

DISCUSSION PAPER

Coverage under the *Employment Standards Act*

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INTRODUCTION

New Brunswick's *Employment Standards Act* (the *Act*) and its regulations establish minimum standards for employers and employees in New Brunswick. The *Act* covers a range of areas, including payment of earnings, minimum wage, hours of work and overtime, vacations and vacation pay, paid public holidays, employment records, equal pay for equal work, maternity and parental leave, sick leave and the employment of children. Employers and employees may agree to terms and conditions that exceed these minimum standards.

From time to time, the *Act* needs to be reviewed to ensure that it is current with the norms and standards that are in force across the country, and responds to changes in the world of work. During the past decade, work arrangements have been evolving in response to globalization, the 2008 economic crisis, new technology, developments in productivity, and changing labour force demographics. The rules governing employment relationships are also affected by case law and international standards. Adjusting to these changes is critical for the province's ability to retain and attract a skilled workforce, and to promote a decent standard of living. For businesses, current employment standards are an important ingredient in market conditions that help to provide a level playing field and promote competitiveness both within and outside the province.

For these reasons, the Department of Post-Secondary Education, Training and Labour (the department) is conducting a review of groups of workers who are excluded from the application of the *Act*. The aim of this review is to ensure that vulnerable people are protected and the *Act* is applied fairly and equitably to all employment relationships.

The department seeks the views and ideas of New Brunswickers on three areas of concern related to the application of the *Act*:

- Clarifying the employment relationship,
- Coverage for domestic workers and persons who work in a private home, and
- Coverage for long-term employees on small farms.

In developing the proposals and options in this discussion paper, the department has examined the situation in New Brunswick and drawn upon reviews of employment standards legislation in other Canadian jurisdictions, international standards and case law.

1. CLARIFYING THE EMPLOYMENT RELATIONSHIP

Issue

The *Employment Standards Act* (the *Act*) is benefits-conferring legislation that provides minimum standards for working conditions and the employment relationship. The *Act* is mainly applicable to non-unionized, low wage workers in the province who have little bargaining power. Under the legislation, the employment relationship creates reciprocal obligations and rights between employers and employees. Employees who are covered by the *Act* may access complaints and enforcement processes if they believe that their rights under the *Act* may have been violated. Workers who are exempted from the coverage of the legislation may not receive wages and working conditions that meet the standards set by the *Act*. They also cannot access complaints and enforcement procedures.

Establishing the existence of an employment relationship is the key point of reference in determining the nature and extent of employers' and employees' obligations to each other. The *Act* defines an employee as "a person who performs work for or supplies services to an employer for wages, but does not include an independent contractor." Employees are subject to the protections and responsibilities of the *Act*, while independent contractors are excluded.

Some employers misclassify their workers as independent contractors when they are actually employees. The result is that the workers are denied their entitlements under the *Act*, including the minimum wage, overtime compensation and leaves. If a worker is misclassified, there can be serious tax and liability consequences for both the worker and the employer, as well as for taxpayers through lost revenues. Ultimately, this can have negative effects on the provincial economy.

The *Act* does not provide guidance on how to properly classify a worker and establish whether an employment relationship exists. While it specifically excludes an independent contractor, the current definition of an "employee" could equally describe what an independent contractor does. A similar situation exists in most provinces and territories across the country. (See Appendix – Jurisdictional Review for further information.)

In the absence of clear definitions and guidance in Canadian employment standards legislation, courts and labour boards have developed common law tests for determining whether an employment relationship exists between two or more parties. These tests were first established during the Second World War by the Supreme Court of Canada in a decision upheld by the Privy Council in *Montreal v. Montreal Locomotive Works Ltd. et al.*, [1947] 1 D.L.R. 161 (P.C.).

Since then, the tests have been developed by the courts to include a number of critical considerations and principles for determining whether a worker has the capacity to carry on business on their own account and is therefore an independent contractor. Considerations include, but are not limited to whether workers:

- have control over their own activities;
- own their own tools;
- hire other workers to help;
- are integral to the organization; and
- have an opportunity for profit or takes any financial risk.

