and their families but also on the economy. It increases the worker's purchasing power and, according to the Canadian Centre for Policy Alternatives, there are no positive or negative repercussions on employment or the economy with a higher minimum wage.⁴

"Claims that higher minimum wages will inevitably cause measurable negative consequences (especially for young workers and those in low-wage industries) are not consistent with empirical evidence from the Canadian provinces. Minimum wage regulations do not have important consequences on employment outcomes in either direction. Not surprisingly, employment outcomes depend first and foremost on the overall level of spending and macroeconomic activity." *Dispelling Minimum Wage Mythology. The Minimum Wage and the Impact on Jobs in Canada, 1983-2012.* Jordan Brennan and Jim Stanford. October 2014

2. Minimum wage revision - Indexation

Actually: Every two years, effective December 31, 2014, the minister must revise the minimum wage, the method to determine the minimum wage, and the calendar for applying the necessary modifications.

Our recommendation:
Every April 1st, the minimum wage will be adjusted to the cost of living.

Rationale: Minimum wage will increase to \$11 per hour in 2017 and be indexed in the following years.⁵ However, there aren't any increases planned for 2015 and 2016. That means workers will lose part of their purchasing power because of inflation. A two-year period without any increase is simply unacceptable.

An annual increase of minimum wage based on the cost of living would enable these workers to keep their purchasing power.

Annual increases would also enable employers to plan ahead for the payroll increase.

3. Sick leave

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

Our recommendation:

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.

Rationale: Given his low earnings, a worker cannot lose work to take care of himself. Being forced to work when sick can have a negative impact on one's physical and mental health, and, in the case of a virus, increase the risk of spreading the virus to other employees or to clients depending of the type of work. It is a matter of public hygiene.

Paid sick leave motivates workers to remain with the same employer and, consequently, reduces staff turnover and costs for the employer. Making it mandatory for all employers to grant paid sick leave creates a balance between employers granting them right now and those who are not doing it presently.

4. Pay equity

Actually: Equal pay for equal work

Our recommendation:

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.

Rationale: The concept of "equal pay for equal work" means that employers must give the same pay to men and women doing the same work. For instance, a woman electrician in a company should receive the same pay as a male electrician. This is a fundamental principle.

However it does not take into account the fact that due to historic and systemic discrimination, many jobs mostly done by women are paid less than jobs of the same value mostly done by men. If responsibilities, qualifications, efforts and working conditions required for a female-dominated job have the same value as those required for a male-dominated job, the pay should be the same. For instance, if it is determined that the jobs of an accounting

assistant (female-dominated) and a car salesmen (male-dominated) working for the same car dealership have the same value, their pay should be the same.

Therefore, we believe that the concept of equal pay for work of equal value (generally called “pay equity”) should be added to the Employment Standards while preserving the concept of equal pay for equal work (generally called “pay parity”).

It is totally unacceptable, in 2015, that women and men who do similar work are not paid the same salary. The hourly wage gap between women and men was 11.1% in 2014.⁶

A large number of women work and we must continue to encourage them to either enter the labour force or stay in it. They should not be disadvantaged because of their sex. Women already face enough obstacles when it comes to work (lack of daycare services, household chores, etc.). We certainly don’t want to place another obstacle in their way, namely a lower salary for work equal or equivalent to a man’s work.

Pay inequity only increases poverty among women and has important repercussions on their life and that of their family.

5. Overtime

Actually: The minimum rate for overtime is \$15.45 per hour.

Our recommendation:

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

Rationale: Presently, in New Brunswick, the work week represents 44 hours and employees only receive time and a half of minimum wage for the overtime hours (Minimum wage of \$10.30/hour + half of that salary (\$5.15) = \$15.45).

Depending on the industry, overtime is important to increase workers’ total income. That rings particularly true for seasonal industries where the work period is limited to a few months a year.

In New Brunswick, the problem stems from the fact that overtime is only paid \$15.45/hour and not at fifty per cent (50%) of the basic hourly salary rate of the worker. Whether a worker earns \$10.30/hour or \$14.00/hour, the overtime hours will still be paid the hourly rate of \$15.45.

Workers having to do overtime have less time for their personal life and that can negatively impact their family life. Moreover, overtime can often lead to work injuries because of the accumulated fatigue. Such a low hourly rate encourages employers to increase regular working hours to the detriment of their workers’ health rather than hire enough staff.

Overtime paid at time and a half of the hourly salary rate could create jobs because the employers would then be forced to hire more workers instead of paying for overtime.

6. Banking of overtime

Actually: No regulation

Our recommendation:

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.

Rationale: Workers must be compensated for all the hours worked and overtime hours should be remunerated accordingly. When a worker chooses to bank the overtime, it gives him the opportunity to use those hours for appointments, personal business, spend time with family or take care of himself.

Some employers make a verbal promise to compensate the overtime in time rather than money. Sometimes, the verbal promise is not kept and the employee worked overtime without any compensation. However, in most cases, being paid in time represents a lower remuneration than that established by law because only one hour of time off is granted for one hour of overtime.

That being said, being remunerated in time rather than money must remain the employee's choice and not the employer's. A written agreement rather than a simple verbal promise is necessary to ensure justice and give some negotiation power to the workers who are not protected by a collective agreement.

As we all know, the minimal standards do not cover paid leave of absence (sick leave, family leave, etc.) and banking of overtime is often the only way to take days off without losing part of one's low income.

7. Salary deduction for uniforms

Actually: No regulation

Our recommendation:

- *Company issued uniform 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 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.*

Rationale: By wearing the uniform that represents the employer, the worker is advertising the company and should not have to pay for that publicity. When required to buy specific work attire, chosen by the employer, the worker cannot buy the same work clothes at a lower price at another store.

