



October 14, 2016

Changing Workplaces Review, ELCPB
400 University Ave., 12th Floor
Toronto, Ontario M7A 1T7

The Association of Canadian Travel Agencies (ACTA), on behalf of our members in Ontario, is pleased to submit comment to the Ontario Ministry of Labour's Special Advisors' Interim Report *Changing Workplaces Review*. ACTA Ontario represents the voice of the retail travel agency owner in Ontario. There are approximately 2,100 registered retail travel agencies in the Province, employing over 10,000 people. The Ontario travel industry is a \$15.8 billion industry, with the retail travel agency sector representing the majority of the industry at \$11.8 billion.

While collectively, ACTA members contribute significantly to the Ontario economy, many of our members are small to medium enterprises. The Ontario Ministry of Labour should also be aware that the travel industry in Ontario is a regulated industry of which the Ontario Ministry of Government and Consumer Services are in the midst of a thorough review of the Ontario Travel Industry Act. Given that the Ontario travel industry is heavily regulated, with many operational and financial burdens already in place, imposing the proposed changes outlined in this Review will create an adverse effect. The retail travel industry is a low margin industry and further increasing the regulatory expenses will restrict the ability of Ontario travel agencies to remain competitive in the global marketplace.

ACTA understands that the government's mandate is to make recommendations on how the Employment Standards Act, 2000 (ESA) and the Labour Relations Act, 1995 (LRA) might be reformed to better protect workers while supporting businesses in our changing economy. The 312-page Interim Report covers several aspects of labour relations, many which may not directly impact the retail travel industry. However, there are some suggested changes posed under Employment Standards that would have a considerably negative effect on Ontario travel agencies.

ACTA's response to the Interim Report will primarily focus on Section 5.2: Scope and Coverage of the ESA.

Section 5.2.1 of the Interim Report looks at the definition of the Employee with two issues being raised:

- 1) the misclassification of employees as independent contractors; and
- 2) the current definition of employee in the ESA.

The government is presenting the following options related to each of these two issues:

CONCERN #1: The government is presenting the following options related to the Misclassification of Employees:

1. Maintain the status quo.
2. Increase education of workers and employers with respect to rights and obligations.
3. Focus proactive enforcement activities on the identification and rectification of cases of misclassification.
4. Provide in the ESA that in any case where there is a dispute about whether a person is an employee, the employer has the burden of proving that the person is not an employee covered by the ESA and/or has an obligation, similar to section 1 (5) of the LRA in relation to related employers, to adduce all relevant evidence with regard to the matter.

CONCERN #2: The options under the Definition of Employee in the ESA:

5. Maintain the status quo.
6. Include a dependent contractor provision in the ESA, and consider making clear that regulations could be passed, if necessary, to exempt particular dependent contractors from a regulation or to create a different standard that would apply to some dependent contractors.

The Interim Report acknowledges that not every worker conforms to the category of employee or independent contractor, as noted on page 144. The term “dependent contractor” has been assigned to a new group that falls in between employee and independent contractor. The LRA provides that an employee includes a dependent contractor that is defined as: “a person who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor.” There is no provision in the ESA that includes the dependent contractor such as the LRA.

The Interim Report cites the argument put forth by employers on the two points mentioned above that 1) the need to use independent contractor whose unique expertise, cost, efficiency and availability cannot be duplicated by their own employees and oppose challenges that these are dependent contractors, and 2) the other sections within the ESA such as hours of work and overtime pay are difficult to apply to these workers, even if dependent, as they tend to set their own hours of work.

Many travel agency operations in Ontario include independent contractors. These positions are accepted by choice and under terms mutually agreed upon. The compensation model for many of these travel agents is based on their volume of sales, also established under terms and conditions mutually agreed to by the travel agent. These independent contractors set their own hours of when and how much they want to work. While much of the business sold by the independent contractor *may* be through one entity, the industry would not wish to see these individuals be considered dependent contractors in the ESA and nor should they be considered employees. Many of these same independent contractors are also incorporated and therefore do not fit within these definitions.

For each of the concerns raised by the government (the misclassification of employees and the definition of employee), **ACTA strongly urges the Ontario government to maintain status quo, with respect to the options related to the Misclassification of Employees.**

Within the same Section 5.2, the Interim Report goes into detail on “who is the Employer and scope of liability”. There are many franchise operations within the Ontario Travel Industry, as well as host agency models which could also be considered a franchise operation. In both situations, ***whether a franchise operation or host agency operation, ACTA recommends, for our same arguments cited above, the Ontario government maintain the status quo and franchisors should not be held liable for franchisees’ ESA obligations.***

ACTA agrees with the position taken by the franchising industry that holding franchisors liable for franchisees’ ESA obligations is unnecessary, would be costly and burdensome, and could threaten the entire franchise model that contributes to employment and the Ontario economy.

Section 5.3 in the Interim Report cover many matters related to Standards such as:

- Hours of Work and Overtime Pay
- Scheduling
- Public Holidays and Paid Vacation
- Personal Emergency Leave
- Paid Sick Days
- Other Leaves of Absence
- Part-time and Temporary Work – Wages and Benefits
- Termination, Severance and Just Cause

For each of these matters listed under 5.3, ACTA strongly recommends that the government maintain the status quo. Changes to any one of these matters would adversely impact the viability of small travel agency businesses. In such a low margin, competitive industry, an increase in regulatory expenses would prevent growth and could in fact threaten the viability of the retail travel business. Some travel agency owners may be forced to close their small business or move their operation to another province. Larger national travel organizations, who have head offices and several locations throughout Ontario, tend to serve national clients, and higher regulatory expenses in Ontario may make it necessary for them to consider operating their business in another, less costly province. With advancements in technology, it has

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become more practical to manage operations remotely, and move businesses to locations that have more favorable regulatory and economic conditions for businesses.

Having studied the Interim Report, there is one matter that ACTA would recommend change: **Section 5.4.2. – Agreements Between Employers and Employees to Have Alternate Standards Apply. *ACTA supports amending the ESA to reflect the Ministry of Labour ES Program policy that electronic agreements can constitute an agreement in writing.***

In conclusion, on behalf of the retail travel industry in Ontario, ACTA appreciates the opportunity to provide our recommendations to the Special Advisors' Interim Report, Changing Workplaces Review. The Ontario retail travel industry represents significant economic benefits, including revenue and employment for the province of Ontario, and as such, the government must consider the negative impact to Ontario travel agencies should any one of the proposed options be implemented. To reiterate, the Ontario travel industry is unique in that it is already heavily regulated (under a delegated administrative authority), which is currently undergoing a government review. Ontario Travel Agencies have already faced a regulatory fee increase in 2016, with additional regulatory fees being added in 2017. Further regulatory fees imposed on travel agencies would be detrimental to their sustainability. Bearing in mind how the travel business is transacted and the "employment" structures within our global industry, the Ontario government should consider exempting our industry under certain standards in the Act based on our uniqueness as pointed out on page 156 of the Interim Report.

Please feel free to contact me if you have any questions regarding ACTA's feedback and recommendations regarding the Special Advisors' Interim Report, Changing Workplaces Review.

Respectfully,



Wendy Paradis
President, ACTA