Employers have the right to flexibility in determining what working arrangements will contribute to the stabilization and competitiveness of their businesses. Equally, some workers also prefer the flexibility that comes with self-employment and the status of "independent contractor." Thus the key policy issue is to balance the objectives of providing sufficient flexibility to both employers and workers in defining their work arrangements, with ensuring that employees are able to exercise their rights and enjoy adequate legal benefits and protections.

Clarifying the definition of an "employee" in the *Act* based on the tests established by the courts would provide guidance on when an employment relationship exists and a deterrent to misclassification of employees. This would result in a greater degree of certainty for employers and workers, including the self-employed, and help to ensure that the mutual rights and responsibilities set out in the *Act* are respected. It would also introduce greater efficiencies in enforcement and for adjudication.

Current situation

Information about the nature and extent of misclassification in Canada is not systematically tracked and reported. Decisions of New Brunswick's Labour and Employment Board show that it takes place across a range of industries and occupations, including construction, taxi drivers, janitorial services, house painting, administration, real estate and hospitality.

Reliable information about self-employment is also limited. In 2015, according to Statistics Canada's Labour Force Survey, 5,300 New Brunswickers were self-employed out of a total labour force of 351,000. Of these, 2,010 were "self-employed, unincorporated, no paid help." People in the latter category may include owners of a business, farm or professional practice, as well as misclassified employees.

Nationally, self-employment has increased in proportion to employment since the 1970s and stabilized at about 15 per cent since the 2008 economic crisis. Most self-employed workers do not have paid help, while the number of those who do has been decreasing over the long term. This is consistent with findings across industrialized nations. In general, most of these workers are women and older workers who earn less than other workers and have less benefits coverage than other workers.

Challenging shifts in work arrangements and problematic employment relationships are a global phenomenon. Businesses and entrepreneurs are experimenting with non-standard work arrangements that have both positive and negative effects. Non-standard work arrangements are typically temporary, contract, part-time, and irregularly scheduled. The World Bank, the International Labour Organization and other major organizations identify these arrangements, and misclassification in particular, as contributing to the erosion of employees' rights and the rise of precarious work arrangements.

A new challenge for defining the employment relationship has arisen with the development of the gig economy. Also known as the "on-demand" or "sharing" economy, the gig economy describes new patterns of work based on short-term and free-lance work arrangements, telework and other unconventional work arrangements. The gig economy presents new opportunities for entrepreneurship and flexible work arrangements that can benefit workers and their clients. At the same time, the classification of workers as independent contractors by "platform providers" such as the ride-sharing company Uber is currently the subject of several class actions and labour disputes in North America and other parts of the world. Recent court and labour board decisions in the United States have led a number of these companies to reclassify their workers as employees in order to avoid negative tax and other consequences. Some of these companies are making the change because they believe that stable relationships with long-term employees is a better business model over the long term.

In 2006, the International Labour Organization adopted the Employment Relationship Recommendation (No. 198). This recommendation calls on members to "combat disguised employment relationships and contractual arrangements that have the effect of depriving workers of the protection they are due" and "develop effective measures aimed at removing incentives to disguise an employment relationship." It articulates basic legislative principles and key indicators establishing the employment relationship and making a distinction between employed and self-employed workers that are consistent with the tests established in Canadian common law, and with the legislative and administrative norms that have developed in Europe and the United States.

Proposal

The Department of Post-Secondary Education, Training and Labour proposes to amend the definition of “employee” in the *Employment Standards Act*, to clarify how to determine whether an employment relationship exists. The new definition would be based on the common law tests (e.g., control, organization, ownership of tools, chance of profit or loss), and best practices in other Canadian jurisdictions, particularly Yukon, Newfoundland and Labrador, and Quebec (see Appendix – Jurisdictional Review).

Benefits:

- A new definition of “employee” would bring the *Act* into conformity with common law tests on the employment relationship developed since 1947;
- Providing clarity for workers and employers on employment relationship would reduce misclassification of employees as independent contractors, provide protection to vulnerable workers and introduce efficiencies into enforcement; and
- A better definition may assist employers, employees and independent contractors to develop contracts that reflect their interests and the nature of the work, and allow for flexibility where it is desirable.

