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# **New Approaches in Achieving Compliance with Statutory Employment Standards**

by

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**Executive Summary**

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## Executive Summary

All Canadian jurisdictions have laws that specify minimum standards of employment. These standards include minimum wages, rules regarding overtime pay, the provision of paid vacations and public holidays, and job protection for employees who take maternity or parental leave. Without such laws, workers who lack power in the labour market may face terms and conditions of work below levels seen as acceptable by the public.

All the main social actors benefit from a set of minimum standards of employment. Workers' well-being is protected, and in turn employers find that workers who believe they are treated fairly are more productive: absenteeism and turnover rates are lower. A floor set of standards also provides a level playing field, so that fair employers cannot be undercut by those offering substandard terms of employment. Taxpayers are better off because of savings in social programs when workers who are paid adequately are less likely to turn to social assistance.

Of course, for workers, employers, and society to benefit from these laws, employers must comply with them. The challenge that public administrators face is to obtain compliance in an efficient and effective manner. Government officials cannot be in every workplace, so they necessarily develop strategies and tools to promote compliance within the resources available to them. Yet, workers' access to minimum employment standards depends upon the extent to which government bodies charged with administering these standards are successful in actively promoting and enforcing compliance.

Achieving compliance with employment standards has become more challenging in recent years. The vulnerable sector of the labour force – workers who have little bargaining power in the workplace – is large and growing. There are several reasons why low-paid, unrepresented workers have difficulty gaining protection from minimum employment standards. Some are unaware of their rights. Others are misled to believe that they are independent contractors, when in fact they are in an employment relationship. Still others may be concerned that an attempt to assert their rights could cost them their jobs.

This report takes stock of compliance practices across Canada, in several states in the US, in New Zealand, and in the United Kingdom. It identifies practices that are believed to be effective and efficient means of reducing the burden of unresolved claims and achieving compliance. The information was gathered through interviews with government officials, representatives of business and labour groups, and people in non-profit organizations working on the front-lines to assist vulnerable workers. Government officials also completed a questionnaire about current practices. A Roundtable among the Canadian participants in the interviews was held in Ottawa on April 15<sup>th</sup> to discuss a draft of this report.

The main results are summarized below.

Efforts to promote compliance with employment standards involve a number of stages of activity. They include:

- Promoting Awareness: Actively informing employers and employees of their rights and responsibilities
- Responding to inquiries and advising people about the claims process.
- Resolving claims: investigating, mediating/persuading, adjudicating.
- Identifying high-risk employers/sectors and conducting audits of workplaces.
- Deterring violations through appropriate penalties.
- Measuring compliance regularly.

Based on the information and ideas gathered in the interviews, the questionnaire replies, the literature reviewed, and the discussion at the Roundtable, we identify a mix of instruments that appear to be promising in their potential to foster compliance with employment standards efficiently and effectively.

### *Facilitating Awareness*

There is a rich array of tools in use in the jurisdictions we studied to promote awareness with employment standards. These range from media campaigns to interactive websites to outreach seminars. This is an area where partnerships between government and other organizations (business, labour, NGOs) can serve both efficiency (making good use of limited resources) and effectiveness (reaching the target) objectives. Governments should consider national campaigns on key standards, tailored as necessary in each jurisdiction, but coordinated in terms of the general messages and the timing of the campaign.

Awareness measures can be targeted, both in terms of the audience and the message. The interviews suggest the importance of targeting new entrants to the labour market (youth in school, new immigrants, new employers) and employers in high-risk sectors. Broad media campaigns should focus on one critical issue at a time. For example, the issue of the definition of employer and employee is worthy of special attention.

### *The Complaints Process*

Most jurisdictions in Canada seem to have had success in reducing the backlog of claims through such measures as call centres, self-help kits, and mediation. As noted above, processing inquiries and claims expeditiously is a valid objective, and these instruments are therefore useful parts of a government's toolkit.

