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Comments from CPHR Canada on Bill C-58, *An Act to amend the Canada Labour Code and the Industrial Relations Board Regulations, 2012*

Submitted to the House of Commons Standing Committee on Human Resources, Skills Development, Social Development and the Status of Persons with Disabilities

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Approximately 22,000 employers and 985,000 employees across the country could be affected by the changes proposed by the Bill that the Minister of Labour tabled in November 2023 to amend the Canada Labour Code so that the use of replacement workers would be prohibited in federally regulated sectors.

Many of these employers are advised by members of our profession. Representing 31,000 human resources professionals in nine provinces and three territories in Canada, CPHR Canada is the national voice of the HR profession. Our contributions and recommendations are always aimed at maintaining the balance between organizational performance and the well-being of workers.

For employers, work stoppages can heavily impact their ability to continue delivering products and services. For unions, strikes are the main pressure tactic to improve the working conditions of their members. During the consultations before Bill C-58 was tabled last year, the Minister of Labour said that he wanted to maintain a fair and balanced approach to labour relations. As we emphasized during this consultation, we share this approach.

Here are our main comments on this bill.

1. The ban on using replacement workers

1.1. Include an exception to protect the public or economic interests of the country

The Canada Labour Code currently prohibits employers from using the services of replacement workers for the demonstrated purpose of undermining a union's representational capacity.

In its current version, the Bill would expand this prohibition to include all work stoppages, except in situations of serious and imminent threats, which are described in section 9(2) of Bill C -58.

We believe that this ban is too broad and should be reined in.

Several federally regulated sectors (maritime, rail and air transport; telecommunications; etc.) are key sectors for a properly functioning Canadian economy and also impact the way many other provincially regulated sectors function.

We believe that organizations should be able to continue using replacement workers during work stoppages whenever these organizations' activities are required in the public or economic interest of Canada and especially to ensure that goods and services which are essential to the maintenance of supply chains continue to be delivered. The well-being and security of the Canadian population as well as the economic prosperity of the country are at stake.

1.2. Allow current employees to act as replacement workers

The Bill also specifies who can act as a replacement worker in the event of a work stoppage. In its current version, section 9(2) of the Bill specifies that employers would be prohibited from using external employees (subcontractors or agency employees), employees hired after the date on which the notice of negotiation was given, and current employees to maintain their activities.

Once again, we think that this prohibition is too broad. It would be more reasonable and fitting for someone already employed by the employer on the date of the notice of negotiation – or someone replacing or succeeding that person – to have the right to perform the work of the employees affected by a work stoppage. Employees of an organization should have the flexibility to make their own choices, and their input would allow organizations affected by work stoppages to continue to delivering goods and services that are required in the public or economic interest of Canada.

2. The maintenance of activities process

Bill C-58 would require an employer and a union to enter into an agreement to maintain operations within 15 days of the notice to bargain. The parties are supposed to enter into an agreement even if it stipulates that no service, operation or production shall continue in the event of a strike or lockout. We support this change.

That being said, we believe further action is required.

2.1. Expand the concept of essential service

The concept of essential service is currently limited to what is "necessary to prevent imminent and serious risks to the safety or health of the public" (section 87.4 of the Labour Code).

CRHA Canada thinks that it would be wise to amend the Bill so that the concept of essential service covers activities required in the public or economic interest of Canada and ensures that goods and services which are essential to the maintenance of supply chains continue to be delivered.

2.2. Ensure the competence and efficiency of the body responsible for maintaining essential services

Further to our above proposal, the body responsible for ensuring the maintenance of essential services should be able to determine what constitutes the public or economic interest of the country.

This body must not only be independent, but also have the expertise to efficiently make the right decisions within acceptable periods of time.

We invite members of Parliament and the government to ensure that the required conditions are in place.

Conclusion

For workers and their unions, expanding the ban on replacement workers will give their pressure tactics more teeth. For employers, this change will further complicate the maintenance of their activities.

We hope that members of Parliament and the government will carefully examine the above proposals and:

- review the scope of the bans (situations to be excluded from the ban, employees who can act as replacement workers);
- strengthen the process of maintaining essential services, such as by expanding the concept of essential services.

We also invite the government to continue to monitor the experiences of the two Canadian provinces which have already implemented such a ban (Quebec and British Columbia) so that it can learn lessons from them and adjust practices at the federal level, where necessary.

CPHR Canada will continue to monitor future developments in this issue and hopes that the final outcome tends toward an equitable balance of power between the two parties.

We thank you for the opportunity to participate in this consultation and will happily share the expertise and perspective of HR professionals with Committee members in the future.

Cordially,

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