



## Alberta Construction Association

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Submission to Employment Standards Review

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The Alberta Construction Association represents over 3200 member companies across Alberta, with both union and non-union members. Construction employs approximately one in nine working Albertans, the third largest employer after retail / wholesale trade and healthcare. Alberta's construction industry is dominated by small firms, with more than 40% of construction workers working in firms of 20 employees or less, and 80% working in firms of 100 employees or less. Construction workplaces are unique in that they are project-based, often seasonal, often in remote locations, where the make-up of the crew can vary from one week to the next.

ACA appreciates the opportunity to participate in the Review, including the April 3<sup>rd</sup> Stakeholder Session in Edmonton. Our comments are as follows:

### Family-Friendly Standards

**ACA recommends that the Employment Standards Code continue to incorporate specific recognition of terms reflective of the unique needs of the construction industry.**

Alberta's construction industry has come through a long period of persistent skill shortages, in which employers have undertaken numerous engagement, training, and compensation initiatives to attract, develop, and retain employees. Examples include apprentice scholarships and tuition reimbursement, safety and supervisory training, and enhanced compensation and benefits. Construction workers are among the highest paid workers in Alberta. Even with the severe recession, construction employers have to date refrained from reduction of base wages.

Given the unique nature of construction work, and the fact that most construction employers are small, family owned businesses, any change will come with incremental administrative and financial costs. ACA urges the Government to ensure a balance so as to also protect the Alberta families that are our business owners.

One advantage of employers and employees freely negotiating the terms of employment is that it is most responsive to the needs of both employees and employers, allowing optimum outcomes. A legislated "floor" for the items under consideration may in fact come at a higher cost than what negotiation can accomplish, forcing the employer to make changes that ultimately work against optimum outcomes and employment.

## Job-Protected Leaves

**ACA believes current leave provisions are generally sufficient for construction industry.**

Given the project based nature of construction, the requirement for the employer to guarantee employment becomes ever more challenging as the length of the leave increases. The proposal to harmonize compassionate leave to the maximum length of EI benefits of 26 weeks can be as long as some construction seasons. Given that employers secure their work on competitive bids, some employers may not be in a position where they are able to retain over an entire season their workforce, even those not on leave.

The definition of eligibility and frequency of some of the proposed new leaves is also unclear. For example, would compassionate care, critically-ill child, and family responsibility be limited to one time within a 12 month period?

The Code should not mandate accumulation of sick leave credits, or for reductions to the 52 week employment prior to eligibility. Most construction workers are covered by employer provided hourly bank benefit programs or collective bargaining agreements.

ACA does not support leaves for work-related injury or minor sickness or injury. Injuries should properly remain the purview of Workers Compensation Board legislation.

Job-protection should not apply for maternity and parental leaves where the employee is subject to termination with cause and where the employer can demonstrate that the scope of the position has changed significantly.

Increasingly, owners of construction, including the Government of Alberta and municipalities are seeking long term contracts in which the contractor builds and maintains to lower the life cycle costs of the structure. Contractors require stability over time to regulations that impact costs, as they have no means to recover costs once they have been negotiated from the bid price.

## Youth Employment

**Amending Alberta's requirements to comply with Canada's recent adoption of the International Labour Organization Convention 138, or Minimum Age Convention makes sense.**

Alberta Construction Association policy recognizes the priority of adolescents is school. Anyone under 15 years of age is too young to be employed in construction field work. Many of our member firms have policies which prohibit anyone under the age of 18 on a jobsite, and safety training is required for all field employees. For 15-17 years old, ACA policy encourages employers to limit student hours of employment during the school year, excepting students enrolled in the Registered Apprenticeship Program or other work experience programs.

Perhaps youths 15-17 should be required to undertake on-line training about their employment rights and responsibilities, prior to being able to be employed.

## Administration and Enforcement

### **Retain and expand the construction industry regulations in the Code.**

The Government acknowledges that the addition of administrative penalties is in part driven by resource constraints for current enforcement. Employers face resource constraints as well. It is critical that there be a simple, low cost appeal mechanism. Even with such a mechanism, employers may well pay rather than challenge unwarranted penalties, judging that the time costs exceed the financial costs. ACA does not support differential penalties by size of firm, as we oppose the principles of penalties being used to “set examples”, or the penalty based on ability to pay.

Should administrative penalties be introduced, ACA recommends a progressive system, in which the first infraction carries a warning only, to be followed by progressively higher penalties based on the number of infractions within a defined period of time (1-2 years). There should also be a “reset” for offenders after a clean record of the same duration (ie. 1-2 years).

While the Director should retain broad discretionary permitting powers to address unique situations, codifying regulations to unique workplace situations should replace the need for frequent repeat permits. Individual industry sections of the Code could then be reviewed periodically by stakeholders to ensure the Code remains current with evolving workplace conditions. Reviews of the Occupational Health and Safety Code have to some degree evolved in a similar manner.

ACA recommends consistency across legislation. As an example, workers sent home for failing to accept mandated safety requirements should not be able to make claims for minimum hours of pay, as has happened in our industry. Employment standards and occupational safety legislation should also be consistent for “working alone” situations.

### Overtime, Compressed Work Weeks, Rest Periods, Calculation of Pay

**ACA does not support proposed changes to overtime, compressed work weeks, rest periods, and calculation of pay – more flexibility required for construction industry.**

The construction industry should be exempt from proposed changes, for example, the proposal to increase banked overtime rate from 1:1 to 1:1.5, the requirement for compressed work weeks to be consistent and repetitive, and a mandated rest period. Current regulations applicable to construction should be retained, and discussion about possible need to expand flexible arrangement unique to our industry on a go-forward basis.

The Alberta Construction Association welcomes the opportunity for further dialogue to implement recommendations that are fair to employees and employers that recognize the cost implications, and the unique nature of construction workplaces and labour markets.

Sincerely,



Paul Heyens  
Chairman