



PEI Federation of Labour's Response to the Employment Standards Review Panel's Recommendations

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Introduction- Due to the very recent release of the report from the Employment Standards Review Panel, the Federation has had very little time to review the full implications of all the recommendations, but here is some of the things that stood out from their recommendations:

Two-Tier Minimum Wage - We are quite concerned that the Panel in part 6 (Minimum Wage) 2 (a) provides for the possibility in future for more than one minimum wage rate. **We hope that since this government has come out publically as being opposed to a two-tier minimum wage for Prince Edward Island that, you will reject this recommendation.**

Overtime Exemptions

Federation Recommendation	Remove all overtime exemptions from the Employment Standards Act.
Panel Recommendation	Grant a variance from the standard work week to specific industries to a maximum of 55 hours per week

While the Federation is happy that the Panel has recommended to reduce the ridiculous overtime exemptions on PEI from up to 75 hours / week down to a maximum of 55 hours / week and the government has accepted this recommendation, we still feel that the standard work week in the Act should be the maximum hours any worker on PEI should have to work before overtime is paid.

Overtime rules are meant to financially deter employers from forcing workers to work excessive hours on a regular basis and allow workers to not only have a social and family life outside of work but also allow them time to recuperate from the physical and mental stresses that are apart of everyone’s daily work experience. Study after study is showing that excessive work hours are dangerous, unhealthy, and disruptive of family and community life. Even with the lowering, 55 hours a week means that a worker save for one hour can still work seven, eight hours days a week before overtime is paid. How can this exemption be considered to act as any kind of deterrence to an employer to make sure that they allow their employees the rest and family time they deserve and need.

Also, even with the Panel’ s recommended lowering of the standard work week from 48 hours to 44, PEI still ranks tied for 11th out of 14 jurisdictions in this country for the highest standard work week. Therefore with our high standard work week, employers on the Island are already receiving an overtime exemption when compared to the rest of the

country and should not be granted any further exemptions.

Therefore, the PEI Federation of labour urges the Provincial government to go further than the recommendation and remove all overtime exemptions from the Employment Standards Act.

Standard Work Week

Federation Recommendation	Overtime be paid after over 8 hours per day or 40 hours per week
Panel Recommendation	Overtime be paid after 44 hours
Rank Before Recommendation	Tied for highest standard work week in country with Nova Scotia
Rank After Recommendation	Tied for 11th in the country for the highest standard work week with Ontario and New Brunswick (see table below)

As we stated above even with the Panel’s recommended lowering of the standard work week from 48 hours to 44, PEI still ranks tied for 11th out of 14 jurisdictions in this country for the highest standard work week. Nine jurisdictions in Canada have overtime rules that require overtime be paid after 40 hours per week. Why should Island workers not have the same standard work week enjoyed by the vast majority of Canadians.

-Therefore, the PEI Federation of labour once again urges the Provincial government to go further than the recommendation and require employers to pay overtime after over 8 hours per day or 40 hours per week have been worked in order to bring PEI more in line with the majority of Canada.

Comparison of Overtime Rules Across Canada

Jurisdiction	Overtime rules
British Columbia	Over 8 hours per day or 40 hours per week In BC, overtime pay also includes double time for hours after 12 hours per day
Northwest Territories	Over 8 hours per day or 40 hours per week

Yukon	Over 8 hours per day or 40 hours per week
Federal	Over 8 hours per day or 40 hours per week
Nunavut	Over 8 hours per day or 40 hours per week
Manitoba	Over 8 hours per day or 40 hours per week
Saskatchewan	Over 8 hours per day or 40 hours per week
Newfoundland & Labrador	Over 40 hours per week
Quebec	Over 40 hours per week
Alberta	Over 8 hours per day or 44 hours per week
Ontario	Over 44 hours per week
New Brunswick	Over 44 hours per week
Prince Edward Island	Over 44 hours per week
Nova Scotia	Over 48 hours per week

Statutory Holidays

Federation Recommendation	Add Victoria Day and Thanksgiving Day
Panel Recommendation	Add Thanksgiving Day
Rank Before Recommendation	Tied with Newfoundland and Nova Scotia for the lowest number of Statutory Holidays in Canada at 6
Rank After Recommendation	Tied with New Brunswick at 11th out of 14 jurisdictions for the lowest number of statutory holidays in Canada at 7 (see table below)

The Federation is happy that the Panel has recommended that PEI add Thanksgiving Day as a statutory holiday and the government has accepted this recommendation. However at 7 statutory holidays, this still leaves PEI tied with New Brunswick for the 11th lowest number of statutory holidays out of 14 jurisdictions in Canada. Ten jurisdictions in this country recognize at least 8 statutory holidays.

