

CAUT Submission Concerning the Modernization of Labour Standards under the Canada Labour Code

31 January 2018

Introduction

Founded in 1951, the Canadian Association of University Teachers (CAUT) is the national voice for academic staff representing 70,000 teachers, librarians, researchers, general staff and other academic professionals at 122 universities and colleges across the country.

CAUT works actively in the public interest to improve the quality and accessibility of post-secondary education in Canada. We fight for fair working conditions, compensation and benefits that foster quality teaching and innovative research while advancing equity and human rights within our profession.

Growth of precarious work

Good quality jobs, that provide certainty in continuing employment, decent income, access to benefits including paid leaves and pension, and job protections, are becoming increasingly scarce. This is true generally across the workforce and is also reflected in the post-secondary education sector. The hiring of poorly paid and precariously employed contract academic staff has far outpaced those hired into stable, well-paid positions. Current labour force survey estimates show that one out of every three professors is on a temporary or part-time contract.

Contract and part-time work has quickly gone from a short-term stepping stone to a career-long condition. Many contract academics earn less than a living wage, have no job security, and limited, if any, access to paid leaves and other benefits.

As in the general labour market, women, Indigenous people, racialized Canadians, LGBTQ2S and people living with disabilities are over-represented among the ranks of precarious academic staff. That is especially true for intersectional individuals.

As post-secondary education is an employment sector with high union density, we know well that the existence of a collective agreement does not automatically protect workers from employers seeking to lower labour standards.

CAUT commends the federal government for seeking to modernize labour standards to better address the changing nature of work.

The gold standard of labour codes

While our members are not federally-regulated employees, we believe a federal labour code should exist as a firm and legislated floor to provisions of collective agreements and as a gold standard for provincial and territorial labour codes.

Strong labour standards are an important part of creating a more productive, innovative and fair society. There should be minimum rights and standards for all workers under federal jurisdiction at least equal to the best standards at the provincial level. The current federal code doesn't match the best provincial practices, let alone the best international practices, in a number of critical areas: paid leave and other leave provisions; minimum wage; maximum hours and scheduling; protection of rights; and, protection of part-time, temporary and contract workers.

By providing a vision in the Canada Labour Code of what constitutes good quality work, the federal government can improve working conditions for federally-regulated employees and put upward pressure on other jurisdictions.

CAUT would like to see the federal labour code amended to address the growing inequality among workers by making the following improvements to Part III of the Canada Labour Code:

- Develop a vision and standards for decent work;
- Ensure equal pay for equal work, regardless of employment status;
- Require adequate notice of work and compensation for cancellation;
- Protect pension and severance pay;
- Improve access to leaves;
- Establish a pathway to permanent work; and
- Enhance the federal minimum wage.

These changes would improve the working conditions and job security of all workers.

Fundamental principle

In his report entitled *Fairness at Work: Federal Labour Standards for the 21st Century*, Professor Harry W. Arthurs established the following guiding principle:

Principle 1: Decency at work.

“Labour standards should ensure that no matter how limited his or her bargaining power, no worker in the federal jurisdiction is offered, accepts or works under conditions that Canadians would not regard as “decent.” No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is effectively denied a personal or civic life.”

CAUT’s position is that this principle should be enshrined in Part III of the Labour Code as a fundamental principle. It must be a reference for the purposes of making regulations and interpretations and should prevail if it comes into conflict with other clauses.

Equal pay for equal work

We believe that the Code should prohibit the differential treatment of workers on the basis of employment status. Workers should be compensated equally for equal work, whether their status is permanent, temporary, seasonal or casual. Further, the Labour Code should explicitly prohibit the use of discontinuous contracts to prevent part-time, temporary and contract workers from benefiting from their rights and benefits.

When employees perform similar work that requires substantially the same skills, efforts, and level of responsibility and their work is performed under similar working conditions, employers should compensate all employees at the same rate of salary, and benefits, including access to pension. Exceptions to this rule should be limited to objective factors to justify the difference, such as qualifications, skills, seniority, or experience.

Fair scheduling

Like others in precarious work situations, our members hired into contract jobs can be assigned work immediately before the beginning of a term, receive last-minute cancellations or non-renewals. These kinds of “just-in-time” practices too often leave workers with little time to adjust their lives accordingly.

Employees should be entitled to advance notice of schedule changes. The Canada Labour Code requirement for advance notice of changes to work schedules should be extended from twenty-four hours to one week. The Labour Code should also include a provision to ensure workers receive a minimum of one-third pay for work withdrawn whether it was offered in writing or verbally, if that work is subsequently cancelled by the employer within 48 hours of the scheduled start time.

