Targeted Second Phase Consultations on Building Canada Strong for All — Powered by Canada's Workers

Submission by Parkdale Community Legal Services
and the Workers' Action Centre

Submitted: August 1, 2026

Parkdale Community Legal Services
1229 Queen Street West, Lower Level
Toronto, ON M6K 1L2
mary.gellatly@pcls.clcj.ca

Workers' Action Centre
720 Spadina Avenue, Suite 202
Toronto, ON M5S 2T9
deena.ladd@workersactioncentre.org

Introduction

These submissions are made on behalf of the Workers' Action Centre (WAC) and Parkdale Community Legal Services (PCLS). Each year, our organizations support thousands of non-unionized workers in low-wage and precarious employment. Through case work, public legal education and law reform initiatives, it is our mission to support workers in their struggle for dignity and decent work.

On May 22, 2026, we provided detailed submissions on the Phase One consultations which were announced on April 17, 2026. We made further submissions on June 2, 2026 to the Labour Program in its consultation to strengthen the Labour Program's Administrative Monetary Penalties and improve compliance with the Canada Labour Code.

While our submissions are confined to matters under Part III of the Canada Labour Code, we do want to emphasize here that *we support the Canadian Labour Congress submissions on protecting our constitutional rights to collective bargaining and the right to strike.*

We want to register our concern about the lack of transparency with respect to the government's agenda and decision making. As noted in the Round-table discussion on Part III of the Code that took place July 29, 2026, the critical issue of wage theft is not getting the fulsome attention that it needs.

We are further concerned that the rather obscure mention of medical leave in the Phase One consultation blew up to be a major focus of second-round consultations with the government's apparent consideration of legislative changes to this provision. This is being done in the middle of the summer, without the involvement of the numerous medical professionals and public health experts including the Canadian Medical Association, and other unions and civil-society organizations and individuals that had previously weighed in heavily on the public matter of paid sick days. We strongly believe that prior to any consideration of legislative changes on these matters, there be genuine consultation of all stakeholders.

1. **Medical Leave with Pay**

   Historically, the federal government has been a "model regulator", setting the bar for employment standards which are then emulated in other Canadian jurisdictions.[1] The Labour Program took up this mantle when it implemented a relatively robust short-term, job-protected sick leave program, which took effect in December, 2022.

Before the pandemic, less than half of Canadian workers had access to employer-provided paid and protected short-term sickness and caregiving leaves.[2] Division XIII was legislated because COVID-19 revealed a significant need for income support and job protection laws, which were temporarily filled with emergency measures during the pandemic. For workers in low-wage and precarious jobs, illness — including both mental and physical illness — too often leads to financial hardship. Through the experiences of our members and the workers we support, we see how the lives of workers can come crashing down around them when they experience long-term sickness or injury. We also know that many workers are forced to go to work sick because they do not have access to short-term job-protected paid sick leave, which, in addition to undermining public health, can lead to worsening health conditions as workers forgo medical care.

The Code now requires employers to provide employees with at least ten paid Medical Leave days, which are accrued over the course of a year. Unsurprisingly, some employers resent the new requirement and the costs associated with it. During this consultation, some employer representatives have expressed their frustration with the increase in Medical Leave use in their workplaces. What they claim is abuse of sick leave is more appropriately characterized as employees making use of a newly available benefit. There is no independently verified evidence to support the claim that employees are disproportionately abusing paid Medical Leave or that the new program has had any negative effect on worker productivity or our economy. There is, however, significant research on the high social cost of "presenteeism", which occurs when workers cannot afford to take time off for short-term illnesses. The results are longer absences from work, more serious health consequences, and lower productivity.[3]

---

[1] Regulator? Investigating Reactive and Proactive Labour Standards Enforcement in Canada's Federally Regulated Private Sector,' International Journal of Comparative Labour Law and Industrial Relations 37, no. 2&3 (2021) at 173.