-Therefore, the PEI Federation of labour asks the Provincial government to go further than the recommendation and add at least one further statutory holiday preferably Victoria Day in order to bring PEI more in line with the rest of Canada.

Comparison of Statutory Holidays Across Canada

Jurisdiction	Number Stat Holidays	Recognize Victoria Day and Thanksgiving Day
Northwest Territories	10	Yes
Yukon	9	Yes
Federal	9	Yes
Alberta	9	Yes
Nunavut	9	Yes
Saskatchewan	9	Yes
British Columbia	9	Yes
Ontario	8	Yes
Quebec	8	Yes
Manitoba	8	Yes
New Brunswick	7	No
Prince Edward Island	7	Thanksgiving Day only
Newfoundland & Labrador	6	No
Nova Scotia	6	No

Minimum Duration of Vacations

Federation Recommendation	After five (5) years of continuous employment on P E I that employees be granted 3 weeks of annual vacation with pay and vacation pay be increased to 6%
Panel Recommendation	Where the employee has been working for employer for at least 8 years, they will receive a vacation of at least 3 weeks and vacation pay of 6%
Rank Before Recommendation	Tied for twelfth in the country with Ontario and the Yukon
Rank After Recommendation	Tied for ninth in the country with New Brunswick and Nova Scotia (see table below)

It is good to see the Panel once again recommend an improvement to the Act however once again their recommendation is not in line with the rest of Canada. **With 8 of 14 jurisdictions legislating a 3 week vacation duration before the 8 years service that the Panel recommends, we urge this government to go with the majority of jurisdictions in Canada and legislate a 3 week vacation after 5 years to bring us in line with the rest of Canada.**

Comparison of Duration of Vacation across Canada

Jurisdiction	Vacation Pay	Duration of Vacation
Saskatchewan	3/52 of vacationable earnings After 10 years of employment: 4/52 of vacationable earnings	* After 1 year of employment: 3 weeks * After 10 years of employment: 4 weeks

British Columbia	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Manitoba	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Alberta	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Quebec	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Northwest Territories	4% vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Nunavut	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Federal	4% of vacationable earnings After 6 years: 6%	* After 1 year of employment: 2 weeks * After 6 years of employment: 3 weeks

New Brunswick	4% of vacationable earnings After 8 years: 6%	*After 1 year of employment: 2 weeks (One day for each calendar month worked, or 2 weeks; whichever is less.) *After 8 years of employment: 3 weeks
Nova Scotia	4% of vacationable earnings After 8 years: 6%	* After 1 year of employment: 2 weeks * After 8 years of employment: 3 weeks
Prince Edward Island	4% of vacationable earnings After 8 years: 6%	* After 1 year of employment: 2 weeks * After 8 years of employment: 3 weeks
Newfoundland & Labrador	4% of vacationable earnings After 15 years: 6%	* After 1 year of employment: 2 weeks * After 15 years of employment: 3 weeks
Ontario	4% of vacationable earnings	After 1 year of employment: 2 weeks
Yukon	4% of vacationable earnings	After 1 year of employment: 2 weeks

Maternity and Parental Leave

<p>Federation Recommendation</p>	<p>We urge the provincial government to adjust maternity/parental leave rules to allow continuation of benefit plans.</p> <p>We also urge the government to waive notice periods and allow extensions on leave time lines if there is a complication in the pregnancy, birth or post-partum.</p>
<p>Committee Recommendation</p>	<p>Maintenance of employee benefits</p> <p>(3) For the periods of leave specified in sections 41, 42 and 44, the employer (a) shall grant to the employee the option of maintaining a benefit plan in which the employee participated prior to the start of the leave;</p> <p>Extension of Parental and Adoptive Leave</p> <p>If the child has a physical, psychological or emotional condition requiring an additional period of parental care, the employee is entitled to up to an additional five consecutive weeks of unpaid leave, beginning immediately after the end of the leave taken under subsection (1) or section 41.</p>

