

Changing Workplaces Review Interim Report

A Veterinary Industry Employer's Response

Introduction

We preface our response with a statement of our firm conviction that the most effective regulator of the employment relationship is the market. Despite the most thoughtful approach and best intent, the law of unintended consequences will prevail and intervention ultimately causes more adverse effects for both businesses and employees than beneficial.

We believe that an appropriate base for employment standards has been established, and further intervention restricts our ability meaningfully assess the value of a role to an organization, manage our employees effectively and respond quickly to market pressures to create sustainable and long term employment.

Increasing those base standards impacts our ability to differentiate ourselves in the employment market by offering **better** standards, and results in continued upwards pressure on wages and therefore consumer prices, with resultant economic and employment impacts.

We are supporters of a “no worse off” test in determining whether an organization’s practices, as they apply to an individual, provide an appropriate base. Many changes we have seen to the design and operation of the employment relationship in our organization are driven by the desires and bargaining power of individual employees.

Labour Relations Act

4.6.2 Employee Voice

We are opposed to any changes to the existing structure.

The imposition of a formal feedback and participation committee/model adds administrative burden, does not educate employers on the value of involvement for engagement, has the potential to create a perception of entitlement over business decisions, and requires additional management of expectation and relationships. **It is also likely to actively bias employers against engaging in more constructive forms of employee involvement which have a higher likelihood of real impact in the workplace.**

We would instead prefer a platform of education, training and support for employers on how to engage in active listening practices and the creation of a feedback loop for employees to drive engagement in line with business maturity and needs. Information in the employer population on the hard dollar impact of employee engagement is far more likely to encourage communication than a government imposed obligation which is perceived as a burden.

Employment Standards Act

5.2.1 Definition of Employee

We do not think the definition of employee should be broadened to include Dependent Contractors.

We would prefer to have all who might be classed as Dependent Contractors engaged as employees. This eliminates any potential ramifications from an employment law or CRA standpoint around the question of status. That they are not employees is a factor of their preferences and bargaining power – we can choose to allow them to be engaged as contractors (to their benefit, not ours), or they will work elsewhere.

Should the definition be expanded we argue that there should be an income threshold above which the definition does not apply, for example \$40k (this figure allows for Contractors who choose to work only a few days a week for a single company). A threshold recognizes the reversal of bargaining power as it relates to highly paid/skilled workers.

5.2.3 Exemptions, Special Rules and General Process

Managers and Supervisors

We do not think the existing exemptions should be eliminated for Managers.

Business operations, including the number of other employees and their wages, hours of work etc have been determined based on the existing exemption. Eliminating the exemption will freeze wages of existing hires, reduce wages of future hires, and potentially result in a reduction in employee numbers or a decision to not replace.

Manager compensation is set to account for the exemption.

If the exemption were to be removed, we would submit that:

1. Existing compensation structures are able to be adjusted without consequence of contract breach or constructive dismissal claims, to ensure a “no net loss” to the employee, and “no net increase” to employers. In reality, it will impact one way or the

other as estimates will not be accurate despite best efforts. There will be a consequent change in employee and manager behaviour regarding scheduling, overtime, hours of operation etc which will have a negative flow-on for operational costs. As managers are responsible for setting and managing the schedule, and are not subject to detailed oversight in this area, there is a direct conflict of interest.

2. There should be an income threshold above which managers maintain their existing exemptions. We submit that threshold should be no higher than \$40k.

We make no submission regarding supervisors, except to state that similarly to managers, the test should be of function not title.

Veterinarians

Similarly to Managers, existing compensation structures and operational parameters (operational hours, number and pay of support staff, pricing) have been determined based on the current exemptions.

Veterinarians are not a vulnerable population, are educated and have good job prospects. Veterinarians, similar to their human medicine counterparts, can work in emergency and specialty services which are by their nature unpredictable and cannot be rescheduled.

Over 90% of veterinary clinics in Ontario are owner-operated General Practices, and such practices in general may engage 2 or 3 additional veterinarians – often as independent contractors. The vast majority of veterinarians would thereby continue to be exempt, except for organizations with multiple practices such as ourselves, which impacts our ability to be competitive in the market in which we are the largest single employer.

We are committed to maintaining and awareness of, and complying with all legislation governing the employment relationship – not all owner-operators have access to the resources to advise on these requirements and their implementation. Increased regulation therefore is also likely to impact our ability to be competitive as a result of non-compliance by other operators.

We object to any changes in the veterinarian exemption, whether as part of this review or a future process (as indicated).