Challenges:

- Courts have found that there is no single test or set of indicators that will definitively decide whether an employment relationship exists, and that each case must be evaluated on its facts. A legislated definition may not be able to provide for every circumstance.

2. COVERAGE FOR DOMESTIC WORKERS AND PERSONS WHO WORK IN A PRIVATE HOME

Issue

New Brunswick excludes domestic workers from employment standards protections. Currently, the *Employment Standards Act’s* definition of an employer “does not include a person having control or direction of or being responsible, directly or indirectly, for the employment of persons in or about his private home.” This means that workers who are employed by private individuals to work in their homes are not guaranteed the minimum wage, leave protections and other basic rights under the *Act*. These workers also have no remedy when they have employment-related problems with their employers.

The exclusion of domestic workers is fundamentally an issue of gender equality: they are primarily female workers who are denied basic labour rights on the basis that their work is done in the private home. The need to ensure that domestic workers in New Brunswick enjoy the protections and benefits of labour legislation has been raised by the International Labour Organization and United Nations human rights treaty bodies. For example, in 2011, an International Labour Organization committee of experts asked for details on the implementation of the *Pay Equity Act* and noted New Brunswick’s exemption of domestic workers from minimum wage protections.

Repealing the exemption of employers of domestic workers in the *Act* would provide coverage to a group of vulnerable workers, bring New Brunswick in line with the rest of Canada and fulfil obligations under international human rights and labour rights treaties.

Because domestic workers have been exempted from the legislation, a number of issues that are specific to their conditions of work have not been addressed in the legislation, including employer-provided accommodations and wage requirements for being on-call or working overnight. In repealing the exemption,

it would be prudent to address these issues. It is also important to ensure that the provision of community-based, casual domestic work such as baby sitting is not affected by bringing occupational domestic work under the legislation.

Current situation

In general, the domestic work being done in private homes includes functions and occupations related to caregiving and housekeeping. Because they have been excluded from the legislation, a large proportion of domestic workers are a part of the informal economy (i.e., unregulated and untaxed economic activity). Because of this and their relative seclusion in private living spaces, the work they do is relatively invisible and they can be highly vulnerable in their work environments. Domestic workers are exposed to some of the same health and safety risks as hotel, restaurant and institutional care workers. They may also be the victims of human trafficking or abusive employers.

Because of the nature of the informal economy and data limitations, developing an accurate picture of how many people are working as domestic workers in New Brunswick is not possible. The 2011 National Household Survey estimated that there were 10,475 people in New Brunswick working in related occupations: home child care, home support, housekeepers, light duty cleaners and related occupations. Across these occupations, 90 per cent of these workers were women.

Each year, the Department of Social Development provides approximately \$30 million in hourly subsidies to individual New Brunswickers so that they may hire homecare workers privately. While the subsidy is based on the prevailing minimum wage, none of these workers or their employers is subject to the *Employment Standards Act*. Because discrimination on the basis of social condition is prohibited under the New Brunswick *Human Rights Act*, domestic workers could bring complaints against their employers and government under the *Human Rights Act*.

At the same time, caregiving is increasingly being professionalized based on standards of care for persons with disabilities and chronically ill. Domestic workers may have specialized skillsets in demand by employers, such as cardiopulmonary resuscitation, first aid and other certifications. Demographic changes and the recognition that health outcomes are better for people who are able to remain in their homes mean that the demand for home-based care is increasing. Ensuring that these workers are covered by the *Act* would promote retention of workers in these critical caring occupations.

The number of live-in caregivers in the province under the federal migrant worker program reached a high of 49 in 2009 and has since steadily decreased. There were 30 live-in caregivers in 2012 and just 12 in 2015. This change may be owing to a number of factors, including the economic downturn and changes to the federal program in 2014.

See Appendix – Jurisdictional Review for further information.

Proposals

1. Repealing the exclusion

The department proposes to amend the *Employment Standards Act* by repealing the exclusion of employers of “persons in or about his private home” in the definition of “employer.”