The Federation is quite happy with the panel’s recommendation to add the maintenance of benefits during an employee’s period of leave to the Act and we are also happy that the panel is recommending the extension of parental and adoptive leave by an additional five consecutive weeks in case the child suffers from a physical, psychological or emotional problem.. In addition, we are happy to see that the panel is recommending that the restrictiveness of the current qualification period for maternity/parental/adoptive leave be reduced from 20 continuous weeks to a total of at least 20 weeks in the 52 weeks immediately preceding the day on which the requested leave is to commence. We hope that the government will accept these recommendations

However, we do feel that the panel missed one important addition to Maternity Leave regulations. While they did allow for extension to Parental and Adoptive Leave in case of health problems of the child, the panel did not allow for complications suffered by the mother during pregnancy. We feel that the Act should allow for the waiving of notice periods or allow extensions on maternity leave time lines if there is a complication in the pregnancy, birth or post-partum.

Therefore, in addition to accepting the panel’s recommendations on maintenance of benefits, the extension of parental and adoptive leave in case the child suffers from health problems, and the reduction in the restrictiveness of the current qualification period for maternity/parental/adoptive leave, the federation urges the government to include language to protect women whose pregnancies suffer from complications.

Bereavement Leave

Federation Recommendation	Change PEI’s bereavement leave for an immediate family member from 3 days unpaid leave to add one day of paid leave (as in Newfoundland and Quebec) and 4 days unpaid leave. 5 days of unpaid leave total is standard in most provinces in Canada.
Committee Recommendation	One day of paid leave and up to two consecutive days of unpaid leave if the deceased person was a member of the immediate family of the employee

The Federation would like to express its support for the panel’s recommendation to add one day of paid leave to the Bereavement Leave provisions of the act and we ask the government to act upon this recommendation.

Notice of Group Layoffs or Terminations

Federation Recommendation	layoff 10 or more employees in an establishment within 4 weeks of each other there should be a layoff notice of 8 weeks for 10-99 employees, 12 weeks for 100 to 299 employees, and 16 weeks for layoffs of over 300 employees. If the company does not give the proper notice, the employee shall be paid their regular wages for the number of required notice weeks in lieu of notice.
Committee Recommendation	Subject to subsection (3)(d) and notwithstanding subsection (1), where an employer discharges or lays off ten or more persons in an establishment within any period of four weeks or less, the employer shall give notice of not less than eight weeks.
Rank Before Recommendation	Last as PEI was the only jurisdiction in Canada that had no regulation
Rank After Recommendation	Puts PEI in approximately 3 rd place in Canada (see table below)

The Federation supports the panel’s recommendation regarding notice of group layoffs or terminations and asks the government to add this provision into the Act.

Comparison of Notice of Termination for Groups across Canada

Jurisdiction	Number of Employees	Minimum Notice
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Quebec	10 employees or more in an establishment within 2 months The terminations are for technological or economic reasons.	10-99 employees: 8 weeks 100-299 employees: 12 weeks 300 employees or more: 16 weeks
Nova Scotia	10 employees or more in an establishment within 4 weeks	10-99 employees: 8 weeks 100-299 employees: 12 weeks 300 employees or more: 16 weeks OR Pay in lieu
Prince Edward Island	10 employees or more in an establishment within 4 weeks	10 employees: 8 weeks
Saskatchewan	10 employees or more in an establishment within 4 weeks	10-49 employees: 4 weeks 50-99 employees: 8 weeks 100 employees or more: 12 weeks
New Brunswick	More than 10 employees representing at least 25% of the employer's workforce (whether termination or layoff) within 4 weeks	6 weeks OR Pay in lieu
Northwest Territories	25 employees or more within 4 weeks	25-49 employees: 4 weeks 50-99 employees: 8 weeks 100-299 employees: 12 weeks 300 employees or more: 16 weeks