5.3.1 Hours of Work and Overtime Pay

Any reduction in normal weekly hours will result in additional costs, with impacts on wages (freezes, lower wages for new hires), fewer hours of work and therefore take home pay, and job losses through elimination of roles (including not hiring replacements for leaving employees).

Elimination of averaging agreements would have a **significant** detrimental impact on our ability to manage ebbs and flows in demand particularly in our larger practices.

Impacts include reduction in workforce size, increased number of part-time employees with the corresponding reduction of hours for other employees. A recent analysis of engagement results indicated that part-time employees are less engaged than full-time employees, and engagement is directly correlated to business performance. Should all else remain equal (which is unlikely), merely increasing the proportion of part time employees will reduce operational performance.

Additionally, many of our employees prefer the rotating/compressed work schedules.

We strongly support any amendments which increase our ability to be flexible to adjust to market and employee needs.

5.3.2 Scheduling

We believe that predictability is important to employees, and publish schedules up to 3 months in advance depending on the nature of the clinic. As such we do not object to any provisions around the posting of a schedule.

Due to the nature of business and its lack of specific (vs seasonal) predictability we strongly oppose any additional payments resulting from changes to schedules. This proposal, especially when coupled with the potential for paid sick leave (and therefore an increase in absenteeism costs and last minute call ins) adds significant long term cost.

We oppose increasing the minimum hours reporting pay from 3 to 4 hours.

We oppose any requirement to gain agreement from consent from workers to amend a schedule.

We strongly oppose the option of paying for a fully scheduled shift. This will result in consistent under scheduling and call ins to manage cost, resulting in lower predictability and take home pay for employees, with the corresponding increase in risk of burnout.

We strongly object to any imposition of offering additional hours to existing part time employees before hiring new employees. It should be the employer's right to make decisions on the best workers for their needs (barring illegal practices), with regard to the skill-set, attitude, performance, reliability and potential of their existing employees, and future needs of the business.

6.3.4 Personal Emergency Leave

We echo the submissions of other employers that the application of PEL is cumbersome, confusing and burdensome.

PEL should be split into separate leave categories to make interpretation and application easier and allow direct comparison to existing policies providing a higher benefit.

5.3.5 Paid sick leave

We currently provide paid sick leave to our employees, and oppose any imposition of a paid sick leave employment standard.

The referenced rate of 7 days/FT employee is particularly objectionable. This is equal to 70% of the vacation accrual requirement and is an excessive sick leave adjustment. If such a standard were to be introduced a more appropriate level would be 3 days pa, accrued. Should a paid sick entitlement be introduced then PEL should be reduced accordingly, and there should be no requirement for sick leave to rollover or be paid out.

5.3.7 Part-Time and Temporary Work

Part Time

It is our strong preference to employ as many full-time employees as possible, rather than a larger number of part-time employees to work an equivalent number of hours. In many circumstances the number of part time employees is driven not by the preferences of our employees.

To recognize the increased operational performance attributable to our full-time employees, reward the increase in commitment and hours spent in the workplace, we maintain a difference

in entitlements for part-time employees. This is to encourage more employees to seek full-time employment, and a recognition mechanism for those who have given more time and effort in their work (in absolute terms) than others.

We strongly object to any imposition that impedes our ability to differentiate the attractiveness of full-time work for our employees and potential employees. From a practical standpoint, the ability to provide cost effective benefits (both from an insurer and our own administration) is significantly hampered by any requirement to advance group benefits to employees below a reasonable threshold of hours. Our current benefits threshold is 24 hours.

We grow through acquisition. Should group benefit equity, with or without a threshold, become mandated for then we would like to see a grace period of up to 2 years for newly acquired businesses to meet the group benefits requirements.

With respect to temporary workers, we object to any interference with the market on the benefits provided to such workers, as access to benefits is likely to result on extremely high levels of usage for such workers given their temporary employment, inflating the costs for existing and ongoing employees. The premise of temporary workers is that they will not be an ongoing contributor to operations – therefore insurances based on that expectation eg around disability (eg STD, LTD) and life or AD&D should be excluded from any potential mandate on benefits coverage. These insurance premiums are experience rated, and any claims by temporary workers (a small portion of whom may seek employment specifically for the purposes of being able to utilize them) have an ongoing, adverse impact on permanent employee premiums.

5.3.8 Termination Severance and Just Cause

Notice

We support maintaining the status quo on notice, or reducing the amount of notice required where an employer has engaged in documented progressive discipline.

Reducing the cap based on documented performance management provides for a level of clarity and mutual understanding between employers and employees, and actively encourages its use. There is therefore potentially a “net neutral” cost in that the time spent on wages during a performance improvement process is no more than, or only slightly more than, the requirements for notice had no performance management taken place. It also encourages employers to address performance issues early, as the earlier the intervention and good practices are started, the higher the likelihood of performance improvement, self-selection out of the employment relationship, and the lower the notice cost requirement.

