



**Canadian
Manufacturers &
Exporters**



Canadian Manufacturers & Exporters (CME) Response to the Changing Workplace Review 2015

September 18, 2015 – Preliminary Comments

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Canadian Manufacturers & Exporters (“CME”) is pleased to provide our preliminary relating to the Ontario Ministry of Labour’s ***Changing Workplaces Review*** consultation document. We are continuing to obtain input and feedback from members and will be providing more substantive analysis and comment throughout the process.

CME directly represents more than 10,000 leading companies nationwide. More than 85% of CME’s members are small and medium-sized enterprises. As Canada’s leading business network, CME, through various initiatives, including the establishment of the Canadian Manufacturing Coalition, touches more than 100,000 companies from coast to coast, engaged in manufacturing, global business and service-related industries.

CME’s membership network accounts for an estimated 82% of Canada’s total manufacturing production and 90% of exports.

Q 1: *How has work changed for you?*

The manufacturing sector in Ontario continues to face challenges, lagging the national average since the early-2000s. However, the sector has been steadily in recovery 2014 witnessed the strongest sales in manufacturing since 2006. Despite this progress sales are off slightly as of June of 2015 from a year earlier down 1.9% and have yet to surpass pre-recession levels in Ontario.

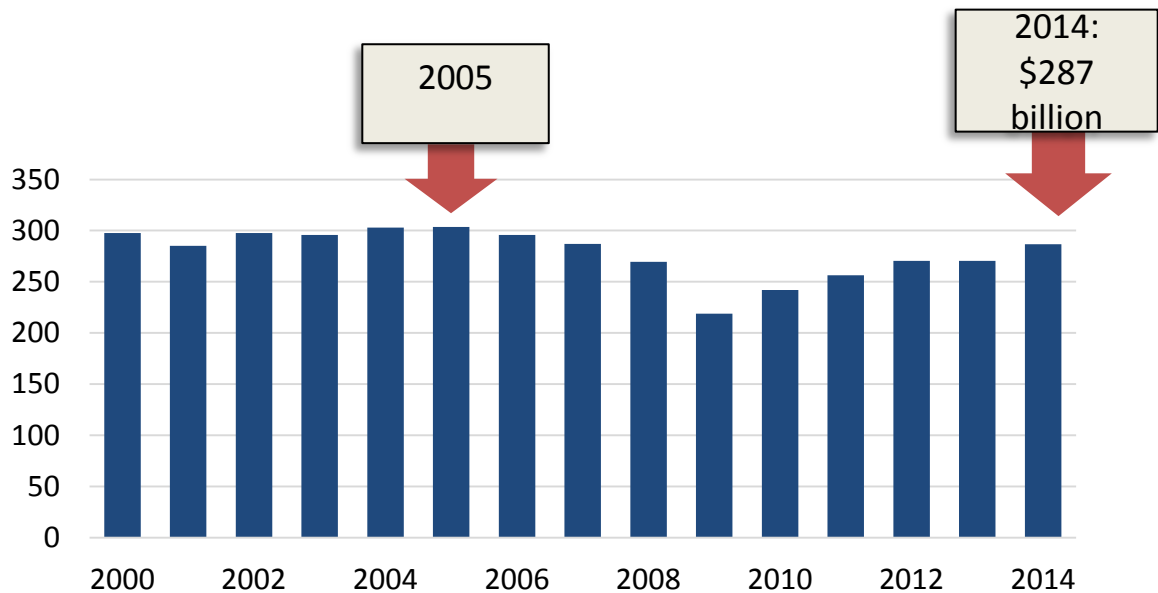
Despite these recent challenges, the manufacturing and exporting sector continues to be the largest business sector in Ontario, with approximately \$275 billion in annual shipments and 748,200 direct jobs. Most of these jobs are highly skilled and highly paid. Another 1.2 million Ontarians are indirectly employed in manufacturing.

Every dollar invested in manufacturing, generates nearly \$4 in total economic activity, the highest multiplier of any major sector. Manufacturing and exporting is on the cutting edge of Ontario innovation. Manufacturing also accounts for 50% of all private sector R&D and over 80% of all new products commercialized. Manufacturer’s success drives Ontario’s prosperity.

Manufacturing has undergone a significant restructuring over the last decade driven largely by significant currency fluctuation, changing customer demands and the intense cost pressures of an increasingly global marketplace for goods and services. These factors have prompted a shift towards higher value-added activities and more capital-intensive, automated forms of production.



