FETCO speaking points

RELATING TO

Bill C-97 – Budget Implementation 2019
Part 4, Division 3, Employment Equity Act

TO

Standing Senate Committee on National Finance

June 11, 2019
Introduction

On behalf of the member organizations of FETCO, thank you for the opportunity to address your committee today. Hello from Geneva, Switzerland where I am participating in the International Labour Conference on this the 100th anniversary of the International Labour Organization. The ILO, which I will reference later in my comments, is the only tripartite organization of the United Nations. Decisions here are taken only after extensive collaboration across the key constituent social partners – government, business and organized labour.

FETCO stands for Federally Regulated Employers – Transportation and Communications. FETCO has existed as an employers’ association for over 30 years. Our members are generally large employers in the federal sector, encompassing nearly 500,000 employees (more than half of all workers in the federal private sector). We represent airlines, courier companies, marine ports, railways, trucking companies, and telecommunications and broadcasting firms, as well as others. Our members are household name organizations that provide critical services to Canadians on a daily basis.
As with the ILO, the Canadian federal sector has historically followed tripartite model when change is considered to key workplace legislation, such as the *Canada Labour Code*, or in the case of the issue at hand today, the *Employment Equity Act*. Change has typically been the result of tripartite discussions that are followed by specific legislative and regulatory amendments. I am disappointed to say that, once again, our government has moved away from this proven approach and introduced major legislative change via the use of a budget omnibus bill. FETCO criticized the previous government for this practice. And we do the same today.

This is the 4th time in three years this approach has been taken – as we have previously seen under Bill C-44, C-63 and C-86 – all budget omnibus bills that have introduced substantial change to workplace laws. Important change like this should not be buried at the back of a 500+ page budget implementation bills, which means it will not receive the kind of scrutiny it richly deserves.
Employers are supportive of modernizing legislation where it makes sense to do so. In my five minutes today I cannot review all the change that is being pushed out by government on workplace matters – suffice it to say the enormity of the change is concerning. And the impacts on employers and, ultimately, on the millions of customers across Canada is immense. While there have been some consultations on some of these changes, it is clear the employer voice is not being heard on many others.

**The Employment Equity Act**

That said, we are here today to talk about the *Employment Equity Act*. For several years now, FETCO has been encouraging the government to modernize this 33-year old piece of legislation that is outdated and sorely in need of a refresh. While we are encouraged to see that government recognizes change is required, the change proposed under Bill C-97 is unexpected and not the direction we would have preferred government to take.

FETCO has been asking government to, at a minimum, introduce two changes to the *Employment Equity Act*: 
First, that the voluntary nature of diversity reporting, which is proven to under-state the extent to which those from designated groups are employed, be eliminated and mandatory employee reporting be put into place (or at least an approach that allows employers to develop proxies in situations where they know under-represented groups are employed but not counted). The Act holds employers accountable for diversity but does not allow accurate data collection on which to report.

Second, that the Act and/or Regulations be updated to modernize the terminology found therein. Current definitions related to gender diversity, persons with disabilities and indigenous persons are all antiquated. The Act is silent on a modern understanding of these concepts. This requires change if we are to truly have a meaningful contemporary conversation about diversity and inclusion.

Both of these employer concerns have been ignored under Bill C-97.
Bill C-97, with no notice to stakeholders that such a change was coming, simply amends the Employment Equity Act to add a degree of pay transparency to the federal private sector, a concept that is ill-defined within the bill itself. This was a surprise to stakeholders and not the result of any tripartite consultation prior to this bill being introduced.

**About Pay Transparency**

It should be noted that FETCO members are committed to the concept of employment equity. FETCO member organizations have been active under the *Employment Equity Act*, since its inception in 1986, and consistently work to ensure compliance under the Act. In many member organizations, this work has expanded to include a more contemporary focus on diversity and inclusion within the employment space. Employers do this not only because it is the right thing but also because it simply makes business sense.
The fundamental challenge employers have with Bill C-97 is the unexpected focus on pay transparency found in Part 4, Division 3 of this budget implementation bill. It is FETCO’s position that government is simply moving too quickly on these matters, without due regard for the concerns of key stakeholders. Government has communicated an expectation that employers will take responsibility to close any perceived pay gaps – via a yet-to-be-defined public reporting mechanism – but has not taken the proper time to consult with the employer community on how this could best be accomplished.

I will note that some regulatory consultation has been initiated under this concept, to prepare for the potential Coming Into Force of Bill C-97. During these meetings, government officials have presented a solution to pay transparency that has caused great consternation among the employer community.

We have put forward the following concerns (which I am happy to explain further if you have questions):
1. There is little explanation provided for the data analysis that will be undertaken by ESDC.

2. The sheer volume of data that government is seeking to collect is concerning.

3. The type of data requested is broader than is required with limited explanation.

4. The timelines of the rollout are not realistic.

5. The data requested raises substantial employee privacy concerns.

6. The public nature of the reporting is built on analysis that has not yet been proven.
FETCO Recommendation

We have urged government officials to slow the progress on this consultation. The recommended regulatory changes presented in the government's discussion paper and consultation meetings have been presented largely as a fully-cooked solution. Employers still have more questions than answers. FETCO has asked the government to take the time to do this right and find a path forward that accommodates the concerns of the stakeholder community while also accomplishing the objectives being sought by government around the concept of pay transparency.