[2] Tucker, Eric M., and Leah F. Vosko. 2021. Designing Paid and Protected Employment Leaves for Short-Term Sickness and Caregiving . IRPP Insight 38. Montreal: Institute for Research on Public Policy at 3.

[3] V. Lovell, "No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave," Institute for Women's Policy Research, June 2004; and S. Pichler and N. Ziebarth, "The Pros and Cons of Sick Pay Schemes: Testing for Contagious Presenteeism and Shirking

Employer representatives indicated that some employers and employees in the Federally Regulated Public Sector (FRPS) are confused about the appropriate use of Medical Leave, including how Code benefits should interact with collectively-bargained entitlements. The Code provisions do not need to be amended to address these concerns. Rather, these concerns are best addressed through education and information sharing initiatives led by the Labour Program.

The Medical Leave entitlements and requirements enshrined in section 239 of the Code are appropriate for the FRPS. The current entitlements ensure workers, employers, and healthcare providers are not wasting precious time on unnecessary bureaucratic obstacles, and ensures all workers, including those who lack union representation or are engaged in precarious work, have adequate protection and financial stability to attend to their health. It also ensures that workers who provide employer-paid sick days — either through a collective agreement or individually negotiated employment contracts — are not put at a competitive disadvantage.

We strongly recommend that no changes be implemented to the current 27 week job-protected medical leave, including 10 employer-paid sick days. In addition to our responses to the specific questions below, we refer you to our Phase One submissions on this issue.

- **Should employers have greater flexibility to request a medical certificate from employees who take paid medical leave? If so, under what conditions?**

  Section 239(2) of the Code should not be amended.

  Employers do not require greater flexibility to request medical certificates. Any potential benefits of such an amendments are gravely outweighed by the social cost of allowing employers to drain our scarce healthcare resources with unnecessary medical note requests.

  Canada's healthcare system is suffering due to a shortage of healthcare workers. Primary healthcare providers are in particularly short supply. Doctors have identified the excessive administrative burden on healthcare providers as a key cause of burnout and have been adamantly clear: they do not want to waste precious limited resources on

---

Behavior," Upjohn Institute for Employment Research, May 2015, http://dx.doi.org/10.17848/wp15-239.

providing medical notes to verify employee absences.[4] The CMA estimates that nationally, doctors are spending a collective 1.15 million hours a year writing sick notes, time that could be better spent on 3.5 to 5 million patient visits. Providing a medical certificate to satisfy an employer policy is an uninsured service which collectively costs patients $180 million per year — a cost borne either by the employer or the worker themselves. Nine Canadian provinces and territories have heeded the urgent call of medical practitioners and instituted sick note prohibitions. In at least five jurisdictions (British Columbia, Manitoba, Nova Scotia, PEI, Saskatchewan) employers cannot ask for a medical certificate for absences of five days or less.

During these consultations, employer representatives have advocated for an amendment to the Code to allow employers to request a sick note where they suspect an employee is misusing Medical Leave. There is no parallel for this amendment in other jurisdictions, perhaps because obtaining medical certificates is not an effective way of verifying short-term illness, as employees are often going to see their healthcare practitioners after symptoms have subsided. More importantly, such an amendment would be open to widespread abuse by employers.

It is clear from these consultations that many employers suspect *any use* of sick leave to be illegitimate, especially if workers phone in sick after a weekend or holiday (regardless of the fact that those are times when workers and their families are more likely to congregate and engage in recreational activities and therefore contract illness or injure themselves). In non-unionized workplaces especially, employees will not have any recourse to push back on employers who use this provision as blanket permission to request medical notes for all absences, or, for example, for any absence that occurs after a weekend. If Employers have legitimate reason to suspect that an individual is misusing Medical Leave, the employer is entitled to investigate and discipline the worker. But it is completely inappropriate for employers to download their human resource responsibilities onto our medical system.