The worker can wash, at a lower cost, the uniform or work apparel. Therefore, if the employer decides to do the cleaning himself, the worker should not have to bear those additional costs.

8. Layoff without notice of termination

Actually: 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

Our recommendation:

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

Rationale: Remuneration of one's work is not limited to salary. It also comprises benefits, namely contribution to a pension plan or insurance plan, time off, etc. It is unfair for an employer to pocket the value of the benefits when they are an integral part of the compensation.

The worker covered by the employment standards is often a low-salary worker who lives from one paycheque to the other, and does not have any money put aside to support him before he finds another job. Losing his job is a financial disaster and, often, can mean getting more into debt and forcing the person to rely on income assistance.

Losing one's job without notice is already difficult enough without also refusing to pay what is due to that worker.

9. Transition measures for group terminations

Actually: No regulation

Our recommendation:

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

Rationale: We are observing, namely in the sector of retail sales (e.g.: Future Shop, Target, etc.) and call centres (e.g.: Thing 5, Minacs, Sykes), laying off of group of workers or quick closing of the business. Often, those workers, who are losing their jobs, do not receive any help from their employer in order to find another job or get training. We believe employers should be more responsible in regard to their employees and that the government has an important role to play in these situations.

We propose, in the advent of such situations, that the minister in charge take proactive measures, such as having the concerned parties (workers, employer and union if there is one) to collaborate to help those workers find a new job or get training for a new job.

A low-salary worker cannot put money aside for the unexpected, for example losing his job without any warning. Workers should not be treated as disposable goods in function of the profits employers want to make.

The government should protect the workers by making employers accountable.

10. Severance pay

Actually: No regulation

Our recommendation:

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, and up to 5 days of wages, whichever is greater.

Rationale: Good service and loyalty to the employer must be recognized. Today, people can have up to seven (7) careers in their lifetime.⁷ Therefore, when a worker remains with the same employer for numerous years, those years of service must be rewarded.

11. Statutory holidays

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

Our recommendation:
One extra statutory holiday in February

Rationale: Presently, there are no holidays between Christmas and Easter which represents a three month period. In our view, that period is too long. An increasing number of provinces adopted an additional holiday for their citizens, most during February.

The day is often called: Family Day.

The following provinces all have a statutory holiday in February: British Columbia, Alberta, Saskatchewan, Manitoba (Louis Riel Day), Ontario, Nova Scotia (Heritage Day) and Prince Edward Island (Island Day).⁸

New Brunswick must also establish such a statutory holiday for the families in order to give workers a well-deserved rest, and allow them to spend quality time with their family in February.

Conclusion

These recommendations highlight how the most vulnerable workers in our society face very precarious situations.

Every day, thousands of workers go to work and contribute to the economy and society. Yet, they are not paid a salary that enables them to have a decent life.

Most minimum wage workers are not unionized and have only the minimal employment standards to protect them in their workplace which are clearly inadequate and often not respected by the employers.

It is clear that the government must make more of an effort to inform workers of their rights. It must also make sure employers respect those rights.

We are proposing concrete changes in our province in order to make a positive difference in the life of many workers struggling each day to put food on the table and a roof over the head of their family!

Annex 1 – Summary of recommendations

| Employment Standards | Actually | Our recommendations |
|--------------------------------|--|--|
| Minimum Wage | \$10.30 an hour | \$15.00 an hour |
| Minimum Wage Review-Indexing | Every two years after December 31, 2014, the Minister will review the minimum wage. Certain factors must be considered when conducting a review. | Every April 1 the minimum wage will be adjusted to the cost of living. |
| Sick Leaves | 5 days per year, unpaid, if employed for more than 90 days | 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 | Equal pay for equal work | 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 | Overtime is minimum \$15.45 an hour | Any hours over the standard work week, the employee receives their hourly wage plus an additional premium pay of 50% of regular wage |
| Overtime Banking | Nothing | 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. |
| Deductions for uniforms | Nothing | -Company issued uniform 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 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. |
| Lay-Off: Pay in Lieu | Where no notice, must pay an amount equal to what employee would have earned during notice period | When the employer does not give layoff notice to the worker, he must pay wages and, also, the benefits accumulated during the notice period |

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| Planning Committee for Group Terminations | Nothing | 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 | Nothing | 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, and up to 5 days of wages, whichever is greater. |
| Statutory Holiday | Seven (7) statutory holidays New Year's Day, Good Friday, Canada Day, New Brunswick Day, Labour Day, Remembrance Day, and Christmas Day | One extra statutory holiday in February. |

Notes:

1. Labour force estimates for employees earning adult minimum wage or less. Statistics Canada, Labour Force survey, custom tabulation - 2014.
2. An Economic Reality : Living on Minimum Wage. New Brunswick Common Front for Social Justice Inc. Annex 1.
3. https://www.foodbankscanada.ca/getmedia/7739cdf-72d5-4cee-85e9-54d456669564/HungerCount_2014_EN.pdf.aspx?ext=.pdf
4. Dispelling Minimum Wage Mythology. The Minimum Wage and the Impact on Jobs in Canada, 1983-2012 by Jordan Brennan and Jim Stanford, October 2014, CCPA
5. Dept. of Post-secondary Education, Training and Labour, News release. *Minimum Wage to Increase on Dec. 31*, 14 November 2014. http://www2.gnb.ca/content/gnb/en/departments/post-secondary_education_training_and_labour/news/news_release.2014.11.1295.html
6. <http://www.equite-equity.com/userfiles/file/Inequity%20costs%20MODIFI%C3%89.pdf>
7. <http://www.workopolis.com/content/advice/article/how-many-jobs-do-canadians-hold-in-a-lifetime/>
8. Public Holidays in Canada. Wikipedia. https://en.wikipedia.org/wiki/Public_holidays_in

