

New Brunswick's Employment Standards: Serving or enslaving paid work?

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The Stakes

The boss (employer) hires, gives orders, lays off. The worker (employee) executes the work or quits her or his job. Legally, a work contract is a contract of subordination. The employee is always a subordinate who relies on her or his salary, and therefore her or his employer, to live. The notion of a work contract protects the employer. Who protects the employee?

If he wants to, an employer can pay an hourly wage of \$20.00 or any other condition which is advantageous to his employee. On the other hand, he cannot pay wages of \$2.00 or grant no paid

holiday. The New Brunswick *Employment Standards Act* prohibits it.

For all workers, the *Employment Standards Act* is their sole legal protection against their exploitation at work, except if they enjoy more advantageous clauses in their individual working contract or their collective agreement.

What are these limits? How does New Brunswick protect work? To reply to this question one must look at both what the law addresses, and that which it does not address, for here silence means giving free rein to the employer.

Facts

1. ACTUAL CASE

I worked 90 hours, last week. On Tuesday I almost fell asleep at the wheel.

I plant trees for Irving. They pick us up in a van. They make you pay our transportation. They charge you tool rental. I'm repaying my parents for my boots. In the end, I have a lot less money.

Officially, I work until 10 p.m. In reality I have to close up, and I'm not out of there before 10:20 p.m. She doesn't pay me for that. Moreover, we have to purchase new pieces of clothing in the shop each season.

To work as a mechanic at Midas, you need your own tools. I have almost \$10,000 in tools.

I was called in to work, I went in. He tells me that I can go home. I didn't earn anything, that day.

2. WHAT THE LAWS SAYS

The main headings in the law are: minimum wage, overtime, statutory holidays, leave (annual, sick, bereavement, family responsibility), weekly day of rest, abusive firings, payment of wages, notice of termination of employment. For example:

Minimum Wage: \$6.00\$ since July 2002

Overtime: The law prohibits an employee from refusing overtime. Overtime commences on the 45th hour of work in a week. For the employee earning less than \$9.00, overtime is paid at the rate of one

and one-half time the minimum wage (\$6.00 x 1.5 = \$9.00 per hour), and not at the rate of one and one half time the real hourly wage.

Statutory Holidays: six days

Annual Leave: If less than 8 years of seniority, 2 weeks.

Minimum Reporting Wage: 3 hours if the employee has a regular wage rate of less than twice the minimum wage rate and is regularly employed for more than three consecutive hours in a shift.

2. GAPS IN THE LAW

The current law is silent on many subjects, or, if it does address them, it is to say that it will not intervene, thus leaving the employer free to act as he wishes.

Hours of Work: "...the number of hours that an employee may work in one day, one

week or one month, is not limited." (Article 14). Consequently, the employer may legally have one work 60, 70 hours... or hours per week.

Breaks - no reference.

Working clothes: no reference. An employer can impose the purchase of special clothes.

Definition of Hours of Work: No reference. Some employers (restaurants, boutiques, etc.) consider an employee at work only when he or she is serving clients. For some closing up, tidying up or simply waiting is not considered to be "work".

Protection of Employees Who File Complaints Regarding the Non-respect of Standards: No reference. The employee who files a complaint is absolutely not protected, neither during the investigation period, nor later.

ANALYSIS

Laws on employment standards and related regulations set out the worst working conditions in Canada. They do not protect the employees against the well-known excesses of exploitation at work in the province. They impose total flexibility.

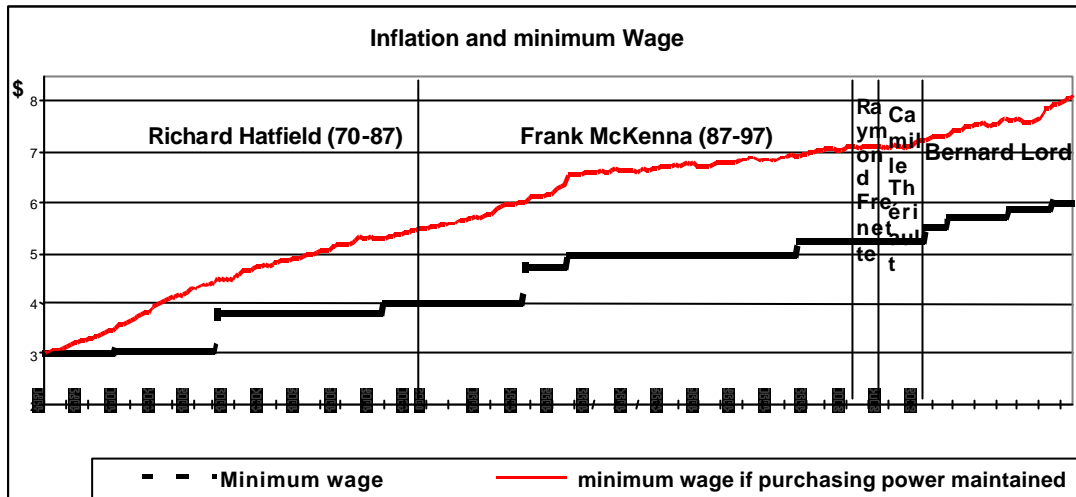
Financial Harm Done to Employees

To transfer the operating costs on employees by obliging them to purchase or rent boots, tools, clothing, or not paying the true hours of work, comes down to a reduction of wages.

As well, inflation has eaten away at the purchasing power of employees receiving the minimum wage, essentially young people and women.

Had the 1978 purchasing power of the minimum wage been maintained, it would have been \$8.10, in January 2003. Who can believe that employers in 2003 cannot pay the equivalent of the 1978 minimum wage? In comparison to 1978, the loss of purchasing power of an employee who works 40 hours per week at the minimum wage is \$336.95 per month. This amount would remove those who work at minimum wage from poverty. For today, with \$6.00 per hour, a person living alone and working all year, finds herself \$3,921.00 below the poverty line (\$16,401 for a person alone in 2002). Over the last 25 years, only the Lord government has regularly increased the minimum wage. And so, it has not increased the loss of purchasing power of

the minimum wage. But neither has it paid employees in poverty.
 reduced the gap that maintains the low-



Physical and Mental Harm to Workers

The Employment Standards Act promotes the physical and mental erosion of workers by encouraging excessive overtime. Many employers organize work in two shifts of 10 to 12 hours, at a wage rate below the minimum overtime

rate. No one can develop mentally and physically when regularly working 12 hours on end, day as well as night. What is the sense of a law that promotes the acceleration of the mental and physical erosion of its poorer citizens, besides impoverishing them?

CONSEQUENCES FOR ALL WORKERS

Since the 80's, income inequality has increased and workers work longer and longer hours without enjoying the profits of increased productivity.

The New Brunswick *Employment Standards Act* contributes directly to this state of affairs by legally enslaving work to the whim of employers.

Changing this law must be made a priority, particularly for the labour movement, if it means to improve the lot of all workers, rather than only that of its members.

The Commons is a fact sheet produced by researchers associated to the New Brunswick Common Front for Social Justice.