

Fair Wages Policy

**Recommendations submitted to the
Labour Program,
Employment and Social Development Canada**

December 2018



Introduction

The Canadian Labour Congress (CLC) represents 3 million workers in virtually every industry and occupation in Canada. This includes hundreds of thousands of workers in the construction trades who regularly work on projects contracted by the federal government.

As Canada's largest labour organization, we applaud the Cabinet commitment (as stated in the 2015 and 2017 *Ministerial Mandate* letters) to implement a modern fair wages policy (Policy) and welcome the opportunity to participate in this consultation.

The development of a new fair wages policy is an important opportunity for the government to strengthen its broader strategy on decent work and, more specifically, avoid the downward pressure on wages in public procurement. If done correctly, a clear and concise Policy is an opportunity to leverage procurement spending to help improve the lives of Canadians by ensuring those working on government contracts have access to fair wages and decent working conditions.

In addition to the positive impacts a new Policy would have on workers, it is also an opportunity to promote economy and efficiency in procurement by ensuring government departments and agencies are contracting with responsible employers. Contractors who consistently pay a fair wage, and adhere to employment standards and labour laws are more likely to have workplace practices that enhance productivity and increase the likelihood of timely, predictable, and satisfactory completion of contracts for the federal government.

The CLC firmly believes the federal government's contracting process should prioritize healthy and safe workplaces, decent work, and high quality outcomes. In order to achieve this, there must be an acknowledgement that a contract tender that is (perceived to be) the lowest bid, may not necessarily be the least expensive.

The following submission responds to the following questions, to which the Labour Program has indicated they are seeking feedback on:

- Who should be covered by this policy?
- What should the policy require?
- How should this policy be enforced?

Scope: Who should be covered by the policy?

Type of contracts covered: Similar to the previous Act, Policy, and Regulation, the new Policy should, at a minimum, cover contracts for construction and remodeling. In addition to this, the new Policy should have a broad scope and should cover all public sector contracts, including the provision of services. The new Policy should apply to all federally funded construction projects, not only applying to fully funded contracts but also to those funded in part by the government. The new Policy should apply regardless of the funding model used. For example, public-private partnerships, projects funded by the Canada Infrastructure Bank, Infrastructure Canada projects, and other alternate financing and procurement projects, should all be covered by the new Policy.

Subcontracts and independent contractors: The new Policy should be explicit in that its requirements extend to subcontractors and independent contractors. While Section 12 of the previous Regulation specified requirements be extended to subcontracts, it should be updated to specifically indicate the requirements also extend to independent contractors.

Manufacturing of materials, supplies and equipment: Similar to the previous Act, Policy, and Regulation, the new Policy should not apply to the *purchase* of pre-made materials, supplies or equipment for use in contracts. Yet, similar to the previous policy, contracts for the *manufacturing and supply* of materials, supplies, or equipment should be covered by the new Policy.

Content and Requirements: What should the policy require?

Wages and Benefits

The previous policy stipulated the government agency rendering the contract is required to communicate the nature of the proposed contract and the classes of labour required for its execution to the Department of Labour, which shall prepare and provide schedules that set out the rates of wages generally accepted as current for workers of the classes (and within districts) required. Section 4 of the previous Regulation (Determination of Fair Wages) provided further details on how fair wages are to be calculated. While best intentioned, the CLC and our affiliated unions express concern that previous wage schedules fell below what is considered a fair wage in the class/sector/region and failed to be updated on a sufficiently regular basis.

To ensure the new Policy is successful in its aim to guarantee fair wages and that it will garner support from Canada's trade unions, **the CLC recommends** that wage schedules be informed by collective agreements, that such rates be based on the "most identifiable wage rate" for a particular trade in the region, and that they be updated on a regular basis. More specifically, wage schedules should be updated every three years and should coincide with the timelines of collective agreement negotiations in the industrial, commercial, and institutional (ICI) construction sector. The process for updating the wage schedules must be transparent, independent from political direction, and must use a clear and concise formula that can be easily accessed and understood by both workers and employers. To ensure employers who provide benefits are not penalized or discouraged from funding benefits, wage rates must reflect the "total compensation package", which includes benefits and pension.

