Equal Pay for Equal Work? Not in Alberta

Introduction

Students aged 13 to 17 will soon have to accept a lower minimum wage than the rest of Alberta workers. The Government of Alberta recently amended the Alberta *Employment Standards Regulations* to introduce a $13 per hour youth minimum wage.[1] Workers 18 years and older will continue to receive the $15 per hour minimum wage already in place. The sharp distinction being made on the basis of age raises the question: is this change in the youth minimum wage legal?

Alberta's *Employment Standards Code* and the Changes to Minimum Wage

The Alberta *Employment Standards Code* sets the minimum rules for conditions of employment in the province. These include hours of work, minimum wage, overtime, holidays, and rules for employing youth.[2] The *Regulations* determine the actual amount that constitutes minimum wage.

The Government of Alberta's amendments to the *Regulations* reduced the minimum wage payable to students aged 13 to 17 from $15 to $13 per hour. During the school year, students must receive a minimum wage of $13 per hour for the first 28 hours worked per week. After 28 hours, minimum wage will increase to $15 per hour for the remainder of the week. The youth minimum wage will apply to all hours worked by youth during the summer months.[3]

The Government has stated that this change in minimum wage is an attempt to get more youth working part-time during the school year.[4] The idea is the reduced minimum wage makes it more economical for employers to hire youth. Alberta is not the first province to introduce a youth minimum wage. Ontario introduced a similar regime in 2016 and it is still in place.

The Point of Contention: Does the New Youth Minimum Wage Violate the *Charter*?

The *Charter* protects certain human rights and freedoms.[5] It safeguards Canadians from government actions that violate these rights.[6] All laws enacted by the Government of Alberta must comply with the *Charter* in order to be constitutional. The question this new youth minimum wage raises is whether the Government is discriminating against youth on the basis of age and therefore breaching the equality rights section of the *Charter*.

Section 15 – Equality Rights

Section 15, the equality rights section, of the *Charter* is designed to promote equality and ensure that government action does not discriminate based on protected grounds such as

age, sex, race, colour, or religion.[7]

An individual cannot be discriminated against on the basis of age. The proposed youth minimum wage arguably discriminates on this basis. For example, a 17-year-old café employee could have three years' work experience at the café. The employer is only required to pay the 17-year-old $13 per hour. The employer could then hire an 18-year-old with little to no work experience. The 18-year-old is entitled to receive $15 per hour, $2 more per hour than the 17-year-old. This wage discrepancy has nothing to do with either employee's capabilities, it is simply due to the fact that one employee is considered a youth and the other is 18 years old.

In order to determine whether the new minimum wage is actually unconstitutional, a challenge to the *Regulations* would have to be brought to court. A court would analyze whether the youth minimum wage infringes on an individual's equality rights. The court would ask the following questions:

1. Whether, on its face or in its impact, the law creates a distinction on the basis of a protected ground such as age, sex, race, etc.;
2. Whether the law fails to respond to the actual capacities and needs of the members of the group and instead imposes burdens or denies a benefit in a manner that has the effect of reinforcing or worsening their disadvantage[8]

The first part of the analysis is likely easily satisfied. The changes to minimum wage make a distinction on the basis of age – individuals between the ages of 13 to 17 are to receive a lower minimum wage than individuals ages 18 and older.

Under the second part of the test, it could be argued that youth can have the skills to do the same work as those marginally older than them – especially in the fact situation outlined above. In this way, the reduced minimum wage is not responding to their actual capacity. The new minimum wage denies youth the benefit of receiving equal pay for equal work. Youth arguably face many disadvantages; they can be economically disadvantaged, face higher unemployment and are ineligible to vote. Further, youth are legally required to attend school until they are 16 years old.[9] As a result, they are not able to work as much as someone who is not in school.

The youth minimum wage could arguably worsen these disadvantages by further reducing youth's economic opportunity:

- Youth are limited in the hours they may work during the school year.[10] They must now accept less money during the limited hours they are allowed to work;
- Many youths are dealing with homelessness, experience with the criminal justice system, and food insecurity.[11] Reducing the minimum wage

would make it harder to deal with these issues or require them to work increased hours to make up for the lost wages;
- Youth living in rural areas have fewer potential job opportunities and a lack of available transport.[12] Rural youth now have a greater disadvantage in that they must accept less money for jobs that are harder for them to find.