Benefits:

- Ensuring that domestic workers enjoy the same entitlements and protections as other employees under the *Act* is an issue of fundamental fairness and gender equality.
- New Brunswick’s legislation would conform to our obligations under international labour and human rights treaties.
- Aligning New Brunswick’s legislation so we are not the only province that exempts domestic workers from employment standards coverage.

Challenges:

- Private employers of domestic workers will be required to comply with the requirements of the *Act* if they are not already. They may have to:
 - » Start keeping records and payroll accounts;
 - » Adjust their expectations and reorganize conditions of work to meet the requirements of the *Act*; and
 - » Incur higher costs if their employees are not already receiving minimum wage, overtime, vacation pay, etc.

2. Babysitters

The department proposes to amend the *Employment Standards Act* by introducing a definition of domestic worker to clarify that it applies only to those workers who perform domestic work on an occupational basis within an employment relationship and does not include a person who performs domestic work only occasionally.

Benefits:

- Providing a definition of “domestic worker” would clarify that the *Act* does not apply to casual, informal work such as baby-sitting and snow-clearing provided by teenagers to family friends and neighbours.

Challenges:

- Employers and workers may be confused about when the *Act* applies. The amendment proposed earlier to the definition of “employee” based on the common law tests would provide clarity.

3. HOURS OF WORK AND WAGE REQUIREMENTS: WORKING OVERNIGHT

Issue

Domestic workers providing care (e.g., for children or for persons with a disability or chronic illness) may be required to work at night. Some care workers may be paid less than their normal hourly rate (a wage differential), or may not be paid at all by employers for the times when they are working overnight.

If domestic workers are to be covered by the *Act*, ensuring consistency in the treatment of their wages and hours of work is critical to ensure that they are treated equitably in relation to employees in other occupations who are often required to work overnight or be on-call, and who may be sleeping during that time. In addition, fair treatment and remuneration for their time is key to being able to attract and retain workers in these kinds of critically important caring occupations. The primary issue for determining wage requirements for working overnight, particularly if the employee may be sleeping during at least part of that time, is what constitutes “hours of work.”

Proposal

The department proposes to amend the *Employment Standards Act* to provide a definition of “hours of work” to clarify that periods during which an employee must remain at the disposal of the employer shall be regarded as hours of work. This would include night-time shifts and times during which the employee may be sleeping.

Benefits:

- Defining “hours of work” as including sleep time and wait time would clarify that when an employee’s time is at the disposal of the employer, they are at work and should be compensated.
- It would bring New Brunswick in line with seven other provinces and territories that have adopted this approach.
- It would provide an equitable approach to remuneration for hours of work in traditionally female care-giving occupations in relation to conditions of work and wage requirements of workers in other occupations who may have similar hours of work, such as first responders.
- It would promote attraction and retention of workers in critical caregiving occupations that contribute to better long term health outcomes and reduce the burden on the health-care system and tax payers.

Challenges:

- Treating sleep and wait time as hours of work may increase costs for private employers of domestic workers who do not already get paid for this time. Employers would continue to have the right, under section 8 of the *Act*, to apply for an exemption from any provisions of the *Act* on the basis that compliance with the provision would result in a special hardship for the employer, or if the employer could show that the employee receives other benefits or advantages that can be viewed as reasonable compensation.

4. EMPLOYER-PROVIDED ACCOMMODATIONS

Issue

New Brunswick is the only jurisdiction in Canada that does not set minimum requirements under employment standards legislation for accommodations or room and board provided by employers to their employees. (For further information, see Appendix – Jurisdictional Review.)

Employer-provided accommodations are often a specific condition of employment for domestic, agricultural, seasonal and foreign workers. Sometimes the accommodations are sub-standard, or employers may charge too much money for what the employees receive. Employees who live on premises provided by their employers have little or no recourse to remedies for their situations.