The CLC recommends the new Policy also include a provision requiring employers to provide "equal pay for equal work" specifically prohibiting differences in the rate of wages based on the employment status of employees (e.g. part-time, full-time). This provision should reflect language put forth in Bill C-86, which proposes amending the *Canada Labour Code* by adding the following: "An employer is prohibited from paying

one employee a rate of wages that is less than the rate paid to another of that employer's employees due to a difference in their employment status, if (a) they work in the same industrial establishment; (b) they perform substantially the same kind of work; (c) the performance of that work requires substantially the same skill, effort and responsibility; (d) their work is performed under similar working conditions; and (e) any other factor that may be prescribed by regulation is present." Similar to the proposal made in Bill C-86, the provision in the new Policy may clarify that differences in an employees' rates of wages is allowed based on seniority, merit, or the quantity or quality of each employee's production.

Hours of Work

The previous policy required all persons employed by the contractor (including subcontractors) be paid an overtime rate of at least one and one-half times the fair wage when working an excess of 8 hours a day or 40 hours a week. It further stipulates that working hours shall not exceed 8 hours in a day or 48 hours in a week, unless longer daily or weekly hours have been authorized. For example, in cases of "exceptional circumstances" (e.g. short working season, remote area, public interest), the Minister may order an expeditious completion of work. **The CLC recommends** adopting into the new Policy language regarding hours of work that is similar to that of the previous policy.

Non-discrimination

The previous policy required a provision regarding non-discrimination in the hiring and employment of workers be inserted into all contracts. **The CLC recommends** adopting language similar to that of the previous policy, while revising and updating it to reflect current practices and standards in this area. Specifically, the provision in the new Policy should use language that is gender-neutral (e.g. "workers" should be used rather than "workmen"), and the prohibited grounds of discrimination should be updated to reflect those listed in Section 3(1) the *Canadian Human Rights Act*. This includes race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or

expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

In addition to including a provision on non-discrimination in the new Policy, **the CLC recommends** the Labour Program should seize this opportunity to strengthen the requirement for employment equity under the Federal Contractors Program.

Specifically, the threshold to which contractors must certify their commitment to implement employment equity should be reinstated to bids on contracts estimated at \$200,000 or more. In 2013, under the Harper Conservative government, this threshold was raised to only apply to contractors that have a combined workforce in Canada of 100 or more employees and have received an initial contract valued at \$1 million or more (including applicable taxes). In addition to lowering the threshold in \$200,000, proactive compliance measures that were in place prior to the 2013 changes should also be reinstated. This includes the requirements to submit their compliance measures when selected for a government contract (rather than waiting one year before the first compliance assessment is conducted), adopt accountability mechanisms for employment equity, consult and collaborate with bargaining agents or employee representatives, adopt measures to remove barriers, adopt reasonable accommodation measures, adopt monitoring procedures, and review and revise employment equity plans.

Hiring and Training of Apprentices

Federal contracts should not only be a source of good jobs but should also promote the government's broader agenda on skills development and training. This can be achieved by requiring that contracts provide training opportunities and the hiring of apprentices, with specific priority given to vulnerable populations including women, Indigenous Peoples, newcomers, racialized workers, at-risk youth, and workers with disabilities. Thus, in addition to areas covered by the previous policy (wages, hours of work and overtime, and non-discrimination), **the CLC recommends** that the new Policy include

provisions related to the hiring and training of apprentices, including mandatory apprenticeship quotas in contracts.

