Employment Standards Legislation

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employment standards legislation.

Legally enforceable minimum terms and conditions of employment established by the state, these standards apply to all the workers covered by the law. Prior to 1877, a statutory master-and-servant regime prevailed in Canada, which rendered workers covered by the law criminally liable for breach of contract but which also provided workers with a simplified legal process for recovering unpaid wages. The repeal of these master-and-servant statutes in 1877 substantially decriminalized individual employment law and marked the triumph of a capitalist labour market governed by freedom-of-contract principles. This understanding ensured that in post-Confederation Canada, employment matters, including minimum standards, were seen to be largely a matter of property and civil rights, an area of provincial jurisdiction under the British North America Act.

Pressure for direct state regulation of some terms and conditions of employment occurred first in respect to hazards at work and compensation for work injuries. The push for regulation came from workers concerned about both dangerous working conditions and common law rules that prevented them from suing employers for work injuries, and from reformers concerned that factories posed a particular danger to the physical and moral health of women and children. In the 1880s, provinces began enacting protective legislation that set minimum standards for all workers, as well as special ‘protections’ for women and children, including limits on their hours of work. Inspectors were authorized to enter workplaces and enforce the law. At the same time, provincial legislation modified common law liability rules and, beginning in 1914, established workers' compensation systems through which workers injured in the course of employment were paid using funds collected from employers and administered by provincial workers' compensation boards.

In the 20th century, minimum standards developed in a highly gendered fashion. Federal and provincial fair-wage laws required governments to pay no less than prevailing local wages on government contract work. The first private sector minimum-wage laws, passed during and in the aftermath of the First World War, applied only to women. Minimum-wage boards were empowered to set wages on an occupational and regional basis that aimed to meet the subsistence needs of a single women living on her own, while also taking into account business conditions. In some provinces, boards also regulated hours of work for women. British Columbia was the only province to extend minimum wage and hours of work laws to men.

The Great Depression provided the impetus for a general extension of minimum wages laws to men, but few orders were issued, leaving most workers to fend for themselves under unfavourable labour market conditions. The Second World War set the stage for greater direct state regulation of labour markets and employment standards, initially through federal wage controls that limited wage increases in the face of labour shortages rather than protecting workers from unacceptable conditions. The war also led to the enactment of a long-debated and much delayed federal unemployment insurance scheme. As the war progressed and labour unrest increased, the provinces were pressured to establish additional labour standards and to address discriminatory employment practices. Vacation-with-pay legislation was first enacted in Ontario in 1944, as was the first law prohibiting racial discrimination in employment.

Employment standards proliferated in the post-war era. Fair employment laws prohibiting discrimination on an expanding number of grounds were passed by provinces in the 1950s and were transformed into human rights codes enforced by administrative tribunals in the 1960s. Among the more recent prohibited grounds of discrimination are age, sex, disability, and sexual orientation. Workplace sexual harassment was also made a human rights violation. In the 1980s, political pressure to address persistent gendered wage inequality led some jurisdictions to enact pay equity laws that required employers to take steps to ensure that women receive equal pay for work of equal value. An even smaller number of jurisdictions enacted employment equity laws that aim to eliminate barriers facing women, visible minorities, First Nations peoples, and persons with disabilities.

The range of employment standards also increased: by the 1950s it included broader minimum wage laws, overtime pay, weekend rest days, and limits on hours of work; in the 1960s, entitlements to paid public holidays, maternity leave, and notice of termination were introduced. Since then, few new standards have been added but many have been changed. Most often the standards were strengthened, although in recent years protections have been eroded in
many provinces. As well, in many provinces some groups of workers, including domestics and agricultural workers, have been totally or partially excluded from protection that other workers enjoy.

A similar trend was visible in other areas of labour protection. Occupational health and safety laws were substantially overhauled in the 1970s, giving workers rights to know about workplace hazards, participate in joint health and safety committees, and refuse unsafe work, but enforcement was often problematic. Workers' compensation and unemployment insurance were strengthened in the 1970s but eroded in the mid- to late-1980s.

Finally, although the common law has never been a significant source of employment standards, since the mid- to late 19th century it has presumed that contracts of employment are of indefinite duration and can be terminated only by reasonable notice unless the employee has committed a serious breach of contract. The common law provided employees with some economic protection if they were terminated without just cause, but lower-status workers were entitled to only brief notice. Since the 1980s, the courts have adopted a more protective approach towards individual employees, including lower-status ones, increasing notice periods and making it harder to dismiss them without notice for just cause.

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