Proposal

The department proposes to amend the *Employment Standards Act* based on the best practices of other Canadian jurisdictions by adopting minimum standards for employer-provided accommodations, as follows:

- The cost of employer-provided accommodations may not reduce an employee's wages below the minimum wage rate.
- Employees would be free to reach agreement with their employer or potential employer on whether to reside in the household.
- Employees who reside in the household would not be obliged to remain in the household or with household members during periods of daily and weekly rest or vacations or leaves.
- Provide basic standards by adopting Quebec and Ontario's definitions of "room" and "dwelling":
 - » "room" means a room in a dwelling unit that is reasonably furnished and reasonably fit for human habitation, has a bed and a chest of drawers for each employee that is accommodated, is supplied with clean linen and towels, allows reasonable access to proper toilet, wash basin and bathing or showering facilities, and access to laundry facilities; and
 - » "dwelling" means a dwelling that has at least one room as described above and has kitchen facilities, including a refrigerator and stove.

Benefits:

- Employers would be deterred from providing sub-standard housing and over-charging their employees.
- In general, employers of foreign workers will already comply with these conditions because they are required under the federal Temporary Foreign Worker and Seasonal Agricultural Worker programs.
- Providing minimum standards for a "room" and a "dwelling" sets reasonable expectations for both employers and employees.
- These proposals are consistent with the rules of the federal Temporary Foreign Worker and Seasonal Agricultural Worker programs.

Challenges:

- Some employers may have to make payroll adjustments if they are currently charging their employees rates for accommodations that reduce their wages below minimum wage.
- Some employers may be required to make improvements to the accommodations they provide to their employees, incurring costs as a result.

AGRICULTURAL WORKERS

Current situation

At present, the *Employment Standards Act* applies to a great majority of agricultural workers in New Brunswick. However, section 5 of the *Employment Standards Act* exempts employers who employ three or less agricultural workers “over a substantial period of the year” from coverage of the *Act*, exclusive of workers who are in a close family relationship with the employer or younger than the age of 16. In practice, the department interprets section 5 as excluding employers who hire three or fewer agricultural workers who work for at least six months of the year.

This exclusion has created an issue of fundamental fairness and equality for long-term employees of farming operations who are not covered by the *Act*, while short-term workers, such as harvesters, are fully covered. This may be viewed as a violation of the New Brunswick *Human Rights Act* prohibition of discrimination on the basis of social condition.

According to Statistics Canada’s last Census of Agriculture, in 2011, there were 2,611 primary agriculture establishments in New Brunswick with annual sales of at least \$10,000 for agricultural products. Of these farms:

- 1,481 did not have any employees;
- 634 or 24 per cent had one to three employees, for a total of up to 1,902 employees; and
- 496 or 18 per cent had four or more employees for a total of at least 5,523 employees.

Of the 634 agricultural establishments with one to three employees, 184 had employees working for at least six months of the year and would have been excluded from the *Act*. This would have affected up to 552 employees.

See Appendix – Jurisdictional Review for further information.

Proposal

The department proposes to amend the *Employment Standards Act* by repealing section 5 to bring all agricultural employees under the *Act*, with the exception of workers who are in a close family relationship with the employer, as defined under the *Act*.

Benefits:

- Repealing the exemption of agricultural workers who work on small farms for a substantial period of the year:
 - » Is an issue of equality rights under the law;
 - » Would correct the disadvantage that longer term employees are put to in relation to short term employees; and
 - » Would address New Brunswick’s anomalous situation in relation to other jurisdictions. No other jurisdictions make a similar distinction between long and short term employees, and none make exceptions for smaller operations.
- Continuing to provide an exemption for workers who are family members is critical to the economic viability of many agricultural operations.

Challenges:

- A small number of employers may experience some hardship as a result of repealing the exemption in the form of:
 - » Having to create or make changes to payroll systems;
 - » Having to adjust expectations and reorganize conditions of work in order to conform to the *Act*; and
 - » Higher costs if workers are not already receiving minimum wage, overtime, vacation pay, etc.

Note that employers would continue to have the right, under section 8 of the *Act*, to apply for an exemption from any provisions of the *Act* on the basis that compliance with the provision would result in a special hardship for the employer, or if the employer could show that the employee receives other benefits or advantages that can be viewed as reasonable compensation.

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 improvement of the employment relationship in New Brunswick. 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

Coverage under the *Employment Standards Act* Consultation
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The deadline for submissions is Oct. 7, 2016.

Thank you for taking the time to participate.