Figure 1: Ontario manufacturing levels remain below a decade earlier



Over the time manufacturing has changed, manufacturing work has changed in parallel. Activities once core to manufacturing are now characterized as services, often performed by a third party provider. More capital-intensive, automated production processes also require different, often more specialized, skills. Demand for such skills has outpaced supply in many instances, creating a constraint on growth and prosperity. In this context, it is important to ensure that there is flexibility that is win-win for both employers and employees.

Meanwhile, the advent of just-in-time delivery and mass customization requires manufacturers to be extremely agile and responsive to changing customer demands. The long term trend in an effort to reduce costs to remain globally competitive, companies have moved to Just in T to avoid expensive inventory costs and improve time-to market. In today's web based world, customers can source product from all over the world. Such conditions require a conducive regulatory environment to enable manufacturing to continue to survive and thrive in Ontario.

CME is seriously concerned about a growing sentiment amongst our membership that Ontario is becoming an increasingly challenging high-cost jurisdiction in which to manufacture. This is



very concerning given the many benefits that manufacturing continues to generate for the Ontario economy and the increasing competition for manufacturing investment globally. The main driver for this sentiment is the cumulative burden of regulation on manufacturing which creates a substantial drag on investment and job creation. Coupled with among the highest electricity costs in North America, many manufacturers find themselves struggling for survival.

Members site a number of areas that drive significant costs within an organization including WSIB, AODA, OSHA, Violence in the Workplace, Pay Equity, Employment Standards, Toxics Reductions Act, Air Emissions Standards, Waste Diversion Act and new initiatives like Cap & Trade and the Ontario Retirement Pension Plan – all well intended but with significant cost, administration and unintended consequences. The time, cost and resources associated with these initiatives are diverted from investments that could yield more tangible progress in these areas while improving productivity and competitiveness at the same time.

Figure 2: Ontario manufacturing sales lag the national average



Q2: What type of workplace changes do we need to both improve economic security for workers, especially vulnerable workers, and to succeed and prosper in the 21st century?

In the manufacturing context, economic security for workers is enhanced by a competitive business environment. Therefore, improving economic security for workers should start with a holistic strategy to ensure the environment for manufacturers is conducive to maintaining, growing and attracting manufacturing investment. This strategy includes support for



innovation, reduced electricity rates, a competitive tax system, faster approvals, streamlined regulations and workplace skills development.

The following are the key principles to consider with respect to a review of employment standards and labour relations legislation:

- **Clarity and certainty** for the employer, union and individual
- **Balance** the interests of the employee and employer
- **Flexibility** allowing the manufacturer to respond and quickly adjust to changing customers needs (e.g. hours of work), business and market conditions. Such flexibility should be maintained and enhanced.
- **Economic impacts** of proposed amendments that increase costs must be avoided or mitigated to the greatest extent possible.
- **Authentic consultation** with stakeholders regarding potential change before being tabled in the legislature to demonstrate respect for industry partners and avoid any potential unintended consequences.
- **Streamlined processes** to reduce administrative cost that may lead to increased competitiveness for manufacturers.
- **Recognition of Good Employers** to focus resources on challenges

Ontario is an advanced economy with a strong track-record of improving standards, which are higher than in almost any other jurisdiction. The most powerful force for further improving security for workers will be economic growth and ensuring a competitive environment for attracting skilled and talented workers. Improving labour market information, occupational standards and skills development will also help to ensure Ontarians are in high demand from employers and can adapt to rapid change in manufacturing.

Q 5: In light of the changes in workplaces, how do you feel about the employment standards that are currently in the ESA? Can you recommend any changes to better protect workers? Do the particular concerns of part-time, casual and temporary workers need to be addressed, and if so, how?

In a manufacturing environment, the primary use of temporary “assignment employees” or contract workers is to cover fluctuations in production (e.g. seasonality, cyclicity) or specific projects (ie new construction).

The labour supply industry has developed over time to provide a stable solution to the problem of over and under-employment, reducing the experience of frequent, short-term layoffs. The assignment employee benefits by having their skills matched with a broader pool of



employment opportunities and this benefits industry which can address labour requirements in a targeted and flexible manner.

It is important that employment standards do not interfere with the certainty and clarity which exists in the relationship between the company, the temporary agency and assignment employees. Similarly, employment standards should not shift risks and regulatory costs as between the company and the agency employer.

While Bill 18: Stronger Workplaces for a Stronger Economy Act provided some positive change, CME remains concerned that the establishment of joint and several liability for unpaid wages blurs the lines of the employment relationship, shifts the risk balance towards the manufacturer and other unintended consequences making the use of temporary assignment employees less attractive. While this may create stronger attachment to the workplace in the near term, longer term it increases the challenge of volatility and cyclicalities thereby discouraging new or re-investment.

