

DISCUSSION PAPER

Legislative Review of the *Employment Standards Act:* Employment Protections for Young Workers

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Overview

According to Statistics Canada, about 40,600 youth aged 15 to 19 lived in New Brunswick in 2015. The percentage of those youth who were either employed or seeking employment was 50.5 per cent (n=20,500). Employment opportunities for young persons encourage individual development and growth and support the labour market. The challenge with youth employment is balancing the positive aspects of working while ensuring the development of youth is protected, they remain in school and maintain a healthy balance between school, work and life.

To ensure New Brunswick's young workers are able to gain work experience while not interfering with their development and growth, the Department of Post-Secondary Education, Training and Labour is conducting a review of New Brunswick's employment protections for young workers under the *Employment Standards Act*. There are two key factors promoting the department's review: the International Labour Organization's *Convention 138* and New Brunswick's *Strategy for the Prevention of Harm to Children and Youth*.

Convention 138, concerning minimum age for admission to employment, establishes key safeguards for youth by ensuring they can attain their fullest physical and mental development by having the opportunity to complete compulsory schooling and ensuring that their "health, safety and morals" are not put at risk.¹ New Brunswick has expressed its support for Canada's ratification of this convention.

In November 2015, New Brunswick released its *Strategy for the Prevention of Harm to Children and Youth*. This five-year strategy is based on the principles of the United Nations *Convention on the Rights of the Child*, particularly Article 19 on children's right to be protected from all forms of harm. The strategy includes 10 priorities that fall under five types of harm: socio-cultural, neglect, physical, sexual and emotional. Under physical harm, injury is one of the 10 priorities identified and includes the prevention of unintentional injuries such as workplace accidents.

In developing the proposals and options in this discussion paper, the department has considered the situation in New Brunswick and has drawn from youth employment standards across Canada as well as in international treaties.

Current legislation

New Brunswick's legislation provides protections aimed at preventing the exposure of young workers to occupations that may be harmful to their development and ensures their presence at school. The *Employment Standards Act* establishes minimum standards for the employment relationship, including hours of work, minimum wage and paid public holidays, just to name a few. The *Employment Standards Act* also provides certain restrictions on employment of children.

Section 39 of the *Employment Standards Act* indicates that any person under the age of 16 is not permitted to work in employment:

- that is or is likely to be unwholesome or harmful to the person's health, welfare or moral or physical development;
- for more than six hours in any day;
- for more than three hours on a school day;
- between 10 p.m. and 6 a.m.; and
- the total hours spent attending school and working must not be more than eight hours.

¹ International Labour Organization, *Convention 138 (Minimum Age)*, 1976.

Furthermore, section 40 of the *Act* includes a list of restricted industries that apply to persons under the age of 14, including:

- any industrial undertaking;
- in the forest industry;
- in the construction industry;
- in a garage or automotive service station;
- in a hotel or restaurant;
- in a theatre, dance hall or shooting gallery;
- as an elevator operator; or
- in any location or occupation prescribed by regulation.

Policy options and proposals – summary

The department proposes to:

- Repeal sections 41(1) and (2) of the *Employment Standards Act* to disallow exemptions;
- Amend section 39 of the *Employment Standards Act* to include youth under the age of 18;
- Increase the age of work restrictions from under 14 to under 16;
- Complete a comprehensive review of the restricted industries listed in the *Employment Standards Act*;
- Require employers to obtain written consent from a parent or legal guardian to employ a youth under the age of 16;
- Review participation in artistic performances to determine whether employment provisions for entertainers under the age of 16 should be added to the *Employment Standards Act*; and
- Review the hourly restrictions in the *Employment Standards Act*.

Policy options and proposals – discussion

1. Disallowing exemptions

In New Brunswick, section 41 of the *Act* allows the youth employment rules to be modified by an exemption system at the discretion of the director of Employment Standards. Under Article 8.1 of *Convention 138* (Minimum Age), work exemptions are permitted in individual cases to allow participation in artistic performances only. Thus, it is recommended that additional conditions be applied uniformly to all youth under the *Employment Standards Act*, thereby making it suitable to repeal the exemption structure.

The benefit of repealing the exemption section of the *Act* is that it will reduce red tape and possible resource issues for employees and employers. The challenge is that it will result in no longer having the flexibility in the system to consider youth employment situations that may involve exceptional circumstances.

2. Including youth under the age of 18

Currently under section 39 of the *Act*, youth under the age of 16 cannot be employed in employment that “is or is likely to be unwholesome or harmful to the person’s health, welfare or moral or physical development.” It is proposed that this section be amended to include a reference to education and be broadened to include youth under the age of 18.