APPENDIX – JURISDICTIONAL REVIEW

1. The employment relationship

In general, employment standards legislation in Canada recognizes “employer” and three types of worker: “employee,” “independent contractor,” and “dependent contractor.” With the exception of Yukon, Quebec, and Newfoundland and Labrador, definitions tend to be vague and often do not provide much guidance on the nature of the relationship between the two parties, although these are well-established in common law. No Canadian provinces or territories provide definitions in their legislation of “employment,” “employment relationship,” “independent contractor” or “self-employment.”

Employee:

- There is no common definition of an “employee” across Canadian labour legislation. Generally, employees are described as including those who receive wages or remuneration for providing services to an employer. They may also be described as undergoing training, being on leave, and being past employees.
- New Brunswick’s *Employment Standards Act* defines an employee as “a person who performs work for or supplies services to an employer for wages, but does not include an independent contractor.”
- The best practice for reflecting the common law in providing clarity on the employment relationship is Yukon’s definition of an “employee,” which includes a “contractor worker” and is defined as:
 - “a worker, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by the worker, who performs work or services for another person for compensation or reward on such terms and conditions that
 - (a) the worker is in a position of economic dependence on, and under an obligation to perform duties for, that person, and
 - (b) the relationship between the worker and that person more closely resembles the relationship of employee to employer than the relationship of an independent contractor to a principal or of one independent contractor to another independent contractor.”
- Two other jurisdictions have helpful definitions:
 - » Newfoundland and Labrador’s definition says that an employee “works under a contract of service for an employer.” A “contract of service” implies an employment relationship, while a “contract for service” implies self-employment (independent contracting); and
 - » Quebec’s definition echoes the common law definitions by including a worker who is “a party to a contract, under which he or she (i) undertakes to perform specified work for a person within the scope and in accordance with the methods and means determined by that person; (ii) undertakes to furnish, for the carrying out of the contract, the material, equipment, raw materials or merchandise chosen by that person and to use them in the manner indicated by him or her; and (iii) keeps, as remuneration, the amount remaining to him or her from the sum he has received in conformity with the contract, after deducting the expenses entailed in the performances of that contract.”

Employer:

- There is no common definition of an “employer” in Canadian legislation. Generally, employers are described as employing employees, including in the past.
- New Brunswick’s *Employment Standards Act* defines an employer as “a person, firm, corporation, agent, manager, representative, contractor or sub-contractor having control or direction of or being responsible, directly or indirectly, for the employment of one or more persons...”
- Best practice: Saskatchewan says that an employer “has control or direction of one or more employees; or is responsible, directly or indirectly, in whole or in part, for the payment of wages to, or the receipt of wages by, one or more employees.”

Independent contractor:

- “Independent contractor” is understood to mean a self-employed person, but it is not defined in employment legislation in Canada.
- New Brunswick is the only jurisdiction that explicitly excludes an “independent contractor” from the definition of “employee.”

Dependent contractor:

- Dependent contractors are generally not recognized in Canadian employment standards legislation. However, they may be recognized in Yukon’s definition of employee and contract worker.
- Some provinces provide bargaining rights to dependent contractors in industrial relations legislation.
- Courts have established that dependent contractors have termination and notice rights normally accorded to employees in employment standards legislation.

2. Coverage for domestic workers and persons who work in a private home

While New Brunswick is the only jurisdiction that excludes domestic workers from employment standards legislation, there is very little commonality in the treatment of these workers in legislation across the country.

- On application of the legislation:
 - » Newfoundland, Northwest Territories, Yukon and Ontario treat domestic workers the same as everyone else.
 - » Alberta exempts domestic workers from provisions for hours of work, overtime hours and overtime pay.
 - » Nova Scotia legislation applies to those who work at least 24 hours per week (in any occupation); and
 - » Manitoba’s applies to domestic workers who work at least 12 hours per week.
- Other special conditions:
 - » British Columbia requires employers of live-in workers to register with the director of employment standards.
 - » Manitoba provides definitions and specifies conditions of work for “domestic worker,” “residential caregiver” and “night attendant.”

