

**Submissions on  
Ontario's Labour &  
Employment Law  
Regime**

**DENSO Manufacturing Canada, Inc.**

**June 25, 2015**

**DENSO**

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Changing Workplaces Review  
Employment Labour and Corporate Policy Branch,  
Ministry of Labour  
400 University Ave., 12th Floor  
Toronto, ON M7A 1T7

**RE: Submissions on Ontario's Labour & Employment Law Regime**

Messrs. Mitchell and Murray:

On behalf of Denso Manufacturing Canada Inc. ("Denso"), I am writing to offer the company's submissions on the Changing Workplaces Review, currently being undertaken by the Ontario Ministry of Labour. While the company will be speaking to its concerns during the consultations in Guelph on June 25, 2015, we wanted to provide our position in writing, as well.

Denso is engaged in the manufacture of heating ventilation and air conditioning units, radiators, condensers, engine fans and cooling modules for OEM automobile manufacturers in North America. As part of the automotive manufacturing industry, Denso is involved in a highly integrated and competitive sector. It should not be necessary to quote statistics to describe the very challenging environment within which Ontario manufacturing operates. Nor should it be necessary to mention the steep decline in this sector of Ontario's economy over the past several years, and the fact that stable employment in the manufacturing sector has become increasingly scarce with the off-shoring of production to other jurisdictions where labour and other costs are lower and the regulatory scheme is less restrictive and onerous. Not only must Ontario automotive manufacturers compete with cheaper products produced in the United States, Mexico and overseas, but the high degree of integration with OEM manufacturers and other players in the supply chain require that they be responsive to sudden and unplanned increases or reductions in production. Continuing to receive 'business' from these other parts of the supply chain is dependent on being able to deliver quality product, at the right price, while having the necessary flexibility to meet unanticipated, emergent situations.

It is in this milieu that Denso has some concerns with the current labour and employment law regime in Ontario, and some suggestions on how greater flexibility can be built into the system to better position the province as a destination for manufacturing jobs in the future. We will address these concerns in the sections that follow. However, we would like to first comment on the general approach to Ontario's legal scheme. At page 12 of the Guide to Consultations, the Ministry of Labour asks if the principles of "Efficiency", "Equity" and "Voice" should be the key objectives that should direct the province's legislation. For there to be employment opportunities to keep Ontarians working, employment-related legislation cannot lose sight of the need for our industry to be competitive, productive and generate high-quality goods to meet the demand of global markets. Unless Ontario manufacturers are able to compete in a global marketplace, some will relocate, others will close, and Ontarians will be deprived of

opportunities for good, stable employment. At the same time, Denso is committed to providing fair, equitable treatment to its employees, both out of fairness and as a means of attracting and retaining the best human resources available. Both employers and employees should have an opportunity to express their views on how the workplace operates, including the means by which government regulates the employment relationship. Denso is in agreement with these principles, but is of the view that the current regime does not strike the right balance in all respects. Moreover, it is the company's view, as explained below, that further 'tinkering' with the existing structures is likely to disrupt that balance in some key areas.

### **The Employment Standards Act, 2000 (the "ESA")**

#### *Emergency Leave (section 50 of the ESA)*

For employers, like Denso, that already offered employees various types of leaves that address the personal emergency situations covered by section 50 of the ESA, the introduction of statutory emergency leave in 2001 introduced a great deal of unnecessary complexity and generated little, if any, real benefit for employees. Denso's employees already had the ability to take time off work to address personal illness or injury (with short-term and long-term disability benefits available for longer medical absences), paid bereavement leave to attend to deaths in the family, and discretionary leave to address other urgent personal situations. The entitlements of Denso's employees pursuant to the company's policies are significantly greater in the aggregate than what the statute provides. At the same time, those employees who would have most benefited from emergency leave (i.e., employees of small employers who typically do not offer a variety of leaves) were excluded from the application of section 50 of the ESA.

