

BARGAINING SECTORAL STANDARDS: TOWARDS CANADIAN FAIR PAY AGREEMENT (FPA) LEGISLATION

Summary

Guiding Principles of Accountability, Integration, and Inclusivity

- Sector standards bargained by a democratically accountable bargaining agent for workers and a representative employer organization.
- Co-exists with existing collective bargaining regimes and serves as a floor for collective bargaining under existing regimes.
- Applies to all workers in an employment relationship – including dependent contractors and gig and platform workers.

How is this New System to be Structured?

- New, stand-alone statute, drawing upon existing institutions administering collective bargaining legislation (e.g., labour boards, ministries of labour)
- Incorporating some familiar collective bargaining concepts: good faith bargaining, dues check-off, and unfair labour practice protection.
- Explicit exclusion from application of the *Competition Act*.

Who Does it Apply to?

- Broad application to workers, operationalized by the “ABC test”, subject to managerial exclusions.
- Preserves existing collective bargaining arrangements by excluding specified sectors with existing high union density or existing sectoral bargaining (e.g., construction sector, public service, and public sector where union density exceeds 70%).

How Does it Operate?

Step 1: Application to Initiate Sectoral Bargaining

- A union applies to represent a specified sector (a defined industry or occupation within a geographic area).
- Applicant demonstrates support of either 500 employees or 10 percent of the proposed unit, whichever is less, to initiate bargaining of a sectoral agreement, through signed membership cards, including electronic cards.
- An alternative, “Public Interest” test for representation would be available requiring demonstration of low pay, poor working conditions, precarity or low bargaining power in the proposed sector.

Step 2: Bargaining the FPA Sector Agreement

- Bargaining occurs between a union council and an employer council, with the labour relations board having authority to determine council composition and resolve disputes.
- Union councils would be composed of the union(s) with FPA certification and any union that has bargaining rights in the sector under existing collective bargaining legislation, whether at the time the sector certification was issued or later.

- Employer council would generally consist of all or some representative employers in the sector.
- Ratification required by employees and by employers, with potential for weighted vote for smaller employers.
- Government supports for bargaining, including: research support to bargaining parties, communication resources, mediation services, including intensive mediation for bargaining a first sector agreement.

What Does a FPA Sector Agreement Include?

- Certain matters will be “mandatory to agree” while others will be “mandatory to discuss” in bargaining, although parties may include any other matter in bargaining that is lawful and is employment related.
- Bargaining parties may agree to:
 - Minimum entitlement provisions applying differently to an employee or class of employees based on skill or qualifications, provided these do not violate human rights or minimum standards laws.
- Initial mandatory three-year term, with renewal term between three and five years.

How are Sector Bargaining Disputes Resolved?

- Third-party interest arbitration with the assistance of third-party mediation would be available to resolve sector bargaining disputes.
- Work stoppages would not be permitted once interest arbitration is engaged.

Union Membership & Dues

- Employees choosing to join the union pay member fees, and an employee may join at any time.
- Where an FPA sector agreement is reached, membership dues are included in a negotiated wage increase in the form of a “union member payment.” Like the dues check-off right under existing collective bargaining legislation, this provision would be included in a sector agreement if requested by the union.
- Only union members have a right to representation by the union in respect to any violations of the FPA sector agreement, in addition to all other rights and obligations that come with union membership. Non-members may, individually, seek to enforce their rights under a sector agreement, but the union has no obligation to represent non-union members in enforcing sector agreements.

FPA Sector Agreements, Existing Collective Agreements & Future Certifications

- Existing certifications and collective agreements are not a bar to negotiation of an FPA sector agreement, and vice versa.
- Where an employee is covered by both an FPA sector agreement and a collective agreement under existing collective bargaining legislation, then, where there is an overlap in provisions, the employee receives the benefit of the more favourable provision.
- Therefore, the FPA sector agreement operates as a sector-wide standard floor from which unions certified under existing legislation may collectively bargain.