Nunavut	25 employees or more within 4 weeks	25-49 employees: 4 weeks 50-99 employees: 8 weeks 100-299 employees: 12 weeks 300 employees or more: 16 weeks
Yukon	25 employees or more within 4 weeks	25-49 employees: 4 weeks 50-99 employees: 8 weeks
Federal	50 or more employees in an industrial establishment within 4 weeks	16 weeks before termination date of first employee in group whose employment is to be terminated
Manitoba	50 employees or more within 4 weeks	50-100 employees: 10 weeks before termination date of first employee 101-300 employees: 14 weeks before termination date of first employee 301 employees or more: 18 weeks before termination date of first employee OR Pay in lieu
Newfoundland & Labrador	50 employees or more within 4 weeks	50-199 employees: 8 weeks 200-499 employees: 12 weeks 500 employees or more: 16 weeks OR Pay in lieu, including overtime the employee would have worked.
British Columbia	50 employees or more at a single location within 2 months	50-100 employees: 8 weeks before termination date of first employee 101-300 employees: 12 weeks before termination date of first employee 301 employees or more: 16 weeks before termination date of first employee Pay in lieu or a combination of notice and pay in lieu

<p style="text-align: center;">Ontario</p>	<p>50 employees or more in an establishment: representing more than 10% of the number of employees in the establishment who have been employed there for at least three months; or the terminations are caused by the permanent discontinuance of at least part of the employers business at the establishment; within 4 weeks.</p>	<p>50-199 employees: 8 weeks 200-499 employees: 12 weeks 500 employees or more: 16 weeks OR Pay in lieu</p>
<p style="text-align: center;">Alberta</p>	<p>50 employees or more at a single location within 4 weeks</p>	<p>4 weeks</p>

Compliance and Effective Enforcement

A central priority for the Federation coming into this review was to ensure that measures are put in place so that there is effective employer compliance with and enforcement of the Act.

It should go without saying that there is little ultimate point in proposing or legislating substantive improvements in employment standards if they do not become the lived reality of our workplaces. It is incumbent upon the Province, not just to set a decent

minimum floor of rights and standards in law, but also to ensure that the law is effectively communicated and enforced.

In our experiences with non-union workers on PEI two things stand out when you talk about the Employment Standards Act to them. The first is the general lack of knowledge and understanding about the Act. We have even been told by some nonunion workers that their employer told them that Employment Standards only applies to union members. There is a real need to educate workers about the rights provided to them in the Act and to educate employers on their responsibilities under the Act.

The other thing was the real lack of confidence that the Employment Standards Branch could offer them the protection against employer reprisals the Act is supposed to ensure them if they complain about the violations they were subjected to. This lack of confidence is one of the main reasons that almost all formal complaints are received only after the employee has resigned or has been terminated.

We are happy that, in their review of the enforcement of the Employment Standards Act, the panel seems to realize that there is a real need to educate and that the current complaints based system is not working as an effective method to truly enforce the Employment Standards Act on PEI. Island Workers need a more proactive method to ensure this Act is properly enforced and that it offers them the protection against employer reprisals that the Act is supposed to offer workers.

Therefore, we ask the government to not only enact the compliance and education recommendations made by the panel but to also enact the commitment of sufficient resources recommendations that this panel makes in the Non-legislative Recommendations section of the report.

Conclusion

In the end, while we feel that the recommendations offered in this report are a step forward, in a lot of cases it is a baby step. Even if all the positive committee's recommendations are enacted, it would still leave PEI workers in many cases treated like second class citizens in their own country. The Provincial government needs to look past bringing PEI up to the level of the rest of the Maritimes and look at bringing Employment Standards for Island workers up to the level that Canadian workers outside our region enjoy. PEI is becoming known more and more as a great place to retire but a lousy place to work. The Provincial government needs to start changing that perception and bringing PEI's Employment Standards up to a level enjoyed most Canadians, ensuring Island workers that the Act will be enforced and they will be protected from reprisals, and doing

more to educate Island workers and employers about the Act will be a definite step in the right direction..