However, the introduction of statutorily-protected leaves has and will continue to have costs and create issues for Denso. On an annual basis, employees are currently using approximately eight and one-half (8.5) days of emergency leave per year on average (inclusive of bereavement leave). In order to cover for absences created by the usage of statutory leave, the company is incurring an annual cost of approximately \$1.2 million. This amount is in addition to loss of productivity (from using casual or temporary staffing to cover absences by regular, full-time employees) as well as the compensation that employees are receiving for paid forms of absence (such as STD benefits or bereavement leave). For employers who are enlarging their workforce, the cost and disruption is magnified. Additionally, having to count absences under the statute and under employer policies simultaneously complicates the company's efforts to monitor attendance of employees with casual absenteeism problems, and obstructs the ability to reward those employees who provide perfect attendance. This contributes to workplace resentments and creates a drag on morale and productivity.

In Denso's experience, there are patterns in the usage of Emergency Leave days by employees which suggest that some abuse of the entitlement may be involved. The company has noted that usage tends to be higher on Fridays and Mondays (thereby extending weekends), and that many employees use the majority of their days from January through April and between September and December. This latter trend suggests that employees are using Emergency Leave in lieu of vacation time, which is primarily taken during the summer when the company is able to backfill absences using students (who work only during the summer months). It would appear, therefore, that for some employees, Emergency Leave days are viewed as a vested right (irrespective of actual eligibility) and are being taken in addition to

other forms of paid absence (such as vacation). In Denso's view, it is likely that Emergency Leave has already contributed in a meaningful way to casual absenteeism.

While similar entitlements may be available in other jurisdictions, such as Family Medical Leave in the United States, it must be remembered that emergency leave is only one of several job-protected leaves provided for under the ESA. Employees in Ontario also enjoy entitlement to pregnancy leave, parental leave, family medical leave, organ donor leave, family caregiver leave, critically ill child care leave, crime-related child death or disappearance leave, emergency leave (declared emergencies) and reservist leave. Moreover, the inclusion of "urgent matters" among the circumstances that warrant the granting of leave makes emergency leave much more susceptible to abuse than Family Medical Leave or other similar forms of statutorily-protected leave. It should also be noted that, with the development of the law surrounding "family status" under the *Human Rights Code*, an employee's ability to take leave to deal with many of the circumstances addressed by section 50 of the ESA is already legally 'protected'.

While Denso is aware that it could argue that the other entitlements it offers employees constitute a "greater contractual right" (under subsection 5(2) of the ESA), this provides little comfort. Adjudicators interpreting that provision of the Act have taken widely divergent approaches, and there is no guarantee that the company would receive full credit for the leaves (both paid and unpaid) that it offers its employees.

In order to address the problems created by the introduction of emergency leave, Denso would recommend that the Ministry consider the following measures:

- Introduce a regulatory exemption from section 50 of the ESA for employers who provide paid leave (or a combination of paid and unpaid leave) for some or all of the situations covered by the current emergency leave provisions, and which paid (and unpaid) leave entitlement is at least equivalent to the ten (10) unpaid days of absence provided by the Act;
- Amend section 50(1) of the Act to circumscribe the "urgent matters" for which an employee is entitled to emergency leave. Paragraph (c) should be amended so that it is clear that the matters in question must be of a "serious" nature and require the employee's attention (rather than being delegated to someone else);
- Correct the Employment Standards Branch's interpretation of subsection 50(7), such that an employer can request reasonable evidence to support that the employee was required to attend to the illness of a family member or an "urgent matter" involving one of the specified family members.

Failing these changes, which would provide greater flexibility and control over the use (and potential abuse) of emergency leave by employees and the attendant costs of that usage, Denso asserts that the current entitlement should not be expanded in any way. The company's statistics indicate that employees have used between 8 and 9 days per year on average for the past five (5) years, and there is no indication that a greater entitlement is warranted or necessary. Moreover, the introduction of paid emergency leave (as has been suggested in some quarters) is entirely unwarranted, particularly for larger employers who already offer various forms of paid leave (for personal illness or bereavement, for example). Introducing paid leave entitlement into the current statutory framework would greatly increase the incentive and potential for abuse.

