

March 13, 2018

The Honourable Kevin Flynn, MPP
Minister of Labour
Ontario Ministry of Labour
400 University Avenue, 14th Floor
Toronto, ON M7A 1T7

Via Facsimile

Original via Canada Post

Dear Minister Flynn,

Re: Certain Workplaces, Better Jobs Act, 2017 Changes

The Construction Employers Coordinating Council of Ontario (CECCO) is a Council that represents twenty trade employer bargaining agencies in the I.C.I. construction sector, totalling 8,000 trade and general contractors.

The Council of Ontario Construction Associations (COCA) is a federation of construction associations; the largest and most representative group of ICI and heavy civil construction employers in Ontario. Our member organizations represent more than 10,000 construction businesses.

The Electric Power Systems Construction Association (EPSCA) negotiates and administers construction trade collective agreements on behalf of employers performing construction industry work for the Bulk electrical Systems on Ontario Power Generation Inc., Bruce Power LP and Hydro One property.

The Fair Workplaces, Better Jobs Act, 2017 (the Act) introduced a great many changes to basic working conditions for employers in this Province. Such changes obviously met the needs of many workers in many industries. However, certain changes provided in the Act present real problems for the construction industry. We jointly are of the opinion that construction should be exempted from the Act in total.

There is a longstanding general commitment in our industry for employers and unions to work together to solve mutual problems. Because of this commitment, the industry has a long history of success in this regard. Therefore we are requesting that you use your Ministerial powers to exempt the construction industry employers and employees from section:

- Personal Emergency Leave
Section 50 (5) Two days of paid leave

Due to the transient nature of a significant portion of the construction work force it is not inconceivable that an employee can be employed for a week or longer by five to ten employers and request ten to twenty Personal Emergency Leave Days. We appreciate this is not the intent in the Act but is a very plausible reality. We acknowledge the intent in the Regulation 285/01 section 3.0.1 to allow the construction industry to pay employees 0.8 percent or more of his or her hourly rate for personal emergency leave days to address the transient worker.

A number of concerns and difficulties have arisen with this solution. In attempting to solve one issue employing the .8% solution ensures all employees are paid for personal emergency leave days whether they are required or not. This then unfairly impacts any employer with fixed priced contracts or service agreement in place. Also, in adding .08% to the wage package, employees will in effect receive it on premium and overtime hours, which we believe was not the intent of the legislation. The construction industry is struggling to come to grips with this requirement.

An alternate option while still having major cost implication for contractors with in place contracts may be to revise this section as it relates to Construction to align more with Regulation 502/06 Section 4 (10).

Our situation, while not exactly the same, is similar to the automotive industry. Our collective agreements in many instances have a combined percentage of holiday and vacation pay that exceeds the statutory requirement of 7.7% for employees with under five years of employment and 9.7% for employees with a minimum of five years' service.

Suggested revisions to Regulation 285/01

An employee is not entitled to take two days of paid leave under this section if the following applies under the terms and conditions of his or her employment or collective agreement:

1. The aggregate total of the holiday and vacation pay percentage received is in excess of .08% above the required statutory minimums

3.0.1 Revised If a construction employee who works in the construction industry receives 0.8 percent above the aggregate total of the statutory holiday and vacation pay percentages.

- (a) Is not entitled to paid days of leave under section 50 of the Act: and
- (b) Is entitled to take a total of 10 days of unpaid leave under section 50 of the Act in each calendar year. O. Reg. 526/17.s.4.

- Scheduling

Sections 21.3 Three Hour Rule and Section 21.6 Cancellation

The scheduling of work in our industry is particularly problematic. Work on construction sites can be postponed or cancelled for any number of legitimate reasons which are beyond anyone's control and often on very short notice. Therefore the above referenced sections present particular problems.

We obviously believe that our employees should be treated fairly and should be rewarded for their work. However, we also believe that the contractors that we represent should not have to bear an additional burden because of uncertainties of the construction industry, and because of reasons out of our control. The myriad of factors which can affect work performance and scheduling in the construction industry are sufficiently numerous and unique.

These issues are very real to us and our industry and are precisely the type of issues which we address in collective bargaining.

We also request that you use your Ministerial powers to exempt or in the least delay the implementation of Personal Emergency Leave Section 50 (5) until the conclusion of collective bargaining on April 30, 2019.

- Regulation 285/01 Exemptions Re: Public Holidays
Section 9 (2)

We believe the intent of the exemption is:

- (a) less than five years employment 7.7 percent of his or her hourly rate or wages for vacation and holiday pay; or
- (b) five years or more of employment 9.7 percent of his or her hourly rate or wages for vacation pay and holiday pay.

We therefore request the first sentence of Section 9 (2) be revised to:

Part X and Part XI does not apply to a construction employee who works in the construction if;

Also revise the word **or** in in both (a) and (b) between vacation and holiday pay to **and**.

Minister, in conclusion given the above, and given the general commitment which has always existed within our industry for employers and unions to work together to solve mutual problems, we are requesting that you use your Ministerial powers to exempt the construction industry employees and employers from the above set out Sections of the ESA or delay the implementation of the these items until our industry is able to deal with the impact in contract negotiations scheduled prior to April 30, 2019.

Sincerely,



Wayne Peterson
Executive Director
Construction Employers
Coordination Council of
Ontario



Ian Cunningham
Executive Director
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Alex Lolua
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