

Update on the Rights of Farm and Ranch Workers in Alberta

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Case Commented On: Bill 6, [The Enhanced Protection for Farm and Ranch Workers Act](#); [Report to Ministers - Technical Working Group: Employment Standards Code](#); [Report to Ministers - Technical Working Group: Labour Relations Code](#)

Bill 6, [The Enhanced Protection for Farm and Ranch Workers Act](#), made amendments removing the exclusion of farm and ranch workers from Alberta's labour and employment legislation in January 2016, with varying timelines for implementation (for earlier posts on Bill 6 see [here](#) and [here](#)). Some of those timelines allowed for a consultation process to work through the details for including these workers in the relevant legislation. Technical working groups (TWGs) were established to make recommendations regarding the inclusion of farm and ranch workers in the *Employment Standards Code*, [RSA 2000, c E-9](#), *Labour Relations Code*, [RSA 2000, c L-1](#), and *Occupational Health and Safety Act*, [RSA 2000, c O-2](#). Two of the TWGs have now reported, and this post will provide a brief summary of those reports, as well as the current state of inclusion / exclusion of farm and ranch workers in the legislation.

As a result of Bill 6, farm and ranch workers are now included in the *Workers' Compensation Act*, [RSA 2000, c W-15](#) (WCA), when they do paid work for farm or ranch employers. Unpaid workers, family members and children are not covered under the WCA unless their employer opts in. Recent [statistics](#) show that since Bill 6 came into force, 763 claims for workers compensation from agricultural workers have been processed, including 407 that involved a disabling injury.

In February 2017, the [Alberta Federation of Labour](#) released a 2015 internal government report it had obtained through a freedom of information request, which showed that agricultural workers are more than twice as likely to be killed on the job as other workers in Albertan, and 4,000 work related injuries occur on Alberta farms each year. The report estimated that injured farm workers lose over \$10 million each year in combined wages, and argued that workers compensation coverage was a more cost effective manner of compensating these losses than private insurance. The government of the day did not act on the recommendation. For an argument that the government's failure to include farm and ranch workers in workers compensation legislation was unconstitutional, see [here](#).

Bill 6 also brought farm and ranch workers who are paid, non-family members into the basic health and safety protections under the *Occupational Health and Safety Act* as of January 1, 2016 (see the new definitions of "occupation" and "worker" in s 1 of the *Act*). Farm and ranch employers are now obliged to ensure the health and safety of their workers (s 2), and the workers are able to refuse unsafe work that presents an imminent danger (s 35). OHS officers are authorized to inspect farm and ranch workplaces to ensure that that work is not being carried out in a manner that is unhealthy or unsafe (ss 8, 9), and serious injuries and accidents on farm and ranch work sites must be reported and investigated (s 18). A number of TWGs were established to make recommendations for more detailed OHS rules for farm and ranch workplaces, including

a review of existing requirements and exceptions, best practices for agriculture, and education and training, but these groups have not yet reported (see [here](#)).

Bill 6 amended the *Employment Standards Code* to include farm and ranch workers within the ambit of protections for hours of work, overtime, overtime pay, holidays and general holiday pay, vacations, vacation pay, minimum wages and employees under the age of 18, but this amendment has not yet been proclaimed, pending the completion of consultations. The TWG report for the *Employment Standards Code* was released in early March 2017, and put forward the following [consensus recommendations](#):

- Standards around *Payment of earnings, Employment records, Job protected leaves, Termination notice and pay, and Administration and enforcement* continue to apply except for family-member employees.
- Farms and ranches to be exempt from standards around *Hours of work and breaks and Overtime and overtime pay*. The TWG recommended, in regards to days of rest, that requiring 4 days off every 28 days for waged, non-family employees, at the employer's discretion was a reasonable standard.
- *Vacation and vacation pay* and *General holidays and General Holiday* to apply to waged, non-family employees in the agriculture industry, with special rules around the application of general holiday pay.
- For waged, non-family employees below the age of 16 work must not be detrimental to health, education, or welfare and parental consent must be obtained by employers. Additionally, for youths aged 12 and 13 who are waged, non-family employees there should be a limit of 20 hours of work per week.
- Minimum wage to apply to waged, non-family farm and ranch employees. Greenhouses, nurseries, sod farms, and mushroom farms be considered 'primary production' and have all the same standards and exemptions as the rest of agriculture.
- Family-member employees be exempted from all discussed standards, including ones that currently apply. Rationale included: the application of standards would be impractical and unfeasible, as well as burdensome without providing any benefit. In cases where family members may be mistreated, members of the TWG identified that the employment standards discussed would not be helpful in preventing such mistreatment.
- Sufficient time be provided to phase-in any upcoming changes and education sessions be offered to increase awareness of applicable employment standards.
- Government to explore options around easing the burden of job-protected leaves on small businesses.