---

[4] Doctors Manitoba. Sick Notes, Accommodation Requests, and Return-to-Work Research Summary, May 2024. Winnipeg: Doctors Manitoba; 2024 May; Ontario Medical Association, "Prescription for Ontario: Doctors' Solutions for Immediate Action"; Canadian Medical Association (CMA) and Canadian Federation of Independent Business (CFIB). Losing doctors to desk work: Canadian physicians lose 20 million hours each year to red tape. Ottawa: 2026 Jan.

Notably, we did not hear any employer argue that employees who take multiple Medical Leave days in a row are more likely to be malingering. As such, it would be inappropriate to reduce the number of consecutive days an employee can take before the employer is allowed to request a medical note, as this would not even address the concerns raised by employers.

- **Instead of a medical certificate, should employers be allowed to request that an employee provide a signed attestation that they qualified for medical leave? Why or why not?**

  An attestation requirement is both unnecessary and out of step with approaches taken in other jurisdictions. Its primary impact would be to deter and intimidate workers from exercising their entitlement to Medical Leave when they genuinely need it. In practice, employees may feel pressured to disclose more sensitive medical information than is required when completing an attestation. Moreover, the Code already permits employers to investigate where there is a legitimate basis to suspect misuse of medical leave. An attestation does not meaningfully support or enhance that process.

- **Subsection 168(1.1) of the Code currently provides that certain divisions under Part III (Minimum Wage and Age of Employment, Annual Vacations, General Holidays, and Bereavement Leave) do not apply to employees represented by a union, if the collective agreement provides rights and benefits at least as favourable as those provided in those divisions. Do you believe that medical leave provisions should be treated in the same manner?**

  No. It would not be appropriate to apply section 168(1.1) to Medical Leave.

  Unionized employees are already prohibited from stacking collective agreement and Code based entitlements. This is expressly stated in the Interpretation and Policy Guideline 119 “Medical Leave with Pay — No Stacking”, which provides employers with guidance on how the equal or greater benefit principles apply and expressly states that “duplication or stacking of benefits is not the intent when an employer provides an equivalent or equal benefit.” Importantly, if 168(1.1) were to apply to medical leave, unionized workers would potentially be excluded from accessing the entirety of Division XIII which includes 27 weeks of job-protected medical leave that mirrors the scope and eligibility criteria for EI sickness benefits.

Given how important medical leave is to our individual and collective well-being, Division XIII of the Code is not suitable for 168(1.1) exemption. According to arbitral jurisprudence, in determining whether the 168(1.1) applies, the arbitrator must use the "metaphorical scale", placing in one pan the entirety of the Medical Leave provision, and in the other, all collective agreement rights and benefits relating to medical leave. This "holistic" analysis means that an employer who provides a greater number of paid sick days but requires sick notes for every absence may theoretically be granted an exemption under the Code. It could lead to the absurd result of an employer being able to fire a worker who is on an extended medical leave and in receipt of EI because the Employer is exempted from the requirement to provide 27 weeks of job protected leave. Division XIII of the Code is an important and complicated provision that cannot easily be compared side by side in a "holistic" way with collectively bargained sick leave provisions. Applying an exemption for unionized employees as per section 168(1.1) would lead to numerous arbitration cases, as parties in the unionized FRPS scramble to figure out if the Code applies.

Medical leave should remain governed by section 168(1), which establishes that Part III of the Code prevails over any conflicting law, custom, contract, or arrangement. This framework ensures that statutory minimum standards are consistently upheld.

Some employer representatives suggest that this approach permits the stacking of benefits under the Code and collective agreements; however, that interpretation is incorrect. As clarified in IPG 119, where a collective agreement provides paid leave for the same purpose as the Code's medical leave with pay, the use of one day of that leave is treated as simultaneously satisfying one day of the Code entitlement. In other words, the two are not cumulative but aligned.

