Presentation to Law Amendments
From the Nova Scotia Federation of Labour
Re: Proposed Amendments to the
"Stronger Workplaces for Nova Scotia Act"

September 9, 2024

1 Government Place, Halifax N.S.

Verbal Presentation to Law Amendments
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"Stronger Workplaces for Nova Scotia Act"

My name is Danny Cavanagh, President of the Nova Scotia Federation of Labour, representing 70,000 unionized workers.

The Federation advocates for better laws to protect all workers, unionized or not.

Today, I will summarize key points, though we've provided a more detailed written submission.

The proposed *Stronger Workplaces for Nova Scotia Act* improves labour standards but needs further changes to protect workers' rights fully.

The Workers' Compensation Board (WCB) must act as a justice system for injured workers, but Nova Scotians have historically received some of the lowest benefits in the country.

These amendments offer a chance to correct that, but workers' justice must not be compromised to lower employer costs.

WCB must provide fair compensation and recovery support without prioritizing lower premiums for employers.

Injured workers gave up their right to sue, trusting that WCB would ensure justice and fair treatment.

Their return-to-work process must be based on genuine medical evidence, not employer pressures.

Universal coverage is also urgently needed, as 74% of workers in the province remain uncovered.

Regarding the *Labour Standards Code*, the bill extends unpaid leave for serious illness and family responsibilities but increases sick leave to just five days, which falls short of the 9.5-day national average.

We recommend at least ten paid sick days annually to ensure workers can recover from illness without financial stress. Privacy must be protected when requesting information to support leave.

In the *Occupational Health & Safety Act*, we support the inclusion of mental health in the definition of health but urge for specific mention of bullying and the full integration of ILO Convention C-190, addressing violence and harassment.

The *Workers' Compensation Act* should involve injured workers in regular reviews and guarantee job security and rehabilitation support for those returning to work. Penalties for non-compliance should only apply to workers who unjustifiably refuse to cooperate, not those with legitimate medical reasons.

Our written document goes into much further detail which we hope will be taken seriously and that government is willing to work with us to make positive change to WCB so it helps those who it was meant to.

Respectfully,

Danny Cavanagh, President, Nova Scotia Federation of Labou

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Key Sections and Recommendations for Amendment

Introduction

The Nova Scotia Federation of Labour represents 70,000 members and 135 union locals in Nova Scotia.

Bill 464, the "Stronger Workplaces for Nova Scotia Act," introduces critical changes to enhance labour standards and workplace safety in Nova Scotia.

While the changes represent a step forward, further amendments are necessary to fully protect workers' rights and well-being.

Clauses 2 through 10 – Amendments to the Labour Standards Code

Bill 464 proposes amendments to the Labour Standards Code regarding sick days, including:

- Adding the entitlement to up to 27 weeks of unpaid leave of absence when an employee is diagnosed with a serious illness

- Increasing the entitlement to unpaid sick days from three to five days

- Adding three unpaid days of leave for "family responsibility" matters

- The requirement for an employee to, on request, provide information to the employer in support of the leave.

We strongly support job protection in the event of short term sickness, family responsibility, or serious illnesses. We're concerned about the number of sick days, the unpaid nature of these leaves, and the provisions regarding an employee's duty to provide information to support their leave.

Number of sick days

The increase in sick leave from three to five days per year is not enough.

According to Statistics Canada, the average Canadian is absent from work due to illness or disability 9.5 days per year. The current provision of five days leave isn't enough to cover even the average.

Workers need at least ten days of paid sick leave per year to allow them to recover from minor illnesses.

The unpaid nature of these leaves creates financial insecurity for many employees, including the most vulnerable people in our province.

Many workers cannot afford to take extended periods of unpaid leave, especially during times of illness when medical expenses may be higher.

The COVID19 pandemic showed that desperate people will put their own health and others health at risk if they are given no alternative.

A more responsible approach would be to provide paid leave, either fully or partially, for employees who need leave for health reasons. This would allow injured workers to focus on recovery without the added stress of lost income.

Making such leaves unpaid makes them, for all intents and purposes, inaccessible to Nova Scotia's most vulnerable.

We recommend expanding sick leave to include at least ten paid sick days annually to provide paid time for the average, as noted above, to alleviate financial stress and encourage necessary recovery time.

Information to support leave

We understand the need for employers to have proof of illness at some point. However, the requirement to provide documentation must not be intrusive, cumbersome, or expensive, and it must not burden the health care system.

The Bill provides the Governor of the Council with the ability to create regulations specifying the nature, content and timing of information that an employee may be required to supply in support of a serious illness leave.

We look forward to an opportunity to consult on such a Regulation.

Our concern is with the proposed section 60FA(4)b.

(4) An employer may require an employee who takes a leave of absence under this Section to provide, in a form approved by the Director,

(a) such information in support of the employee's entitlement to the leave as may be prescribed by the regulations or

(b) in the absence of applicable regulations, such information in support of the employee's entitlement to the leave as is reasonable in the circumstances.

Subsection (b) allows employers to require an employee to provide information in support of their leave in the absence of a Regulation. There is no definition of "reasonable in the circumstances".

We understand an employer's right and need to have proof of serious illness. However, both employers and employees require clear guidance in what medical information is "reasonable in the circumstances" to support a serious illness leave. Privacy is a human right, and little should be considered more private than a person's health information. In our experience, conflict arises when there is a lack of clarity surrounding the information an employer is and isn't entitled to related to an employee's health. There must be assurances that an employee's right to privacy will be defended.

Section 60FA(4)b is unnecessary and is likely to result in conflict and misunderstanding. There is no reason there should be a substantial delay in the Governor in Council creating a regulation about the requirement for an employee to provide information to the employer in support of leave.