However, as some NGOs pointed out, some of these tools – particularly self-help kits and mediation – can be overused. For example, for workers who do not have much power in their relationship with their employer, mediation can mean agreeing to settle for much less than what they are entitled to. In cases of small claims, a mediated outcome may still be better for all concerned than a long, drawn-out process leading to adjudication. But in cases where the monies at stake are sizeable from the point of view of the employee, mediation might not be the right instrument.

In addition, given the understandable reluctance of some employees to complain while they still have a job, it may be appropriate to allow complaints to be made anonymously.

Some jurisdictions have moved in this direction. However, there are practical limits to the utility of anonymous complaints. If it is a small workplace and/or the issue remains confined to one individual, it is difficult – in some cases, impossible – to protect anonymity as the case proceeds. Anonymity can be useful in a larger workplace where it triggers a broader investigation.

### *Detecting Violations/Active Audits/Measuring Compliance*

At least in high-risk sectors, complaints ought to trigger a broader inspection of the workplace. There should also be follow-up audits of employers found to seriously violate the law, without waiting for new complaints.

Most importantly, there is a strong argument that governments should conduct random audits of workplaces in high-risk sectors. Many jurisdictions in Canada have done this to some extent in the past, but find it difficult to find the resources to sustain it. Certainly, government inspectors cannot be everywhere. But governments can and should at least identify the highest risk sectors, conduct random audits in those sectors, and publicize the fact that they are doing so.

Information about non-compliant employers should be shared, to the extent that privacy laws allow, among agencies regulating different aspects of the workplace, as non-compliance in one area increases the likelihood of non-compliance in other areas.

### *Penalties*

Penalties for violations of employment standards are important for their deterrent value. While education and persuasion may be appropriate for minor offences (and an effective awareness campaign may avoid many minor offences), there should be real penalties for serious violations, even if the employer agrees to pay. Otherwise, the incentive will be for some employers to deliberately not comply, knowing that the worst that can happen is that they have to pay what was owed to begin with.

Several jurisdictions have recognized the potential deterrent value of publicizing the identity of serious offenders. All jurisdictions should make information about the rules on penalties readily and clearly available to employers and the public. The ability to hold corporate directors liable for employment standards violations also seems to be a necessary tool, to enhance the ability of governments to recover the funds owed to employees.

### *Training of Enforcement Staff*

Training programs should be provided, especially for new enforcement officers or when new tools have been developed, to ensure that the instruments available to enforcement officials are consistently applied.

## *Measuring Compliance*

The use of random audits, advocated above to enhance detection of violations of the law, would also allow governments to generate a measure of compliance with key standards that can be tracked over time. Surveys of employees can also provide useful information about compliance, but just measuring how quickly complaints are resolved or how many are voluntarily settled is clearly inadequate to assess the extent of compliance with the law.

## *Conclusion*

A mix of tools holds promise for promoting compliance with employment standards, including:

- Partnering with business organizations, labour, school boards, and NGOs on awareness initiatives.
- Providing broad awareness campaigns on key standards, and targeted awareness initiatives focussed on high-risk sectors, youth, and recent immigrants.
- Allowing complaints to be made anonymously (as a potential trigger to a broad workplace investigation), and using mediation judiciously.
- Conducting broad workplace audits when complaints occur in high-risk sectors or in workplaces with a poor previous record of compliance.
- Sharing information about non-compliant workplaces across regulatory agencies.
- Conducting random audits in key sectors, and using the information generated to track compliance over time.
- Providing a range of tools to apply penalties, and ensuring that penalties are applied in the case of serious offences; and
- Training enforcement staff to ensure consistent procedures

Moving in these directions will likely require some temporary increase in resources, since more active measures (such as random audits in high-risk sectors) will uncover violations that had not been previously detected. However, partnerships on awareness initiatives can help keep costs down. Most importantly, once a culture of compliance is established, the rate of violations should decline, so that the additional resources may be needed only in the process of transition to a new context in which everyone understands what the standards are, and that they need to be taken seriously.