At the same time, the Code continues to operate as a floor. Where collectively bargained sick leave provisions do not meet the statutory minimum, employees must still receive the protections guaranteed by the legislation. This safeguard is particularly important given the limitations of many short-term disability plans, which often include unpaid waiting periods or exclude certain groups, such as probationary employees or workers aged 65 and older.

Since this provision only came into force on December 1, 2022, its application remains relatively recent. Where uncertainty arises due to differences between the Code and a collective agreement—particularly in assessing whether a benefit meets or exceeds the statutory standard—the parties retain the ability to address and resolve those issues through collective bargaining by negotiating revised language. IPG 119 also offers practical guidance through a range of examples illustrating how to apply the "greater right or benefit" analysis. Although it is not legally binding, arbitral decisions have increasingly reflected its reasoning. Should additional clarity be needed, employers may seek guidance from the Labour Program, and further elaboration and examples within the IPG could also be considered.

- **Should employers be provided with additional flexibility to designate an alternative 12-month period, other than a calendar or vacation year, for the purpose of calculating paid medical leave entitlements? If so, should this be subject to the agreement of any union representing affected employees?**

  The current provisions give employers ample flexibility to designate a 12-month accrual period based on the calendar or vacation year. There is no need for further flexibility.

7. Wage Theft and Enforcement

The Phase Two consultation paper seeks feedback on the prevalence and forms of wage theft in federally-regulated sectors and enforcement improvements.

- **7(a) What other forms of wage theft do you see most often, and why do they persist?**

  The prevalence of wage theft by federally-regulated employers is not well documented. However, the few Canadian studies that are available highlight that wage theft is a persistent and ongoing problem. The federal government's 1997 Labour Standards Evaluation survey found that 25% of federally-regulated employers were in widespread violation and that 59% were in partial violation of the Federal Labour Code.[5] This study was confirmed a decade later by Statistics Canada.[6]

The small number of employees that file wage theft claims with the Labour Program *understates the extent of wage theft* in federally-regulated sectors. For most workers, fear of reprisal and the challenges and risks associated with pursuing a claim against their employer pose significant barriers, especially for low-wage and precarious workers, racialized workers, and workers with precarious immigration status.[7] U.S.-based research indicates that as few as two percent (2%) of workers experiencing wage theft made a complaint to a state regulatory body.[8]

In our submissions to Phase One of the government consultation on Building Canada Strong for All, we addressed many of the legislative and procedural barriers to addressing wage theft in all federally-regulated sectors. Because of these barriers, federally-regulated employees have been turning to private litigation of wage theft violations because public enforcement has been so ineffective. Between 2018 and 2024, class action lawsuits have recovered $198.5 million to workers largely for unpaid overtime and unpaid hours of work.[9] Many of these class actions have involved federally-regulated employers, particularly in the banking and finance sector, for issues such as unpaid overtime, hours of work, and misclassification.

As Justice Belobaba observed in *Rosen*:

> A class proceeding in overtime-claim cases will generally be more effective than individual claims under the ESA, where there are strict time-limits and caps on recovery. A class

[5] Human Resource Development Canada (1997) Evaluation of Federal Labour Standards (Phase I) Final Report. 41
[6] Harry Arthurs (2006) Fairness at Work. 192.
[7] Banks, Kevin (2016) Employment Standards Complaint Resolution, Compliance and Enforcement: A Review of the Literature on Access and Effectiveness. Prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review of 2016 at p. 13-16.
[8] Daniel Schneider, Elizabeth Khulman, Kristen Harknett and David Weil, Compliance and the Complaint Gap: Labor Standards Violations in the California Service Sector. May 2024. The Shift Project.
[9] The quantum does not necessarily represent the total amount of wages owing, but like all settlements, are a percentage of that total. Class Action settlements require court approval and must be deemed fair, reasonable and in the best interest of the class members. They are therefore grounded in fact and fall within a reasonable range of outcomes from the litigation.