Pensions & severance

Pension and severance pay are different forms of rights and benefits that should never be taken away from employees, under any circumstances. This principle should be enshrined in the Canada Labour Code.

It is CAUT’s position that any provisions that currently make it possible or legal to disentitle workers to severance or termination pay should be removed, given the shift away from mandatory retirement and defined benefit pension plans. The purpose of the review and subsequent changes are to make the law more responsive to current trends in the labour market. Workers should not be prematurely, unfairly, or unnecessarily deprived of their severance pay, termination pay, or pensions.

When applicable, retirement provisions for workers should include pensions that provide adequate income, indexed to cost of living. As previously noted, eligibility should include part-time, temporary and contract workers. Pension funds are deferred compensation and as such belong to eligible workers and pensioners under their plan.

Paid sick leave

Paid sick leave should be available to any ill worker to enhance occupational health and safety and as a public health matter. A qualifying period for access to paid sick leave makes workers in short-term contracts most vulnerable to disqualification from accessing paid sick leave. There should be no qualifying period or limitation before an employee is entitled to paid sick leave.

Compassionate care & critical illness leaves

Currently under the Canada Labour Code, an employee can take up to 28 weeks of compassionate care leave to care for a family member who is gravely ill. This leave of absence can be shared by two or more employees when looking after the same family member, but the total amount of leave taken by all cannot equal more than 28 weeks within the 52-week period.

The requirement that compassionate care leave or leave related to critical illness be shared when two or more employees provide care to the same family member should be removed. Each employee should be entitled to the full period of leave.

All workers should have the right to take full compassionate care leave and leave for critical illness and to maintain their rights for the duration of the leave. The length of the leave should depend on the circumstances and should be at the discretion of the worker. An employer should not penalize an employee for taking these leaves.

Length of service requirements should not disqualify employees from access to leave entitlements. These kinds of familial crisis will not wait until an employee has met a required length of service before being able to take the time.

The employer should also maintain benefit and pension contributions based on their regular salary for the duration of the leave.

Paid emergency leave & domestic violence leave

Short-term paid personal emergency leave should be provided to all employees under Part III of the Canada Labour Code. Personal emergency leave should be available to an employee to deal with personal illness, injury or medical emergency, or that of a family member defined in the broadest sense.

Separately, victims of sexual abuse or domestic violence should have specific paid domestic violence leave in order to cope, leaving personal emergency leave for other circumstances. Such a designated paid leave would help survivors keep their jobs and ensure economic security while they do the things they need to do to keep themselves and their children and family members safe.

Pathway to permanent work

Like too many workers, a growing number of our members work from contract to contract, for the same employer, for years. For fixed term contract workers, the number and total duration of contracts should be capped. The Labour Code should support the conversion of contracted employees to permanent employees where the position is not truly temporary. Just cause protection must be provided to contract workers if, at the end of a contract, another worker is hired to do the work previously done by the temporary contract worker.

Minimum wage

CAUT supports the call to enhance the federal minimum wage in workplaces under federal jurisdiction. The current practice of setting the minimum wage for federally-regulated employees by default to the provincial standard should be replaced by a more fair and decent across the board federal minimum wage.

The federal government should immediately re-institute a federal minimum wage for all federally-regulated employees, which should not be set any lower than the highest established provincial minimum wage.

By abolishing the federal minimum wage in 1996, the federal government lowered the bar for Canadian workers, creating a downward pressure on wages. In 2018, Canadian workers should not work full time yet still live in poverty.

Therefore, a federal minimum wage should be indexed every year to inflation.

Access to employment insurance

As is the case with many precariously-employed workers, contract academic staff facing insecure employment may need to resort to Canada's Employment Insurance system. Contract academic staff, especially those who work part-time, have been disadvantaged by the Employment Insurance system as employers frequently underestimate the number of hours worked. For example, a 3 hour-class can require 1 hour of preparation time and 1 hour of student consultations. In addition to that, time for marking will be necessary. Unfortunately, employers may only tabulate the 3-hours spent in the classroom as the hours worked for the contract. This is why CAUT has encouraged academic staff associations to negotiate collective agreement language to establish "deemed hours" worked for the purposes of Employment Insurance.

While amendments to the Employment Insurance Act will be required, we do believe that the principle of "deemed hours" should be recognized in the labour code when, as part of their regular work requirement, employees must include preparation time and/or post-shift activity to complete contract requirements.

Conclusion

The federal code should lead and not lag behind some provincial codes in a number of key areas: paid leave and other leave provisions; minimum wage; maximum hours and scheduling; protection of rights; and, protection of part-time, temporary and contract workers.

Ensuring every worker can count on a robust and modern set of federal employment standards is critical to their success. All workers, federally-regulated or not, can benefit if the federal government sets a high bar for labour standards and practices.