*Q 6: Are changes needed to support businesses in the modern economy?
How could the Act be simplified while remaining fair and comprehensive?
Are there standards in the ESA that you find too complex?
If so, what are they and how could they be simplified?*

Hours of work provisions are complex and not aligned with the manufacturer's need for flexibility, nor the interest of the employee. For example, the ESA currently requires the employer to obtain signatures from employees to work over a 48 hour threshold to a maximum of 60 hours. The "signature" requirement can create a significant administrative burden, particularly for large organizations, that does not exist in other developed economies. Employees also often prefer longer shifts to obtain over-time pay, provide greater flexibility for personal needs or to allow for alternative shift patterns that may be advantageous. For example, some employers operate continental shifts that can allow for such patterns as three weeks on at 60 hours followed by one week off.

CME recommends removing this 48 hour threshold entirely. In the alternative, CME recommends explicitly allowing for the use of electronic communications as a manner to obtain signatures.

CME also has concerns with the unlevel playing field that has been created by current severance provisions. The current severance provisions can be extremely costly to employers and such costs do not exist in many jurisdictions across Canada. Such provisions also impact companies when they are facing significant financial challenges which could exacerbate the



situation and put other jobs in jeopardy. CME recommends employing a working severance opportunity that is fair to both employees and provides some mitigation for employers.

Q 7: Should leaves be revised in any way? Should there be a number of job-protected sick days and personal emergency days for every employee? Are there other types of leaves that are not addressed that should be?

CME supports the intent of the various leaves to offer employees time away from work to deal with legitimate emergencies or certain life-cycle events. However, the multitude of such provisions creates challenges for the employer to manage operations and contain costs. For a small employer, the loss of a key employee for a prolonged period can be crippling (ie. Family Care-giver Leave).

For larger companies, the primary concern is the abuse of leaves and the ensuing costs. In one particular example, a large manufacturer tracking absenteeism recorded a significant increase in leaves around long weekends and Super Bowl Sunday. The employer has to retain over 100 additional employees just to cover off leaves. This is not a productive use of resources and most importantly, those costs do not exist in other jurisdictions that are competing aggressively for manufacturing investment.

Due in large part to the aforementioned skill shortage and competition for talent, an employer has little recourse to address these abuses.

CME recommends minimizing the number of leaves and an exemption for employers that offer a greater right or benefit. Furthermore, legislation should expressly require an employee to provide evidence to substantiate the leave to avoid abuse.

Q 8: In the context of the changing nature of employment, what do you think about who is and is not covered by the ESA? What specific changes would you like to see? Are there changes to definitions of employees and employers or to existing exclusions and exemptions that should be considered? Are there new exemptions that should be considered?

The ESA provides adequate and relevant coverage for Ontario workers.

Ontario should consider an exemption for good employers that offer a greater right or benefit than the minimum employment standard. For example, companies that offer greater than 10 days leave for any reason should not also have to offer emergency leave over and above this allotment.



Q 9: *Are there specific employment relationships (e.g., those arising from franchising or subcontracting or agencies) that may require special attention in the ESA?*

See Question 5 regarding temporary agencies.

Q 10: *Do the current enforcement provisions of the Act work well? In your experience, what problems, if any, exist with the current system, and what changes, if any, should be made? In your experience, what changes could help increase compliance with the ESA?*

The enforcement provisions of the ESA work well and compliance data collected by the MOL corroborates this position.

The MOL should continue to emphasize building awareness of rights and obligations for the employer and employee and a risk-based approach to compliance (targeting “bad actors”). CME is willing to help strengthen awareness as well.

With respect to compliance, it is important to remain cognizant of the vast majority of manufacturers (CME members in particular) who are good corporate citizens striving to remain compliant and beyond.

Given the multitude of compliance obligations and various entities regulating the industry, recognition of the cumulative impact of regulation and enforcement should be considered when planning inspection and enforcement blitzes.

Ontario should also consider a “good employer” exemption for those companies that offer a greater right or benefit to the minimum standards outlined in the ESA. The intent of the Employment Standards Act is to provide a minimum standard that must be met, it is not intended to apply over and above what generous benefits an employer may already be offering.

Labour Relations Act:

Q 11: *In the context of the changing nature of employment, what do you think about who is and is not covered by the LRA? What specific changes would you like to see?*

The Labour Relations Act causes some manufacturers to feel that they do not operate in a balanced environment between the interests of management and labour; however, there is likely a greater risk of unintended consequences if wholesale changes are made to the Act. Any proposed changes should be carefully considered with extensive and authentic consultation with stakeholders.