> proceeding also provides class members with a less expensive and more efficient litigation vehicle and the advantage of anonymity, which in turn avoids employees' fear of reprisals.[10]

The Bank of Montreal Nesbitt Burns Inc. paid over $12 million to misclassified employees for unpaid overtime.[11] In Fresco v. CIBC, over 31,000 front-line bank employees recovered $153 million in unpaid overtime pay.[12] Scotiabank ended up being ordered to pay its frontline bank employees almost $40 million for unpaid overtime.[13] Other class actions are underway for underpayment of vacation and public holiday pay for commission employees at the Bank of Montreal.[14]

- **7(b) Who in your sector is most vulnerable to wage theft, and what factors make them particularly at risk?**

When we ask who is the most vulnerable to wage theft, we don't usually think of bank and finance workers such as those who fought for their unpaid overtime. However, under the federal government's compliance model of labour standards enforcement, there is no proactive inspection of employer practices. Large non-unionized companies like the big banks have been able to bake-in hours of work violations that become reified as common business practice.

Other sector-wide practices that have become entrenched, such as piece rate pay for airline attendants and truck drivers, have led to substandard hours of work and wages that escape Ministry of Labour oversight and labour code enforcement. For example, a recent survey of federally-regulated truck drivers reported that three out of four drivers (75%) were not being paid for all the hours they worked.[15]

---

[10] Rosen v BMO Nesbitt Burns Inc., 2016 ONSC 4752 (CanLII), <https://canlii.ca/t/gsn79> retrieved on 2026-07-21
[11] Rosen v BMO Nesbitt Burns Inc., 2016 ONSC 4752 (CanLII), <https://canlii.ca/t/gsn79>, retrieved on 2026-07-21
[12] Fresco v. Canadian Imperial Bank of Commerce, 2012 ONCA 444 (CanLII), <https://canlii.ca/t/frtzk>, retrieved on 2026-07-21
[13] Fulawka v. Bank of Nova Scotia, 2012 ONCA 443 (CanLII), <https://canlii.ca/t/frtzp>, retrieved on 2026-07-21
[14] Monkhouse Law, BMO — Vacation and Holiday Pay Class Action https://www.monkhouselaw.com/bmo-vacation-and-holiday-pay-class-action/
[15] Running on Empty: Truck Drivers in Canada are Underpaid and Overworked, February 2026. Report by West Coast Trucking Association, Justice for Truck Drivers, Labour Community Services of Peel and Parkdale Community Legal Services.

As we noted in our Phase One submission, there is an urgent need to close the gap in the Canada Labour Code to address these employer practices.

Sectors vulnerable to wage theft are found down the outsourcing and subcontracting chains. Many high-growth sectors in Canada have shifted away from the tradition of direct employer-employee relationships to a more complex web of companies that prioritize shedding labour costs and employer liabilities to maximize profits. Former head of the Wage and Hour Division at the U.S. Department of Labor, David Weil, describes this as “fissuring” of the traditional workplace. Though the company at the top retains significant control over how and when work is performed, these practices shift the legal liability that employers have for the workers employed through intermediaries and, in the case of misclassification, onto workers themselves. We see these practices in the banking sector where call centres and marketing of credit cards may be outsourced with workers at the bottom squeezed by lower wages and less protection. These workers are more likely to be newcomers, racialized workers, and workers with precarious immigration status who are most at risk of wage theft. When fissuring occurs in the federally-regulated private sector, workers may also move from federal to provincial jurisdiction leading to further confusion for victims of wage theft.

