

Submission to the Labour Program, Employment and Social Development Canada

A Modern Fair Wages Policy

December 2018

Introduction

The Canadian Association of University Teachers (CAUT) represents 72,000 academic staff at universities and colleges across the country. CAUT strives for fair working conditions, compensation and benefits to foster quality teaching and innovative research while advancing equity and human rights within our profession.

Many of the institutions where our members work contract with the federal government to deliver educational services, such as research and training. Between 2010 and 2017, 61 post-secondary institutions fell under the Federal Contractors Program (FCP)¹ and in a cursory scan of the Contract History database managed by Public Works and Government Services Canada; over 40 post-secondary institutions were awarded contracts this year.

As post-secondary education is an employment sector with high union density, we know well that the existence of a collective agreement does not automatically protect workers from employers seeking to lower labour standards.

We welcome the government's commitment to implement a modern fair wages policy. It supports the government's broader decent work agenda and will assist in ensuring that workers who do business with the federal government have fair wages and working conditions.

Our submission responds to the following questions:

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

Who should be covered by the policy?

Type of contracts covered

The new policy should cover all public sector contracts, for goods, services and works. Downward pressure on wages and rising precarity are not unique to the construction sector. In our sector, over one-third of academic staff are estimated to be in non-permanent jobs

that pay significantly less than the same, but permanent, job. We also know from census data that university and college teachers who are women, racialized persons, Indigenous peoples, and people with disabilities are over-represented in precarious employment.

As anchor institutions, universities and colleges should play a vital role in setting fair employment and decent work standards. A fair wage policy would provide a useful incentive to employers to end discrimination against workers.

The new policy should apply to all federally-funded projects; contracts that are fully funded, and those that are funded in part by the government. The policy should apply regardless of the funding model used.

Subcontracts & 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 that requirements be extended to subcontracts, it should be updated to specifically indicate that requirements also extend to independent contractors.

What should the policy require?

Wages & benefits

The previous policy stipulated that 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, we share the concerns of the Canadian Labour Congress (CLC) that previous wage schedules fell below what is considered a fair wage in the class/sector and failed to be updated on a sufficiently regular basis.

1. List released from Employment and Social Development Canada to CAUT, Access to Information request, July 2018.

To ensure the new policy is successful in its aim to ensure fair wages we join with the CLC in calling for the wage schedules to be informed by collective agreements, that such rates be based on the “most identifiable wage rate” for a particular job in the region, and that they be updated on a regular basis. More specifically, wage schedules could be updated every 3 years and coincide with the timelines of collective agreement negotiations in the 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 that employers who provide benefits are not penalized or dis-incentivised from funding benefits, wage rates must reflect the “total compensation package,” which includes benefits and pension.

We also recommend a provision that requires 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 will reflect the welcomed proposed changes to the *Canada Labour Code*, specifically paragraph 182.1(1) of Bill-C86:

“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 C-86, the provision in the new policy may clarify that differences in employees’ rates of wages is allowed based on seniority, merit, or the quantity or quality of each employee’s production.

Non-discrimination

The previous policy required that a provision regarding non-discrimination in the hiring and employment of workers be inserted into all contracts. We recommend 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 gender neutral language (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) of 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 Fair Wages Policy, the changes made to the FCP by the previous government in 2013, should be reversed. 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 addition to lowering the threshold, proactive compliance measures that were in place prior to the 2013 changes should also be reinstated.

These changes include 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.

Strengthening the FCP at the same time as introducing a fair wages policy is a complementary and more comprehensive approach to ending workplace discrimination among federal contractors.

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 persons, newcomers, racialized

workers, at-risk youth, and workers with disabilities. The new policy should include provisions related to the hiring and training of apprentices, including mandatory apprenticeship quotas in contracts.

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.

How should the policy be enforced?

A complaints-based system is not sufficient. A combination of proactive requirements, robust monitoring and enforcement measure, is recommended.

In order to be proactive, there must be a dedicated and resourced “office” or program to administer the Fair Wage Policy.

Like the CLC, CAUT supports the following:

- All potential bidders should be informed of, and provided with educational materials about the Policy at the outset of the bidding process.
- Potential contractors should be required to file a statement of compliance with labour laws and employment standards, including *the Canada Labour Code*, 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.
- If a bidder has been in violation of labour laws, an opportunity to disclose mitigating factors and remedial measures and undertaken in response to the violations, including agreements and corrective actions could be taken to restore eligibility.
- Penalties must be significant enough to deter non-compliance within the sector and in keeping with the scale of the project or contract.

- Once a contract has been awarded, the contract must include provisions on: wages; including equal pay for equal work; non-discrimination; and the hiring and training of apprentices.
- 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 about the complaints mechanism 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.

Conclusion

Through a fair wage policy, the federal government can leverage public spending to support important socio-economic goals, including improved labour conditions and greater equality of income.

The downward pressure on compensation is occurring in many sectors of the economy. In the university and college sector, which is highly unionized, compensation inequality is growing through the over-reliance on short-term contract work to deliver educational services.

The Fair Wage Policy should therefore set a floor for compensation, apply to all federal contracts and enforce compliance of federal contractors to labour laws and employment standards, including the equal pay for equal work provisions as in Bill C-86.

The Fair Wage Policy should be enforced through a combination of proactive measures, a resourced program for monitoring compliance and meaningful penalties for non-compliance.