We recommend that section 60FA (4)b be removed and that the employee only be required to supply information of a nature, content, and timing regulated by the Governor in Council.

Clauses 11 to 18 – Amendments to the Occupational Health & Safety Act

We support the proposed amendments to the *Occupational Health and Safety Act*.

We welcome the addition of a definition of "health and safety," which includes "both physical and psychological health and safety".

This definition brings the *OH&S Act* into the modern era. It sets us on the path to reducing the stigma associated with mental health issues, ending the suffering caused by workplace psychological injury, and creating positive changes in Nova Scotia's economy and communities.

We also support the requirement that an employer establish and implement a policy regarding the prevention of harassment in the workplace. However, we believe that this section should specifically include "bullying."

Although the amendments anticipate the introduction of Regulations respecting workplace harassment, and we look forward to participating in related consultations, we believe adding the word "bullying" to the statute is essential.

"Harassment" and "Bullying" are generally recognized to have different definitions.

Harassment means behaviour that targets someone for a protected ground in Human Rights legislation, such as their gender, sexual orientation, religion, family status, or disability. It is illegal.

Bullying, on the other hand, means behaviour that targets someone either for personal attributes that are not "protected grounds" (personality, clothing, job classification), or for no identifiable reason at all.

Bullying may be included in the Regulation when it is created. However, the statute should clearly state that bullying and harassment must be prevented.

We recommend that section 82(1)ja read, "Respecting workplace harassment and bullying."

ILO Convention C-190

The current amendments make no reference to the ILO Convention C-190, which Canada adopted in January 2023. This is a missed opportunity.

This Convention addresses violence and harassment at work. The Convention requires ratifying member states to adopt, in consultation with representative employers' and workers' organizations, an inclusive, integrated and gender-responsive approach to preventing and eliminating violence and harassment through prevention, protection and enforcement measures and remedies, as well as guidance, training and awareness-raising.

Encouragement to implement measures to create a safe work environment is not enough. We need stronger language, which the ILO Convention offers.

We recommend that the standards of ILO Convention C-190 be fully integrated into the Act to more effectively prevent violence and harassment.

Clauses 19 to 23 – Amendments to the Workers' Compensation Act

Workers' Compensation Review (Section 23):
The provision for reviewing the Workers' Compensation Act every five years is a positive step.

However, injured workers should be directly involved in the review process to ensure that their voices are heard.

The law should require that representation from workers' groups, unions, and injured worker advocacy organizations be mandatory on the Review Committee to ensure that the review truly reflects workers' concerns.

Recommendation: Ensure the direct involvement of injured workers in the review process through mandatory representation from workers' groups, unions, and injured worker advocacy organizations. This inclusion will ensure that the review genuinely reflects workers' concerns and needs.

Job Security for Injured Workers:

We feel strongly that workers need stronger provisions that guarantee job security for injured workers returning from leave. This could include protections against termination or demotion during and after their leave period.

There must be explicit protections against termination or demotion for injured workers returning from leave.

We recommend introducing robust job security measures to protect injured workers from termination or demotion during and after their leave period.

Communication and Training (General Provisions):

Current Provision: Guidelines for employer-worker communication.

Recommendation: Implement mandatory training for employers on handling leave requests sensitively and effectively, ensuring workers are fully informed of their rights and the processes involved.

We need more precise guidelines for communication between employers and injured workers, ensuring that workers are informed of their rights and the processes involved in taking leave. This could include mandatory training for employers on how to handle leave requests sensitively and effectively.

Rehabilitation and Reintegration:

Concern: Insufficient provisions for employer participation in the rehabilitation of injured workers.

Recommendation: Require employers to offer modified duties or flexible work arrangements to accommodate the recovery of injured workers, ensuring a smoother reintegration into the workforce.

We like that there is provisions that require employers to actively participate in the rehabilitation and reintegration of injured workers, such as offering modified duties or flexible work arrangements to accommodate their recovery.

Mental Health Support and Serious Illness Definition:

Current Provision: Inclusion of mental health conditions under "serious illness."

Recommendation: Enhance access to mental health resources and support, ensuring comprehensive coverage under the definition of serious illness.

We believe that the Mental Health Support and that the definition of "serious illness" to include mental health conditions and ensure that workers have access to mental health resources and support during their recovery.

We believe that policies must be reviewed regularly, and a mechanism must be established for regular review and feedback from injured workers regarding the effectiveness of leave policies and workplace safety measures, ensuring that their voices are heard.

Early and Safe Return to Work Provisions (Section 21):

Concern: Potential for rushed return to work without adequate safeguards.

Recommendation: Implement strict safeguards to ensure that returns are genuinely safe and not expedited at the expense of worker health.

Early and Safe Return to Work Provisions (Section 21):
The requirement for workers and employers to collaborate on early and safe return to work can be beneficial. However, safeguards should ensure that the return is genuinely safe and not rushed. Workers should not face penalties if they cannot return to work due to legitimate medical reasons. This section should prioritize worker health and safety over expediency, ensuring employers are not pressuring injured workers to return before they are ready.

Penalties for Non-Compliance (Section 21):

Concern: Potential penalties against injured workers for non-compliance.

Recommendation: Ensure penalties are only applied in cases of clear, unjustified refusal to cooperate, not when workers are medically unable to return.

Penalties for Non-Compliance (Section 21):

The Act allows for penalties against both employers and workers for non-compliance with return-to-work protocols. However, the potential for penalizing injured workers, such as suspending or reducing compensation, could be unjust if their inability to return to work is due to ongoing medical issues. This section needs stronger worker protections to ensure that penalties are only applied in cases of apparent, unjustified refusal to cooperate, not when the worker is genuinely unable to perform their duties due to their injury.

Respectfully,

Danny Cavanagh

President, Nova Scotia Federation of Labour