- **7(c) Why does this wage theft persist?**

Wage theft persists in the federally-regulated private sector because there is little chance that employers' non-compliance with the Code will be detected. Enforcement relies on the victims of wage theft to enforce their rights through individual claims. On average, just two to four percent (2% to 4%) of victims of wage theft report it to enforcement agencies.[16]

In these small numbers of cases, there is little chance of recovering unpaid wages and entitlements as only 18% of orders to pay are

[16] A recent study of wage theft in large Californian service sector firms found that 91% of workers had experienced at least one wage theft violation in the previous year with less than 25% of these workers reporting violations to their employer. Only 2% of these workers made a complaint to a state regulatory body. See: Schneider, D., Khulman, E., Harknett, K., & Weil,D. (2024). Compliance and the Complaint Gap: Labor Standards Violations in the California Service Sector. The Shift Project.
http://shift.hks.harvard.edu/wp-content/uploads/2024/05/CA_Violations_Report_Final.pdf

recovered by the Labour Program because there are no legislated collection powers.[17] These employers face little risk of penalty for violating the Labour Code as the Administrative Monetary Penalties (AMPs) are rarely used, and if they are used, the modest fines are rarely paid. Hence the cost-benefit analysis tips in favour of committing wage theft for many employers because even if they are caught, wage theft still saves them money and will not threaten their business.

The federal government's Labour Program enforces the Labour Code through a reactive compliance model based on the standard employment relationship. The compliance model of labour standards enforcement assumes most employers follow the Code and, where they depart, enforcement strategies rely on the provision of information, persuasion, and negotiation to bring employers into compliance.

This compliance model relies on employees who face wage theft to enforce their rights by filing individual complaints when, or after, the violation has taken place. That is, it is largely a reactive, individualized model that makes employees more responsible for asserting their rights regardless of the power imbalances in the employer-employee relationships that the remedial Labour Code is intended to redress. This model has been failing federally-regulated employees.

Commissions, consultations, and expert panels have long called for the government to shift to a proactive deterrence enforcement model. The Arthur's Commission in 2006 and the Labour Standards Program for 2011-12 to 2015-16 recommended strong measures and proactive strategies.[18] In 2019, the Expert Panel on Modern Federal Labour Standards called for more proactive enforcement with adequate resourcing.[19]

Prof. Vosko's analysis of the federal Labour Program concluded that the reliance on a compliance model of enforcement may contribute to the erosion of labour standards, particularly for those workers in industries

---

[17] Mojtehedzadah, Sara "The big rig: Weak oversight and regulatory loopholes let predatory trucking firms run roughshod over vulnerable drivers." The Globe and Mail, May 30, 2026.
[18] Arthurs, Harry W. Fairness at Work: Federal Labour Standards for the 21st Century. Gatineau, QC: Government of Canada, 2006; and ESDC (2019) Evaluation of the Labour Standards Program.
[19] "Report of the Expert Panel on Modern Federal Labour Standards." ESDC: June, 2019: https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/what-we-heard-expert-panel-modern-federal.html

where small firms and precarious employment dominate, and recommends a more proactive deterrence model of enforcement.[20]

- **7(d) What specific changes to the Labour Program's enforcement powers would most effectively reduce wage theft?**

  In our Phase One submission to this consultation, we made numerous recommendations to improve the Labour Program's enforcement powers. We will summarize these recommendations here, but please see our previous submission for a fuller discussion.

  1. **Remove barriers to labour Code complaints**

     The six-month time limit to file federal labour code complaints limits employers' liabilities for violating the Code. At the same time, it creates substantial barriers to employees facing wage theft.

     Recommendations

     - Establish a two year time limit for filing complaints for reprisals, unjust dismissal, and monetary and non-monetary complaints under the Labour Code.
     - Use s. 251(1.2) of the Code to use available forms of evidence, including employee testimony, to decide claims (especially where the employer does not participate in the investigation).
     - Increase the number of Early Resolution Officers and Labour Affairs Officers to reduce the backlog on claims.
     - Immediately expand employer investigations when multiple complaints against an employer are made, to bring the employer into compliance for all employees (not merely the ones who have made complaints).