Labour relations professor [Bob Barnettson](#) argues that some of these recommendations “effectively roll back protections for various workers.” For example, nurseries, sod farms, greenhouses, and mushroom farms are currently covered by some employment standards provisions, and to deem them to be primary production operations would exclude them from these provisions. He also argues that the child labour recommendations do not go far enough, and critiques the recommendations on hours of work, breaks and overtime / overtime pay, noting that the costs of the proposal will be entirely “borne by farm workers (whom Bill 6 is designed to protect) because they will receive lower wages and be placed at higher risk of fatigue-related injuries.” For arguments that a government failure to legislatively protect farm and ranch workers from these potential harms violates their constitutional rights, see [here](#).

Bill 6 also amended the *Labour Relations Code* to repeal the exclusion of farm and ranch workers from labour relations protections, but like the *Employment Standards Code* amendment, this amendment has not yet been proclaimed. The government notes on its [website](#) that:

Alberta is the only jurisdiction in Canada where farm and ranch employees do not have any form of labour relations coverage. The proposed removal of the exemption in the Labour Relations Code would make it legal for farm and ranch workers to join labour unions and collectively bargain with their employers if they choose to do so.

Recent Supreme Court of Canada decisions have provided all workers, including those in agriculture, with the right to form unions and bargain collectively. The full exclusion of farm and ranch workers from Alberta's Labour Relations Code is unconstitutional. The government is now acting to bring this province's laws into alignment with the Supreme Court's decisions.

In spite of this constitutional obligation, the [technical working group report](#) for the *Labour Relations Code* – also released in early March – indicates that the TWG considered “adding the exemption for agricultural workers back into the Code” (at p 3). The TWG was not able to reach consensus on this recommendation, but provides the rationales for and against it for the consideration of the government (at pp 8-9).

Similarly, the TWG was unable to reach consensus on the following options it debated:

- adopting Ontario's *Agricultural Employees Protection Act*
- adding a provision for first contract legislation that allows for an independent arbitrator to impose the first collective agreement when the parties reach an impasse
- removing the right to strike/lockout for agricultural workers
- adding to the Code that the minimum number of employees it takes to unionize in the agriculture industry would be five

These options also engage the constitutional rights of farm and ranch workers. Ontario's *Agricultural Employees Protection Act*, [SO 2002, c 16](#), provides a specialized (and minimalist) labour relations regime for this sector, and was enacted after the absolute exclusion of farm workers from labour relations legislation in Ontario was found to violate freedom of association under section 2(d) of the *Charter* in *Dunmore v. Ontario (Attorney General)*, [2001 SCC 94 \(CanLII\)](#), [2001] 3 SCR 1016. The *Agricultural Employees Protection Act* was then challenged but upheld in *Ontario (Attorney General) v. Fraser*, [2011] 2 SCR 3, [2011 SCC 20 \(CanLII\)](#) (for further analysis see [here](#)). However, as noted by [Barnetson](#), subsequent rulings of the Supreme Court call into question whether the *Agricultural Employees Protection Act* would still be seen as *Charter*-compliant today. Any recommendation to remove the right to strike for agricultural workers would also be seen as unconstitutional in light of *Saskatchewan Federation of Labour v. Saskatchewan*, [2015] 1 SCR 245, [2015 SCC 4 \(CanLII\)](#), which interpreted freedom of association to include the right to strike (for further analysis see [here](#)).

The TWG for the *Labour Relations Code* was able to reach consensus on the following recommendations:

- adding criteria to the legislation for what would be considered an “emergency” warranting a Public Emergency Tribunal in the face of job action (when there is “imminent and irreversible damage to crops and/or livestock welfare in primary agriculture” – see p 8)
- the exemption of family members from the application of the *Code*
- representation on, and education of, the Alberta Labour Relations Board with respect to the agricultural industry

The government provided an opportunity to comment on the *Employment Standards Code* and *Labour Relations Code* recommendations until April 3, 2017, and it is hoped that it will provide details of these consultations and its responses in the next short while.

It is also hoped that the ongoing resistance of many farm and ranch operators to Bill 6 – which has been amplified by Brian Jean and Jason Kenney, both of whom [promise to repeal Bill 6](#) if they form the next government – will be met by the government with a strong articulation of its constitutional obligations in this area.

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