Ontario's *Infrastructure for Jobs and Prosperity Act, 2015* is a useful example of legislation that requires training opportunities within government contracts. Ontario's Bill 6, which was an Act to enact the *Infrastructure for Jobs and Prosperity Act*, was supported by all parties, and was passed into law on June 4, 2016, by a 95-0 vote.

The Act outlines requirements regarding apprentices, stating that certain bidders involved in the procurement process must provide a commitment and/or plan respecting the intended use of apprentices. The plan must include information on the number of apprentices whom the bidder intends to employ, the methods by which the bidder intends to support the apprentices' completion of their training, and the methods by which the bidder intends to create employment opportunities for apprentices who are women, Indigenous, newcomers, at-risk-youth, veterans, and residents of the local community.

The CLC recommends the new Policy include a provision, similar to that of Ontario's *Infrastructure for Jobs and Prosperity Act*, that requires bidders on Government of Canada contracts to provide to the government a commitment respecting the intended use of apprentices, a plan for the intended use of apprentices, or both. The new Policy must also require that contracts include a provision stipulating the number of apprentices the contractor will employ, the methods by which the contractor will support the apprentices in the completion of their training, and the methods by which the contractor will promote employment opportunities for vulnerable groups.

Process and Enforcement: How should the policy be enforced?

The previous policy was enforced through a combination of proactive requirements (e.g. provisions in contracts, posting of wage rates in a conspicuous place) and remedial measures (e.g. withholding of payments, non-compliance constitute a breach of contract).

The CLC recommends implementing the following proactive and remedial enforcement measures.

At the outset of the bidding process, all potential bidders should be informed of, and provided with, educational materials about the Policy.

Potential contractors should be required to file a statement of compliance with labour laws and employment standards and, if requested, required to provide corresponding records. Those found to have a history of non-compliance should be barred from public contracts and should be publicly listed on the Government of Canada website.

Enforcement measures similar to this are used in the Temporary Foreign Worker Program and in the Federal Contractors Program. Similarly, in the United States, *The Fair Pay and Safe Workplaces Executive Order* (issued on July 31, 2014 by President Obama and revoked on March 27, 2017 by President Trump) required that bidding contractors disclose labour law violations within the last 3-year period and specifically provided a list of applicable labour laws [Sec.2(a)(i)]. If a bidder had been in violation of labour laws in the last 3 years, they were given an opportunity to disclose remedial measures and mitigating factors undertaken in response to the violations, including agreements and corrective actions. A similar approach could be adapted to Canada's new Policy.

Once a contract has been awarded, the contract must include provisions on: wages; hours of work; non-discrimination; the hiring and training of apprentices; departmental requirements before payments are made to the contractor and the withholding of payments; sub-contracts and independent-contractors; and books and records.

The contract should explicitly state that workers and third-parties (including unions and contractors) are encouraged to bring forward complaints of non-compliance and that such whistleblowers will be protected from reprisal.

A simple, one-page resource should be posted at worksites and on the Government of Canada website to educate employers and workers about the Policy.

The fair wages provision and a full schedule of wages must be posted in a conspicuous place on the premises where the contract is being executed, occupied or frequented by the workers, as well as being posted on the Government of Canada website.

The Policy should be proactively enforced through site and spot checks.

Contractors should be required to keep books and records showing the names, addresses, classifications of employment, and work of all workers employed under a contract. Records should also include the rate of wages to be paid, wages paid, and daily hours worked by the workers. These books and records should be audited every 6 months by an accredited firm to ensure compliance with the Policy. These books and records should also be made available, at all reasonable times, to an inspector. Those found to be in non-compliance three times, should be barred from public contracts and should be publicly listed on the Government of Canada website.

All general and sub-contractors should be required to provide proof of compliance with the Act (proof of payment of the fair wage) and requirements must be met before payments are made to the contractor. The contracting department should be authorized to withhold payments to the contractor in the case of non-compliance and the Minister should be authorized to pay workers claims (wages in arrears) out of the money payable to the contractor. Those payments shall be deemed payments to the contractor.