The purpose of this amendment is to ensure all school-aged youth are encouraged to complete their education and protect their health, safety and development. This amendment will bring the *Employment Standards Act* into alignment with section 17(1) of the *Education Act*, which states, “a child must attend school until graduation from high school or until he/she reaches the age of 18.” The *Education Act* also specifies that, “where a child is required by this Act to be in attendance at school, no person shall employ that child during his or her school hours.”

3. Increase the age of work restrictions from under 14 to under 16

The purpose of this amendment is to enhance New Brunswick’s compliance with the International Labour Organization’s *Convention 138*. According to Article 7.1 of *Convention 138*, those aged 13 to 15 are permitted to do light work. These protections are intended to make certain that employment is safe, does not impede development or hamper a young person’s education.

Four Canadian jurisdictions have explicit industry restrictions within their respective employment standards legislation. Manitoba, Prince Edward Island, Nova Scotia and Nunavut identify the minimum age at under 16 – two years older than the current age in New Brunswick.

4. Comprehensive review of restricted industries

The list of restricted industries is intended to protect youth by ensuring they are not permitted to work in industries that have a higher likelihood of affecting a young person’s safety and/or development. Since the list of restricted industries has not been updated in recent years, reviewing it would ensure the list is up-to-date and consistent with occupational health and safety objectives.

In addition to New Brunswick, seven other provinces and territories include a list of restricted industries within their employment standards legislation (see Appendix A).

5. Requiring employers to obtain written consent from a parent or legal guardian to employ a youth under the age of 16.

Currently in New Brunswick, one of the requirements when applying for a Director’s Exemption is whether the youth’s parent or legal guardian has consented to the employment. This proposed amendment would extend the requirement to all employees as a means of ensuring a youth’s parent or legal guardian is aware of their employment status and thus can monitor his/her schedule for balance in work, school and life.

Employers would be responsible for ensuring written permission is received prior to the youth commencing work and responsible for maintaining the written consent in the employee’s file.

Six jurisdictions currently have a consent component in their respective youth employment legislation.

6. Determine whether employment provisions for entertainers under the age of 16 should be added to the *Employment Standards Act*.

Under Article 8.1 of *Convention 138* (Minimum Age), work exemptions are permitted in individual cases to allow participation in artistic performances. If New Brunswick’s exemption structure is repealed (as previously proposed), provisions may be required in the *Act* to address artistic performances. According to *Convention 138*, permits granted in these cases must limit the number of hours worked and prescribe the conditions in which employment is permitted, including continuation of education requirements.

Division 2 and 3 of British Columbia’s *Employment Standards Act* outlines separate conditions for recorded and live child entertainers. Quebec’s *Labour Standards Act* also excludes children involved in artistic endeavours, such as theatre, opera, music and dance; the making of films and sound recordings; and the recording of commercials from the hours of employment restriction. Unlike British Columbia, Quebec does not identify separate conditions that apply to children involved in artistic endeavours.

7. Hourly restrictions

Currently in New Brunswick, any person under the age of 16 is not permitted to work more than six hours in any day, for more than three hours on a school day, and the total hours spent attending school and working must not be more than eight hours. While New Brunswick limits the number of hours daily, the *Act* does not prescribe a maximum number of hours young persons are permitted to work per week. This means that:

- during a school week a youth could work up to 27 hours per week (3 hours X 5 days + 6 hours X 2 days); and
- during a non-school week a youth could work up to 42 hours per week (6 hour days X 7 days a week).

When school is in session, the minimum number of hours of instruction for grades 9 to 12, is five and one-half hours per day, or 27.5 hours per week. When combined with the total number of hours of work per school week this equates to a total of 54.5 hours per week spent in school and at work. Although section 17(1) of the *Employment Standards Act* includes a mandatory weekly rest period of at least 24 consecutive hours, in cases where a youth works a maximum six hour shift on a non-school day (e.g., 7a.m. - 1p.m.) that same youth would be permitted to begin work by 1 p.m. the following afternoon (e.g., 1p.m. - 7p.m.).

According to research conducted on students who worked during high school, the lowest proportion of students who dropped out of school, worked less than 20 hours per week.² Those who worked 30 hours or more per week were 2.4 times more likely to drop out of school.³

While introducing youth to employment is important, protecting them from working too much is equally necessary. Thus, the department would like your input on the following:

1. Should the *Employment Standards Act* be amended to increase the daily maximum number of hours?

a. If yes, below is an option for hours per day:

	School day	Non-school day
Option	4	8
Status quo	3	6

2. Should a weekly maximum number of hours per week be added to the *Employment Standards Act*?

b. If yes, below is an option for hours per week:

	School week	Non-school week
Option	20	40
Status quo	27	42

² T. Bushnik, Statistics Canada, 2003

³ Ibid.