  2. **Remedy for victims of wage theft**

     Under the current system, workers — not employers — bear most of the costs associated with wage theft. When employers withhold pay or provide partial pay, workers must still pay the rent and feed their families. This financial harm is born by the very workers that the Labour Code is supposed to protect and has no remedy for these

[20] Vosko, Leah; Noack, Andrea (Andie); King, Adam; Osten, Victoria; Clare, Emily (2022). A Model Regulator? Investigating Reactive and Proactive Labour Standards Enforcement in Canada's Federally Regulated Private Sector. Toronto Metropolitan University. Journal contribution. https://doi.org/10.32920/21631922.v1

damages. Legislatively mandating damage awards can deter employers from committing wage theft by significantly increasing the cost of violating the law.[21]

Recommendations

- Enact powers to charge pre- and post-judgement interest on unpaid wages.
- Mandate triple damage awards for all monetary Part III violations.

3. Collections

For enforcement to be effective, employers must know that the Labour Program can and will force them to pay wage violations once they are detected. Only 18 percent of Orders to Pay are recovered by the Labour Program. Part III of the Canada Labour Code contains only two provisions for collections of outstanding orders to pay. The Program can issue third party orders to a party that is indebted to the employer in violation or to a bank if known. Otherwise, the Program can file the order to pay in federal court. The Federal Court process for enforcing a debt is complex, costly, and time consuming, particularly if the debtor is uncooperative. Placing the burden on employees whose labour code rights have been violated, to pay thousands of dollars to a lawyer to recover unpaid wages, is unfair and contravenes the remedial purposes of the Labour Code.

Recommendations

Enact provisions in Part III of the Code to facilitate the collection of money owed to include the following:

- Liens on real and personal property.
- Issue warrants to a sheriff to enforce an order to pay and the costs and expenses of the sheriff.

[21] Several U.S. states have wage theft laws that award damages to victims of wage theft, in some cases up to three times the amount of the unpaid wages they are owed (see for example, include Arizona, Massachusetts, New Mexico, Ohio, Idaho, Maine, Maryland, Michigan, Nebraska, North Dakota, and Vermont). This approach has been proven by at least one study as the most effective state policy for combating wage violations. See D. Galvin (2016) Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance. Perspectives on Politics Vol 14, No. 2.

- In addition to filing an order in federal court, provide legal services to claimants to enforce the order to pay in court.
- Require pre-judgement liens or bonds in cases of repeat offenders.
- Prosecute all employers that fail to comply with orders to pay.
- Provide adequate staff and resources for collection activities within the Labour Program.

4. **Deterrence through effective penalties for Labour Code violations**

The consultation paper asks if increasing fine and penalty amounts would reduce wage theft. The short answer is no. That is because the AMPs regime is overly complex, rarely used, and not enforced. For our full discussion of AMPs, please see our submission made on June 1, 2026 to the Labour Program External Consultation: strengthening the AMP system to improve compliance with the Canada Labour Code.

Over the past five years, the Labour Program issued 41 AMPs, with the majority of those being for Part II Occupational Health and Safety violations with fines ranging up to $87,000. Only ten AMPs have been issued for Part III labour standards violation ranging in amounts of $3,500 to $7,000. Only two out of the ten fines have been paid and in none of the cases has compliance been confirmed.

The overly complex and discretionary AMP scheme has rarely been applied over the past five years for wage theft. There are five categories of AMPs that apply to 139 different provisions in Part III of the Labour Code. The classification of the violation penalty amount ranges from $500 to $7,000[22] for businesses with fewer than 100 employees.

The amount of penalty per category of violation differs based on the size of the company (individual, micro (less than five), small (less than 100) or large (more than 100 employees). So once an officer determines what category of violation and what size of business fine applies, there are then multiple layers of decision making at the

[22] Currently there are no labour standard penalties for the larger fine of $15,000 - E)

regional and national level. With all this complexity, it is hardly surprising that AMPs are rarely used. If an AMP is issued by the Labour Program, then the company is shielded from prosecution: it is either an AMP *or* prosecution.