Q 12: *In the context of changing workplaces, are changes required to the manner in which workers choose union representation under the LRA?*

The CME is not seeking any change to the manner in which workers choose union representation at this time. The CME would strongly oppose any proposal which would seek to remove the secret-ballot election, which is a staple of democratic free-choice.

Are changes needed in the way that bargaining units are defined, both at the time of certification and afterwards?

The CME does not seek any change to the way that bargaining units are defined at this time. The CME would strongly oppose any proposal which would seek to allow so-called “micro-units” within an organization.

Are broader bargaining structures required either generally or for certain industries?

The CME is opposed to any proposal which would seek industry-wide bargaining and/or forced unionization of employees based on their participation in a certain industry.

Are changes needed in regard to protecting bargaining rights?

Once bargaining rights are established, it is extremely difficult for a group of employees who no longer wish to be unionized to decertify. The decertification process under the LRA imposes a heavy administration burden on an individual or group of employees who would seek to apply for a secret ballot vote on the continuation of its union’s bargaining rights. There are cumbersome signature collection, filing and timing requirements fixed upon individual employees who do not have the institutional support or resources of a trade union. Rules established by the LRA and the Ontario Labour Relations Board make it unlawful for an employer to provide any support or resources to an employee in the decertification process.

Set in this context, the CME does not see any demonstrated need for legislative change to provide further “protection” for bargaining rights.

Q 13: *Are changes required to the LRA with regard to the ground rules for collective bargaining?*

The CME does not seek any change with regard to the ground rules for collective bargaining.



Are new tools needed in the LRA with respect to industrial disputes or to deal with protracted labour disputes?

The CME does not seek any change with respect to the regulation of industrial disputes.

Q 14: *In light of the changing workplace and the needs of workers and employers in the modern economy, are changes needed regarding the unfair labour practices set out in the LRA, or to the OLRB's power to provide remedies in response to unfair labour practices?*

The unfair labour practice provisions could not be broadened without unduly restricting the free speech of employers. Accordingly, the CME is opposed to any proposal to broaden the unfair labour practice provisions. They already unfairly restrict employer free speech.

The power granted to the OLRB under the LRA to provide for automatic certification cuts against the rights of employees to freely choose whether or not to have union representation through a secret ballot election. The CME would advocate for the removal of this remedial option from the LRA. In any democratic, the best and only way to determine and employees true intent is through a secret ballot vote.

The CME is otherwise opposed to any proposal to broaden the scope of the OLRB's jurisdiction to impose remedies.

Q 15: *Are there changes that could be made to the LRA that would enable the parties to deal with the challenges of the modern economy?*

CME is not seeking any further changes to the LRA at this time. However, we strongly recommend detailed consultation with CME and other stakeholders on any proposed changes.

Q 16: *Are there any other issues related to this topic that you feel need to be addressed? Are there additional changes, falling within the mandate of this review, that should be considered?*

There have been a number of concerns have arisen from what other stakeholders have recommended throughout the course of the consultation including the following:

Applying Successor Rights for Contractors - Successor rights for contractors involves the transfer of whatever rights and benefits exist with a sub-contractor onto a subsequent contract. While CME recognizes the desire to cement higher standards, the unintended consequence of



this action would be to significantly hamper a manufacturer's ability to improve their competitive position.

The Principle of Greater right or benefit is something that should be maintained and enhanced throughout the ESA and the LRA. For example, the primary challenge with emergency leave is that employees deem it to be an entitlement over and above what their employer offers in terms of leaves. If the ESA were to explicitly state that employers offering a greater right or benefit were exempt, it would alleviate much of the abuse and concern.

CME would also strongly oppose any changes that would impose advanced scheduling requirements on employers. Employers already face very significant challenges managing scheduling and absenteeism. Two weeks advanced notice would be practically very difficult in a manufacturing environment.

Conclusion:

Throughout this consultation, CME members have expressed concern with the level of regulation and cost of doing business in Ontario. Some labour groups have been advocating changes that would have add significantly more cost and complexity. CME is therefore very concerned that this process may lead to measures that will worsen Ontario's competitiveness impacting jobs and growth.

Conversely, there is an opportunity to modernize legislation to better reflect the realities of modern manufacturing. Streamlining of processes and increasing flexibility would help to create a more conducive environment for manufacturing. Businesses need to maintain the ability to respond to changing businesses and market conditions. A more holistic approach that improves the business environment will lead to greater investment and more competition for talent that will ultimately benefit individual Ontarians.

We appreciate the opportunity to provide comment and would welcome any further dialogue on these important matters.