The difficulty in setting a maximum number of hours is determining a healthy balance between work, school and life. A challenge with restricting the number of hours a person under the age of 16 is permitted to work may reduce the income on which a youth and/or his or her family rely.

Employment standards legislation in four provinces (British Columbia, Saskatchewan, Manitoba, and Prince Edward Island) include a weekly maximum number of hours within their employment standards legislation:

- Saskatchewan sets the weekly maximum at 16 hours per school week, while British Columbia and Manitoba set it at 20 hours per school week;
- British Columbia sets the maximum number of hours during a non-school week at 35 hours; and
- Prince Edward Island sets the maximum at 40 hours in any week.

How to provide feedback

We welcome your comments, ideas and suggestions on the issues and proposals in this discussion paper as well as other ideas for improving employment protections for young workers. Please provide your feedback to the Department of Post-Secondary Education, Training and Labour at:

Email: labourtravail@gnb.ca

Telephone: 1-844-453-4155 (toll-free)

Fax: 506-453-3780

Online: http://www2.gnb.ca/content/gnb/en/corporate/public_consultations.html

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The deadline for submissions is Oct. 7, 2016.

Thank you for taking the time to participate.

Appendix A

Jurisdiction	Age	Industry restrictions
British Columbia	Under 12	<p>The employer must demonstrate that the child will not work near hot surfaces, noxious substances or dangerous equipment.</p> <p>Includes no other specific mention of restricted jobs/workplaces.</p>
Alberta	Ages 12 to 14	<p>May work in the following jobs:</p> <ul style="list-style-type: none"> • Delivery person for flyers, newspaper and handbills; • Delivery person for small goods and merchandise for a retail store; • Clerk or messenger in an office; • Clerk in a retail store; and • Certain jobs in the restaurant and food services industry (with restrictions). <p>If the proposed job is not on the list, the adolescent must have a permit before they can begin work. Permits are historically not been granted for the following jobs:</p> <ul style="list-style-type: none"> • In the construction industry; • Requiring heavy lifting; • Working with or near moving vehicles and equipment (including forklifts); and • Working with potentially hazardous equipment (hand grinders, hammers, deep fryers, grills, slicers, sharp knives).
	Ages 15 to 17	<p>May work at any type of job, but if employed at any retail business selling food/beverages, commodities, gasoline or a place that provides overnight accommodation (hotel/motel) certain hourly and supervision restrictions apply.</p>
Manitoba	Under 18	<p>Industries that include:</p> <ul style="list-style-type: none"> • Forestry; • Saw or pulp mills; • Confined spaces; • Underground mines or on the face of open quarries; • Asbestos abatement and removal
	Under 16	<p>Cannot work:</p> <ul style="list-style-type: none"> • On a construction site; • In industrial or manufacturing processes; • Drilling or servicing rigs; • On scaffolds or swing stages; • Pruning, repairing, maintaining or removing trees

Jurisdiction	Age	Industry restrictions
Prince Edward Island	Under 16	No employer shall employ a young person in construction.
Nova Scotia	Under 16	No person shall employ a child in: <ul style="list-style-type: none"> • An industrial undertaking; • The forest industry; • Garages and automobile service stations; • Hotels; • Restaurants (except where not operating cooking equipment and safety training and supervision is provided); • operating of elevators; • theatres, dance halls, shooting galleries, bowling-alleys, billiard and pool rooms; and • Work or class of work in which the employment of a child under 16 is prohibited by regulation.
New Brunswick	Under 14	No employer shall employ a person in: <ul style="list-style-type: none"> • Any industrial undertaking; • The forest industry; • The construction industry; • In a garage or automobile service station; • A hotel or restaurant; • A theatre, dance hall or shooting gallery; • As an elevator operator; and • In any location or occupation prescribed by regulation.
Northwest Territories	16 or under	No employer shall employ a youth in the following activities unless prior written approval from an Employment Standards Officer: <ul style="list-style-type: none"> • Clearing brush and trees; • Constructing, reconstructing, repairing, altering or demolishing and work of construction, including the preparation for or the laying of the foundations of any work of construction.
Nunavut	Under 16	No person shall employ a young person in any construction industry unless the employer first obtains the approval in writing of the Labour Standards Officer.