Increasing the cap will encourage employers to make earlier determinations on the likelihood of success of employees with performance issues, eliminating employment of those who would otherwise have improved to a required level had they been given more time.

Severance Pay

We strongly object to any increase in the severance pay cap, we feel the current cap is more than adequate. No other provincial jurisdiction has both a notice and severance requirement, and its presence penalizes large employers, encouraging the retention of poor performing employees, which then negatively impact business performance, opportunities for employment and employment stability.

Just Cause

We support maintaining the status quo on Just Cause termination. The implementation of an adjudicated system will significantly add to cost to both government (and therefore taxpayers) and employers – it is likely that most terminations occurring after the effective date of such a provision will appear before adjudication, regardless of their merit, as a result of a lack of understanding of the process and applicability. This is less likely to be the case if large numbers of employees in the private sector have previously been subject to a union agreement and understand the process.

We reiterate the belief that in order to encourage the use of sound people management practices, and transparency around termination, there should be a reduction in the notice required if progressive discipline has been followed, such cases able to be referred to an adjudicating body. The less radical departure from existing practice is likely to lend itself to more rapid understanding by employees and employers, and less claims made.

Any inhibition of an employer's ability to manage the performance of its employees, including the removal of poor performing employees, is extremely detrimental to its success. We do not believe the "stick" approach in this scenario will be as effective as the "carrot" previously mentioned (reduction in notice required if progressive discipline applied).

5.4 Other Standards and Requirements

5.4.1 Greater Right or Benefit

Given the variation of bargaining power in our industry, as well as the impact of any changes, we strongly support a "no worse off" test to ensure that overall, employees are getting the same level of benefit as the employment standards, but potentially structured in different ways. This allows us to attract and retain employees in ways that are important to them, which are different by generation and life circumstance. There has been extensive research into the different drivers of each generational cohort, and our ability to be competitive and attract the best talent are completely contingent on our ability to respond to their individuality.

5.4.3 Pay Periods

We strongly object to any extension of coverage for the automobile sales commission structure to other areas. Many veterinarians are paid on a commission basis, and this is a key feature of our industry. In order to provide with certainty of cash flow and a level of security, draws/advances are offered, with a rolling recoup of the difference in following months.

The veterinary industry is seasonal, with far higher volume in the summer than winter months. Preventing a carry forward of negatives balances is therefore important and a key reason many veterinarians look for one in the first place – to even out their cash flow. If there is to be a removal of this facility then the draw must be set to the lowest common denominator in order for the employer not to be worse off, or the amount of commission paid overall must be less to account "down" months. Both of these options make us uncompetitive, either in the need to bare additional costs, or a failure to attract key talent.

Any extension to this approach should allow for clawbacks off subsequent commission payments, subject to the restriction that earnings should never be less than would have been earned with minimum wage.

5.5.3 Creating a Culture of Compliance

We believe any ESA Committee will add to the administrative costs of employers, and will add little benefit. If the numbers have shown that employees do not report ESA breaches to their employer for rectification (where required in order to lodge a Board complaint) I see little reason to think that a committee would have an increased impact.

If the committee requirement is enacted it should be limited to an annual review of the company's policies to ensure compliance with the ESA – it should not deal with any individual complaints, and the annual review should be the extent of the audit onus on the employer.

Should a Committee be enacted, particularly under the advanced model, and should they be given rights to look into ESA matters, this should be limited to themselves, or to other employers who have provided express written authorization to the committee to investigate a complaint on their behalf, and explicitly address that the committee will have access to all relevant personal information.

We have significant concerns about the privacy implications of even this approach given the increasing onus on employers and the protection of rights in this area. What are the implications for a member of the committee who breaches an employee's rights to privacy and discusses personal details outside the confines of the complaint? Is this Cause for termination? It should be, explicitly, if rights to personal information is provided. Where is the employer's liability in "vetting" committee members to ensure we are meeting our privacy obligations to our employees?

We think this approach is fraught with risk in a number of areas and reiterate our strong objection to any such approach.

5.5.4 Reducing Barriers to Making Claims

Initiating a claim

We believe the status quo should be maintained, and that an employee must approach the employer directly with a complaint prior to lodging a complaint with the Ministry. This allows employers the opportunity to directly engage in a meaningful way with employees to either rectify the issue (if there is one) or explain why they believe there isn't one. Any process which creates barriers to the dialogue and relationship between the employee and the employer are detrimental to the building and maintenance of good relationships and should be avoided.