



CME SUBMISSION ON PERSONAL EMERGENCY LEAVE

Canadian Manufacturers & Exporters (“CME”) is pleased to provide submissions to the Ontario Ministry of Labour’s Changing Workplace Review Special Advisors with respect to personal emergency leave provisions (“PEL”) of the *Employment Standards Act, 2000* (“ESA”).

CME had initially raised the issue of the multitude of various leave provisions available in the Employment Standards Act. While CME members respect individuals legitimate needs; collectively, they represent significant challenges operationally and financially. Family Care Giver leave for example provides up to 8 weeks of job protected leave for individuals dealing with a serious illness in their family. However, the definitions broad and therefore open to abuse (eg. What constitutes as “serious medical condition”). CME believes it is critical that these issues be addressed in conjunction with changes to PEL.

As you may recall CME directly represents more than 10,000 leading companies nationwide. More than 85% of CME’s members are small to medium-sized companies. 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 businesses and service related industries. CME’s membership networks account for an estimated 82% of Canada’s total manufacturing production and 90% of exports.

The manufacturing and exporting sector continues to be the largest business sector in Ontario, with approximately \$290 billion in annual shipments and 748,200 direct jobs. Another 2 million Ontarians are indirectly employed in manufacturing. As we indicated in our previous submissions to remain globally competitive many of our members have, along with a number of other initiatives, moved to just-in-time processes to avoid expensive inventory costs and to improve time to market delivery.

Following our initial submissions to the Special Advisors, we have had the opportunity to further engage with our membership networks to ensure our stakeholders are able to constructively contribute to the Changing Workplaces Review process. We have now also had the opportunity to review the Interim Report and appreciate the opportunity to provide the Special Advisors with further submissions on the Options the Special Advisors outline in section 5.3.4 – PEL.

While there are signs of a modest recovery in the manufacturing sector of late, our economy remains fragile. We ask that you continue to consider the competitive consequences of each of the policy options you have presented (e.g., research and evidence based assessments). We respectfully submit recommendations without impact analysis will contribute to further precariousness in the Ontario job market.



Section 5(2) of the *ESA* provides workplace parties with the ability to provide a greater right or benefit than required by the *ESA*, thereby exempting them from a particular *ESA* provision. Many of our member companies provide more generous leave provisions than required by the *ESA*. However, following the addition of PEL to the *ESA*, a significant amount of uncertainty and litigation occurred in the application of the greater right or benefit section to PEL. Ultimately, our membership network seeks a regulatory environment that provides **clarity and certainty to address issues of abuse relating to Personal Emergency Leave.**

With respect to the *ESA*'s PEL specifically we urge the Special Advisors to consider the following recommendations are made:

A new **optional** regulatory process to allow workplace parties to seek an exemption upon a positive determination that their existing leave provisions provide a greater right or benefit than the *ESA*'s PEL provisions;

An amendment to the *ESA* PEL that would provide companies **the option** to break down the current ten day provision into more identifiable categories (i.e. personal illness, dependant illness, bereavement, etc.) still enabling a greater right or benefit comparison with a company's existing leave provisions; and

Finally, the maintenance of the existing 50 or more employee threshold provision.

Exemption Process Option

As we have experienced, the Ministry of Labour ("MOL") has existing processes and resources which allow application(s) by workplace parties or their representatives under the *ESA* (i.e. hours of work, overtime averaging permits, etc.). Initially, materials should be developed to educate and raise workplace parties' awareness of their rights and obligations pursuant to PEL. Thereafter, either of the workplace parties or their representatives should be allowed to submit an application (individually or on consent) to seek an exemption from PEL. This would provide the MOL and the workplace parties with a process reducing individual complaints, investigative resources, individual litigation in multiple forums and ultimately provide **clarity, consistency and increased compliance.**

More Identifiable Categories Option

In the alternative to an exemption process outlined above, our member companies would support an amendment to the *ESA* PEL provisions to **provide an option** to break down the current ten day provision into more identifiable categories. We ask that you consider further consultations to identify the appropriate categories and the existing employer leave provisions to be considered under the greater right or benefit provision of the *ESA*. Without this heightened identification, the additional categorization could actually lead to increased regulatory burden for our members. Again, we believe a considered approach to more identifiable categories could also reduce individual complaints,



investigative resources, individual litigation in multiple forums and ultimately provide **clarity, consistency and increased compliance** for those companies that wish to avail themselves of this option.

Under this scenario, employers would have the option to either; maintain the status quo, seek an exemption or avail themselves the opportunity to further break down the leaves into more manageable components.

Maintain the 50 or More Employee Threshold

On behalf of the small and medium size companies that make up the majority of our network, we ask that you maintain the 50 or more employee threshold for PEL.

A significant portion of our network companies would be negatively impacted by the elimination of the threshold. The current threshold strikes a reasonable balance as companies reach a size (e.g., 50 or more employees) that better affords them an ability to absorb the administrative and economic burdens of providing PEL. Companies with less than 50 employees have typically not reached the point where they have the necessary resources to absorb the increased administrative burden, cost and competitiveness burden. In a just-in-time global competitive environment the ability of small and medium companies to replace last minute absence(s) is particularly challenging.

At a minimum, we recommend a cost-benefit analysis be undertaken by the government of Ontario to understand the impact on jobs and the economy prior to any recommended change to this threshold.

As we understand it, when determining whether the 50-employee threshold has been met, all employees (including part time and casual) of the company are counted. With respect to the part time and casual employees, CME submits that there be a proportionality consideration as between the number of part time and casual employee hours of work relied on in the workplace (e.g., full time equivalents) and actual full-time employees as is seen in other employment legislation in Canada. Consider a full-time equivalent formula - to convert part-time and casual employee hours into full-time equivalent for inclusion toward the 50 or more employee threshold. This would be more reflective of the company's ability to administer and absorb the burden of PEL.



**Canadian
Manufacturers &
Exporters**



Conclusion

CME welcome this dialogue around Personal Emergency Leave that will lead to greater flexibility, clarity and certainty for employers and individuals. We would welcome any further dialogue and action on this important issue.

Yours truly,

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