### *Hours of Work (Part VII of the ESA)*

The scheme of Part VII of the ESA is very complex and poses significant challenges for front-line supervision in managing operations in an efficient manner without creating unnecessary compliance issues. Supervisory staff, who are primarily responsible for making decisions on staffing under rapidly evolving circumstances, must juggle daily and weekly maximum hours of work, periods free from work between shifts, weekly/bi-weekly free-time requirements, eating periods, and an understanding of when "exceptional circumstances" may permit some variation from the 'rules' contained in sections 17, 18, 19 and 20. While the current regime provides some flexibility, in the form of excess hours permits and the one small exception afforded by Regulation 502/06 ("Terms and Conditions of Employment in Defined Industries - Automobile Manufacturing, Automobile Parts Manufacturing, Automobile Parts Warehousing and Automobile Marshalling"). However, this limited flexibility is simply insufficient to address the range of emergent situations that may arise in a fast-paced industry like automotive manufacturing. It also fails to address the desire of many employees to work more hours and earn additional income (in the form of overtime and other premium pay).

In order to maintain the efficiency, and competitiveness of the Ontario automotive manufacturing industry, Denso would recommend the following changes:

- Provide some flexibility in the upward limit of hours allowed under excess hours approvals. While Denso and other manufacturers can generally operate within the limits of a 60-hour permit, there will be unexpected situations where hours in excess of 60 per week may be necessary in order to meet production requirements. Employers with valid approvals should be afforded the ability to exceed the 60-hour threshold periodically (e.g., by allowing or requiring an employee to work up to eight (8) hours in excess of the approval in any bi-weekly period, with the employee's agreement).
- Alternatively, employers with excess hours approvals should be permitted to average employees' hours of work over a rolling 4-week period for purposes of determining whether the employer has complied with the maximum number of permissible hours of work under the approval. Only where the average weekly hours of work exceeded 60 hours for such a 4-week period would the employer be non-compliant with the Act.
- Amend Regulation 502/06 to further simplify the rules with respect to hours of work and free time requirements for employers in the automotive manufacturing sector. Section 3 of the Regulation should be amended to permit eight (8) hours free between shifts on more than one day per work week. Alternatively, automotive manufacturing sector employers should be exempted from sections 18(1) and 18(3) of the ESA entirely, with a shorter period of free time specified in each work day or between shifts (e.g., nine (9) hours free from work each day and between shifts).

Through these measures, employers like Denso would be better able to ensure that employees were treated equitably and in accordance with the legislation, while maintaining their competitive position.

### **The Labour Relations Act**

In some quarters, it has been suggested that Ontario should revert to a card-based certification process. It is argued that employees' true wishes cannot be ascertained where the employer has an opportunity, between the filing of an application for certification and the holding of a vote, to unlawfully interfere

with employees' selection of a bargaining agent. However, these arguments fail to recognize the existing statutory scheme that places controls on employers' ability to engage in such conduct. The unfair labour practice regime under section 96 of the *Labour Relations Act*, in conjunction with the availability of remedial certification under section 11 of the Act serve as a strong statement of policy and an effective mechanism to address this type of behaviour. Moreover, there is no evidence to suggest that employees' true wishes have not been respected since Ontario adopted vote-based certification in 1995.

A vote in every case, within five days of an application for certification, ensure that employees' true wishes are respected while providing an opportunity for the employer to exercise its freedom of expression (prescribed limits). The process is generally efficient and equitable, and meets the objective of ensuring that both parties, employer and employees, have a "voice" in how the workplace operates. No other decision that employees can make has so sweeping and lasting an effect on the workplace as the decision to become represented by a trade union, and both employer and employees must be afforded an opportunity to share their views on unionization before employees make that decision.

Furthermore, vote-based certification continues to be the preferred approach of the other large, common law provinces in Canada, such as British Columbia and Alberta, reflecting the simple fact that it has proven fair and effective. While it is true that union saturation rates in Canada have declined in recent years, this is a reflection of a global trend away from trade unionization. This pattern does not, in and of itself, justify amending the certification process, especially in the absence of any data that would suggest the process itself is a contributing factor in the decline of union participation rates.

In Denso's view, no amendments to the *Labour Relations Act* are needed or warranted at this time.

Should you have any questions or concerns regarding the foregoing, we will be pleased to discuss Denso's submissions when we appear at the Consultation on June 25, 2015. We look forward to the opportunity to present our submissions.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Milam". The signature is fluid and cursive, with the first name being more prominent than the last.

Stephen Milam

President,

Denso Manufacturing Canada Inc.