At this table today our ask is actually bigger – FETCO asks that your committee remove Part 4, Division 3 from Bill C-97. This is a legislative amendment that has clearly placed the cart well before the horse. Instead, we ask that government commit to a long overdue formal review of the Employment Equity Act in its entirety, under a tripartite approach. If this review leads to a recommendation for greater pay transparency in the federal private sector, then it should be concluded under a comprehensive analysis that looks at modernizing the entire piece of legislation, and not one that simply picks one solution while ignoring all other alternatives. If we are to make evidence-based policy determinations, those decision must be based on doing the research required to get to that.
Appendix – FETCO Concerns with Pay Transparency Recommended Solution

1. **There is little explanation provided for the data analysis that will be undertaken by ESDC.**

   While government is arguing the new approach for calculating salaries will be simpler, there is little evidence provided that this, in fact, is the case. Employers will be expected to provide government with confidential salary information for all employees and trust that analysis will be properly conducted to reach conclusions. Incorrect data analysis is likely to perpetuate false narratives of inequitable pay where they might not exist. During the in-person consultation meetings, several employer representatives requested greater detail on the data analysis that will be undertaken but questions were not answered in a satisfactory manner. Employers remain concerned, for example, about the lack of clarity around comparators that will be used in the analysis. Before proceeding with this concept, government should provide all stakeholders with a clearer picture of what it plans to do with this data when received by officials.

2. **The sheer volume of data that government is seeking to collect is concerning.**

   Under the proposal, ESDC will now collect all compensation data for all employees of all federally-regulated organizations. This is a steep increase from that currently collected under the Employment Equity Act. To date, limited justification has been put forward as to why this is required. Government has also argued that this new process will simplify matters and reduce the burden on employers. Employers argue the opposite as a new approach to annualizing salaries that incorporates more data is a change management exercise that will undoubtedly result in greater effort for employers, including substantial technological change within organizations. The extent of the review process is also currently unknown. Employers are not aware of the extent to which they will have to review the reports that come from government at the end of the pay transparency reporting cycle.

3. **The type of data requested is broader than is required with limited explanation.**

   A good example relates to overtime. In many large organizations, overtime is often a choice of the individual. The choice to take/not take overtime shifts is the result of many societal factors, as well as organizational factors, such as seniority. Including it in the salary calculation is likely to distort the analysis (FETCO members point to the fact that OT was not included in the British example referred to in the discussions). Including overtime is going to skew data based on choices, and not necessarily on the availability of overtime shifts. And breaking overtime down into voluntary and mandatory (as was briefly discussed during the consultations) will be exceedingly difficult. Including bonus pay (or any other incentive-based payment approaches), even if reported separately, is also problematic as this form of compensation is based purely on performance of the individual employee and not a defining characteristic that should be used in better understanding diversity in compensation in an organization. Similarly, wage premiums for certain shifts worked (often the choice of the employee based on seniority) is going to present potentially erroneous wage differentials. In the end, a better definition of salary is required.
4. The timelines of the rollout/implementation are not realistic.

Government is expecting that employers provide comprehensive salary information in 2020, reporting on 2019. Little information has been put forward on the specifics of the data required (no template has yet been proposed) which makes compliance expectations difficult to determine. Also, in most organizations, human resources information technology solutions are not capable to turning out this volume of data without substantial change to the IT infrastructure. This cannot be accomplished by 2020 to report on current year data. And these changes will mean substantial cost increases for employers.

5. The data requested raises substantial privacy concerns for employees.

The pay transparency reporting proposed by government will go above and beyond that which will be required under pay equity reporting (a parallel process that appears to have many of the same objectives of this potentially redundant exercise, yet very different timelines – it is not clear what this process will do that the new pay equity regime will not; reporting on pay transparency in 2020 and pay equity in 2022, at the earliest, will pose a confusing scenario for employers given the clear overlap between these processes). Privacy concerns, both individual and corporate, will emerge when this volume of data is provided to government, especially in the context of no clearly-defined plan for how the data will be used. Given the speed with which the pay transparency consultation has unfolded, employers are cautious about providing this volume of personal and confidential data with no clear knowledge of the path forward.

6. The public nature of the reporting is built on analysis that has not yet been proven.

This exercise brings enormous potential corporate risk to employers who will be faced with public reporting on salary gaps yet they have no role in actually undertaking the analysis. As noted in various points above, employers have serious concerns about the way in which this concept has quickly unfolded to date. No evidence has been presented that demonstrates what the reporting might look like. Nor has any discussion taken place that establishes how public reporting will help achieve the objective of reducing any wage gaps that exist for those within the designated groups under the Act. In the face of these many unknowns, the employer bears substantial corporate risk. The problem is not with the reporting per se but with the lack of agreement, to date, on how this process will unfold.