



Commentary

One Cheer for Labour Day

By Patrice Dutil and Ron Saunders

Labour Day is a statutory holiday across Canada, but many people will be working today, meeting the demands of our fast-paced world. Some will work (even if grudgingly) on Labour Day in return for another day off or extra pay. But many people will be forced to work today for no extra pay, no extra time off and won't be expecting any special favours. Some people won't even get paid for the work they do. The rules governing Canada's workplaces – what are called employment standards – aren't working as well as they should. Though governments, good employers and employees know this, not enough is being done about it. It's time things changed.

Every province (and the federal government, for the 10 percent of workplaces that are in its jurisdiction) has laws setting 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. They are meant to provide a floor for the terms of employment.

They are not just for the uneducated, the immigrant, or the young person heading out on their first job. We all benefit from having these minimum standards of employment. Decent pay and working conditions promote the well-being of all employees. Employers find that workers who are treated fairly are more productive and less likely to call in sick or quit. 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 save money on social programs, since workers who are paid adequately are less likely to need social assistance.

But the laws aren't worth much if they aren't respected.

Achieving compliance is challenging for several reasons. The first is ignorance: some employers are simply unaware of their responsibilities and many workers are equally unaware of their rights. Second, the relationship with the employer may be set up so that it appears that the worker is an independent contractor not covered by the law, when, if the usual tests were applied, he/she would be legally an employee with a right to protection. Similarly, in cases where temporary agencies are involved, there may be confusion over who the employer is and who is responsible for compliance.

Third, some employers know the laws but choose to ignore them. This behaviour often goes undetected by governments or is not fully addressed (e.g., monies owed to employees are never, or only partly, paid; serious violations of the law go unpenalized). Finally, many workers are reluctant to complain because of the real risk of losing their jobs, or, in the case of people employed by a temporary help agency, the risk of losing future assignments. Workers who have little power in the labour market, such as those who are low paid and have no union to represent them, are particularly vulnerable in this regard.

However, there are ways to deal with each of these challenges. And they won't break the bank. Some are already in use to some degree. Greater commitment is all that is needed.

Governments already promote awareness of employment standards with media campaigns, websites, and seminars. But they could do much more by taking advantage of partnership opportunities with business and labour groups, and with non-governmental organizations that assist vulnerable workers. The key is to focus on new entrants to the labour market (youth in school, new immigrants, new employers) and high-risk sectors (e.g., retail, restaurants). And we need a special effort to communicate the law with regard to the fundamental issue of who is an employee and who is an employer.

To address the understandable reluctance of some employees to complain while they still have a job, governments need to use their powers to audit an employer's payroll records. Obviously, this cannot be done on a large scale. But, again, governments can make the most of limited resources by focusing on high risk sectors - those with low pay rates, little union representation, and large numbers of young people or recent immigrants among their employees. In such sectors, government officials should randomly select employers for audit, penalize serious violations, and publicize the outcome. Furthermore, in high-risk sectors, substantiated complaints ought to trigger a broader inspection of the workplace to check whether the violations extend to other employees.

The other key instrument to promote compliance with employment standards is the use of penalties. Many jurisdictions in Canada appear reluctant to apply the penalties the law provides. However, penalties for serious violations of employment standards have an important deterrent value. While education and persuasion may be appropriate for minor offences (and an effective awareness campaign may avoid many minor offences), serious violations merit real penalties, even where the employer agrees to pay what they owe.

The proceeds should help cover the cost of enforcement. Without penalties, the incentive is for some employers deliberately not to comply, knowing that the worst that can happen is that they will have to pay what was owed to begin with, or a small fine that can be regarded as part of the cost of doing business. The bad actors, a small minority of employers, should be penalized and exposed.

What will it cost to correct the situation? What we propose will require some temporary increase in resources, since more active measures (such as random audits in high-risk sectors) will uncover violations not previously detected. However, partnerships on awareness initiatives can help keep costs down, as would higher fines. The goal is to create a culture of compliance that will reduce the number of violations. The additional resources would only be needed to get us to a place where everyone understands what the standards are and that they need to be taken seriously.

On a day like today, all workers – employers and employees – deserve a good day of rest and a chance to say “three cheers!”. But many people today will not be treated fairly because governments – and society – have been slow to discourage abuses. Until that changes, one cheer for Labour Day.

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