The Code enables the Labour Program to prosecute employers in cases of serious offences or where compliance tools have been unsuccessful in convincing the employer to comply with the legislation. Since 2010, there have been *no prosecutions* of employers in violation of Part III, despite the extremely low rate of compliance with Orders to Pay outstanding wages alongside high ongoing rates of violation in the trucking sector. Failure to prosecute wage theft, particularly in the road transport sector, tells employers that the federal government condones wage theft.

For effective deterrence, fines for violations must be consistently applied and collected.

Recommendations

- Simplify administrative monetary penalties to one set of escalating amounts applied per violation, per employee — with the fine amount escalating based on repeat offences. For example, the first violation is $1,000, second violation is $5,000 and third violation is $10,000 per employee.
- Delegate authority to Officers to apply fines in all confirmed violations of Part III of the Code.
- Make prosecution policy simple and transparent. Each non-payment of an order to pay or or non-compliance with a Notice of Violation must be prosecuted. Establish minimum fines for corporations that are prosecuted.

5. Gaps in the Labour Code that contribute to wage theft and misclassification

Employers are nimble in identifying gaps in labour market regulation and leveraging open opportunities to shift employer liability down the contracting chain or on to workers themselves. We have witnessed this in employers' use of platforms in the employment of ride-hail and delivery workers on a provincial basis and misclassification of drivers on a federal scale.

While misclassification of drivers has been used by employers for decades in trucking, its current dominance in approximately 20 to 30 percent of the sector is quickly being replaced by other strategies such as “chameleon carriers”, nominal leasing of in-house trucks, and using temporary staffing agencies to name a few. Rather than a whack-a-mole approach to employers' violation strategies there is an urgent need to identify and close gaps in the underlying legislative architecture and enforcement regimes.

The Labour Code defines the employer as “any person who employs one or more employees” and is interpreted in IPG — 068 as there being only one true employer of an employee. Based on outdated notions of a standard employment relationship, the Code must be updated to reflect the reality of employer entities that should share liability for employees.

Recommendations

- Employers who enter into contracts with contractors, subcontractors, or other intermediaries, either directly or indirectly, must be jointly and severally liable for monetary and non-monetary entitlements under the CLC, Part III, and its regulations.

- Two or more employers must be jointly or severally liable for compliance with the CLC if they directly or indirectly exercise control of an employee, regardless of that control being exercised.

The longstanding concept of being paid for time worked has been recognized in standard employment relationships. Changing models of work challenge this practice, particularly in the absence of a clear definition of deemed work. The Labour Program has been left without the legislative tools necessary to address unpaid work time.

A recent survey of over 400 truck drivers found that 74 percent of federally-regulated drivers report not being paid for all the hours worked. Further, 51 percent of federally-regulated drivers report not being paid for the actual distance driven. To address wage theft and unpaid work time, there are two legislative gaps that must be addressed: the lack of a definition of deemed work and a definition of regular rate of pay.

In 2019, the government established an independent Expert Panel on Modern Federal Labour Standards that conducted extensive research and consulted over 140 organizations and individuals. One of the key issues addressed was the lack of a clear definition of work time and the need for clear statutory boundaries on what is deemed work time and what should be compensated as work. The Panel's Recommendation 16 calls for a statutory definition of "deemed work", saying:

> Determining the circumstances under which employees are deemed to be at work, regardless of worksite(s), enables employees to be compensated for all time spent at the behest of the employer… Employees should be deemed at work "when providing services required or permitted by the employer".[23]

Recommendations

- Enact a definition of deemed work time where work shall be deemed to be performed by an employee for an employer, regardless of worksite(s), and compensated for all time spent at the behest of the employer.
- Regular rate of pay should be defined in the Code to clarify that the employer shall pay the regular rate of pay agreed to by the employer and employee for hours worked.

---

[23] Employment and Social Development Canada, Report of the Expert Panel on Modern Federal Labour Standards. June 2019. P. 102