At a glance, it appears there is an argument that the minimum wage amendments discriminate on the basis of age, thus violating the equality rights section of the *Charter*. The *Regulations* amendment would be rendered unconstitutional if a court were to make such a finding.

Section 1 – Justification

If a court finds that a law infringes an individual's *Charter* rights, that law may be upheld if the government can justify the infringement – that is, if the government can show the court that the law has a valid purpose and that there is no better way to effect that purpose. A court must balance the effects of the *Charter* infringement and the government's justification to determine whether a law can be upheld. A law will be constitutional if the positive benefits of the government's actions outweigh the negative effects of the *Charter* infringement.

Assuming the minimum wage reduction is found to infringe the equality rights of youth on the basis of age, the Government of Alberta may have a number of arguments justifying the changes to minimum wage. Alberta's minimum wage saw drastic increases over the past three years, having risen from $10.20 per hour to $15 per hour. In a survey conducted by the Canadian Federation of Independent Business of Ontario members, over half the respondents indicated that they planned to reduce or eliminate young workers as a result of increasing minimum wages in Ontario.[13] Further, a Bank of Canada report predicted that 60,000 jobs would be reduced through to early next year as a result of provincial policy changes. The report explained that employers tend to shift away from inexperienced workers when minimum wage rates rise. The effect is strongest for those aged 15 to 19.[14] The research indicates there may be an advantage in reducing the minimum wage in an effort to increase youth employment.

The Government of Alberta could argue that this new minimum wage is making youth more employable. The economic benefit to hiring a youth may encourage more business owners to seek out young workers. The argument might be that youth are able to get jobs they would not have been considered for prior to a lower youth minimum wage. Further, by making youth more employable, the government is targeting some of the disadvantages youth face.

In the event this issue makes it to court, the court will be tasked with balancing the government's reasons for imposing this new minimum wage with the effects the minimum wage has on youth's equality rights. This may be a tough task given that there appear to be strong arguments on both sides.

Conclusion

The new youth minimum wage will take effect on June 26, 2019. Youth currently making minimum wage may see a pay decrease after this change takes effect. The new minimum wage may violate youth's equality rights as it creates a distinction on the basis of age and potentially exacerbates disadvantages youth face when it comes to financial stability and employment. The Government of Alberta may justify this change on the basis that it will make youth more employable, thus alleviating some of the disadvantages youth currently face. In order to determine whether the new minimum wage is constitutional, a challenge will likely have to be brought in court. Until then, youth will have to accept a lower minimum wage.

[1] *Employment Standards (Minimum Wage) Amendment Regulation*, OC 99/2019 (*Employment Standards Code*).

[2] Government of Alberta, "Alberta Employment Standards" (2019), online: <https://www.alberta.ca/improved-employment-standards.aspx>.

[3] *Supra* note 1.

[4] James Keller, "Alberta slashes minimum wage for teen students", The Globe and Mail (May 27, 2019), online: < https://www.theglobeandmail.com/canada/alberta/article-alberta-slashes-minimum-wage-for-teen-students/>.

[5] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[6] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 .

[7] *Ibid*, s 15(1).

[8] *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30 at paras 19-21.

[9] *School Act,* RSA 2000, c S-3, s 13(1)(c).

[10] Alberta, Alta Reg 14/1997, s 52(1).

[11] Canada, Expert Panel on Youth Employment, *Understanding the Realities Youth Employment in Canada - Interim Report Of The Expert Panel On Youth Employment 2016*,

(2016) at 10.

[12] *Ibid* at 12.

[13] Peter Shawn Taylor, "Canada's youth are the clear losers from a higher minimum wage", *MacLean's* (January 8, 2018), online: < https://www.macleans.ca/opinion/canadas-youth-are-the-clear-losers-from-a-higher-minimum-wage/>.

[14] *Ibid*.