

LABOUR MANAGEMENT REVIEW COMMITTEE

June 9, 2010

Honourable Jennifer Howard
Minister of Labour and Immigration
Room 317,
Legislative Building
Winnipeg MB R3C 0V8

Dear Minister:

Thank you for providing the Labour Management Review Committee (LMRC) with an opportunity to review and make recommendations on the issue of amending *The Employment Standards Code* (the Code) to provide for unpaid leaves of absence for workers for purposes of organ donation.

The LMRC has reviewed the issue and unanimously agrees on the appropriateness of such legislation. We feel that amending the Code to provide access to a leave period for organ donors will help recognize the great sacrifice made by these individuals and alleviate concerns they may have respecting their employment.

Upon considering the discussion documents that were provided for our review, we have developed a unanimous recommendation for a legislative approach that is based on leave provisions currently in the Code for reservist and compassionate care leave. Our recommendation is attached for your review.

We would like to thank the members of the LMRC for their work on this issue, particularly for accommodating the short turnaround time that was requested of them. We would also like to recognize the efforts of staff of the Department in providing assistance in this important matter.

Sincerely,

Original Signed
Kevin Rebeck
Labour
Caucus Chair

Original Signed
Michael Werier
Chairperson

Original Signed
Peter Wightman
Management
Caucus Chair

Enclosure

cc: Members of the Manitoba Labour Management Review Committee

REPORT OF
THE MANITOBA LABOUR MANAGEMENT REVIEW COMMITTEE

Unpaid Organ Donor Leave under the Employment Standards Code

June 9, 2010

MANDATE OF THE LABOUR MANAGEMENT REVIEW COMMITTEE

The Manitoba Labour Management Review Committee (LMRC) was tasked with conducting a review of a proposal to provide for unpaid organ donor leave under *The Employment Standards Code*. Staff of the Department of Labour and Immigration provided background material for consideration by the LMRC. Staff was also available to provide further information and to answer the Committee's concerns.

RECOMMENDATIONS

The LMRC recognizes the significant sacrifice that organ donors undergo in donating to another individual. Every year, approximately 20 Manitobans choose to become a living organ donor. Manitoba's *Employment Standards Code* (the Code) currently does not provide workers with the right to take an unpaid leave of absence following a surgical operation undergone to donate an organ. The LMRC is of the opinion that any concerns that employees who are considering organ donation may have respecting their access to leave should be alleviated by appropriate changes to the Code.

The LMRC's proposal reflects provisions currently in the Code for unpaid compassionate care leave and unpaid reservist leave. Following significant discussion of the issue, the LMRC achieved consensus with respect to the following recommendations for unpaid organ donor leave that are consistent with these existing provisions:

1. An employee who
 - a) has been employed by the same employer for at least 30 days and
 - b) is to be absent from work for purposes of surgery for an organ donation to another individual and to recover from the surgery,should be entitled to an unpaid period of leave for the purposes of the surgery and such time as is necessary to recover from the surgery. The LMRC recognizes the similarities between this leave and leave for compassionate care which provides for a 30 day period.
2. The period of leave should be sufficient to meet the needs of the employee and accommodate the surgery and related pre-operation procedures, as well as the time necessary recover from the surgery. It is therefore recommended that the employee receive
 - a) up to a maximum of 13 weeks of unpaid leave;
 - b) an additional period of up to 13 weeks where a physician certifies that the employee is not able to perform the duties of his or her position because of the organ donation and subsequent issues during recovery.

3. An employee wishing to take a leave under this Section must give the employer, in writing, as much notice as is reasonable and practicable in the circumstances. This is consistent with the requirements under reservist leave.
4. For an employee to be eligible for leave, the employee would have to provide their employer as soon as possible with verification of the necessity of the leave in the form of a certificate from a physician, stating the following:
 - a) that the employee is undergoing surgery for purposes of organ donation, or has undergone such surgery; and
 - b) the expected start and end dates for the period necessary to recover from the surgery.
5. The employee would give the employer written notice of the expected date of return to work. To accommodate issues relating to staffing in their workplace, the employer may defer the employee's return to work by up to two weeks or one pay period, whichever is longer, after receiving the notice of the employee's intent to return.

CONCLUSION

The LMRC has been able to reach consensus on a number of significant issues in recent years, and the desire was apparent from both caucuses to find common ground on which to build a consensus recommendation. The LMRC, in recognizing the unique sacrifice of employees undergoing surgery for purposes of organ donation, is pleased to have achieved consensus on recommendations to provide leave for these individuals under the Code.

The Committee wishes to thank the Minister of Labour and Immigration for the opportunity to express its views to the Government on this important issue.