- On wages:
 - » British Columbia and Manitoba set a minimum daily wage of \$104.50 per day for live-in workers.
 - » Alberta applies a minimum wage of \$2,127 per month for live-in workers.
 - » Prince Edward Island exempts certain workers from minimum wage provisions: live-in employees of non-profits, and workers caring for children, persons with a disability and seniors.
 - » Saskatchewan only applies the minimum wage requirement to the first eight hours worked in a single day by a live-in domestic worker.
 - » Quebec does not apply overtime, but sets a maximum work week in regulation.
- On hours of work, on-call and sleep time:
 - » Prince Edward Island and Manitoba exempt live-in caregivers from hours of work provisions.
 - » Quebec and Ontario deem a person to be at work “while available to the employer at the place of employment and required to wait for work to be assigned.”
 - » Alberta allows a different rate of pay for sleep time that can be no less than minimum wage. Designated sleep time may be calculated as overtime hours for caregivers providing homecare or residential care.
 - » Northwest Territories requires that home care workers who are required to stay at the employer’s residence be paid at least the minimum wage for sleep time.

3. Hours of work and wage requirements: working overnight

Six jurisdictions do not set different hours of work provisions for domestic workers: Ontario, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Yukon. In the rest of the provinces and territories, there is no consistency in the treatment of hours of work for domestic workers. For example:

- Quebec and Ontario deem a person to be at work “while available to the employer at the place of employment and required to wait for work to be assigned.”
- Prince Edward Island exempts domestic workers from hours of work provisions.
- Alberta provides that caregivers working in private homes must be paid at least minimum wage for 12 hours in a 24-hour shift, and 12 hours per shift is used to calculate the number of hours in a month for overtime. Alberta allows a different rate of pay for on-call and sleep time that can be no less than minimum wage. In addition, designated sleep time may be calculated as overtime hours for caregivers providing homecare or residential care.
- Manitoba deems sleep time not to be time worked by home care workers.
- Northwest Territories requires that sleep time be paid at minimum wage for home care workers who are required to stay at the employer’s residence.

4. Employer-related accommodations

Currently, New Brunswick specifies in the Minimum Wage Regulation that employers may not deduct charges from minimum wage for accommodations that were not provided to the employee. In addition, foreign workers may not be compelled to remain in employer-provided accommodations. New Brunswick and Newfoundland and Labrador are the only jurisdictions that are silent on how much an employer may charge an employee for room and board.

Manitoba, Northwest Territories, Nunavut, Yukon, Prince Edward Island and the federal *Canada Labour Code* set a maximum amount in regulations that employers may charge for accommodations to employees earning minimum wage. There are no common standards for determining what an employer may charge for room and board and the actual allowable costs vary greatly. For example:

- Alberta's maximum charges are \$3.20 per meal and \$4.22 per day for lodging (\$29.54 per week);
- Nova Scotia's maximum charges are \$3.65 per meal and \$15.45 per week for lodging;
- Ontario has maximum allowable charges for private and shared rooms; and
- Northwest Territories only prescribes the maximum deduction allowed from minimum wage for room and board, currently \$420 per month.

Only Quebec and Ontario set standards for the nature of the lodgings provided. Under the authority of the *Citizenship and Immigration Act*, the federal Temporary Workers Program also sets these standards.

5. Agricultural Workers

There is very little consistency across the rest of the country on the treatment of agricultural workers in employment standards. New Brunswick is the only Canadian jurisdiction that designates a certain number of agricultural employees for the *Act* to apply. In Prince Edward Island "farm labourers" who are not employees of "commercial undertakings" are exempted from employment standards except for minimum wage and wage protection provisions, while all other agricultural workers are fully covered. Apart from these exceptions, New Brunswick and Prince Edward Island are the only jurisdictions where employment standards apply to the majority of agricultural workers without special conditions.

Alberta is the only jurisdiction that completely excludes agricultural workers from employment standards legislation. In the rest of the country, agricultural employees are subject to differing types of exclusions and special conditions, although this has been changing in recent years. The general trend is towards greater inclusion largely because of concerns for human rights and *Charter* rights, particularly for foreign workers, and court decisions.