= =

MEMORANDUM

OF

THE ONTARIO FEDERATION OF LABOUR

ON

PROPOSALS REGARDING

EMPLOYMENT ISSUES

RAISED BY

PREGNANCY, ADOPTION AND FAMILY RESPONSIBILITIES

= =

1. The Ontario government's discussion paper, New Directions for Workers with Family Responsibilities, falls far short of meeting the requirements of a changing workforce. The proposed amendments to the Employment Standards Act are incomplete and inadequate.

2. Long before publication of its discussion paper, the government received representations from women's organizations and trade unions alike. The Ontario Federation of Labour, of course, was among those who made detailed representations to the government. So also was the government's hand-picked Advisory Council on Women's Issues. The government, however, has

chosen to ignore all of these representations. Only one voice has been listened to by the government, namely that of Mr. John Bulloch and his Canadian Federation of Independent Business.

3. The discussion paper makes plain that the government is not prepared to put into statute even what is already common practice among many of the larger employers in this province. Evidently for this government, the benchmark for legislated standards is no longer set by collective bargaining nor even by the voluntary undertakings of major employers. Rather, the norm for labour standards is now to be set by the CFIB.

4. From the government's discussion paper it is sadly clear who is writing labour standards legislation in this province - the CFIB. The result is already apparent in the increasing inequality in employment conditions. The government's minimalist response on the family leave issue adds to that inequality. The deliberate neglect of labour standards is dividing the workforce. On the one side are those who work for large employers or who enjoy collective bargaining. On the other side are the majority of workers for whom legislated labour standards are the most important determinant of employment conditions. **For the sake of that majority, we urge the government to withdraw its proposals and then bring forward amendments to the Employment Standards Act that will reverse the growing inequality in employment conditions.**

Pregnancy Leave - Six Requirements for Fairness

> "Combining paid work with motherhood and accommodating the child-bearing needs of working women are ever-increasing imperatives. That those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged seem to bespeak the obvious."
>
> Chief Justice Dickson
> (for the majority)
> Brooks v Canada Safeway Ltd.

The First Requirement - No Loss of Income

5. A significant number of employers now provide a supplement to UI maternity benefits. Indeed, according to the federal government's Pay Research Bureau, 23.4% of management and professional employees already enjoy an employer-paid addition to UI benefits. **Clearly the step that should be taken by government now is to generalize this benefit so that the majority of working parents will no longer be forced to deal with a reduction in family income precisely when their expenses are increasing.**

6. The Ontario Federation of Labour acknowledges that there could be difficulties in simply legislating an obligation on employers to supplement UI maternity benefits. Such a policy could cause

random economic hardship to some employers. For that reason **we have urged the establishment of a provincially administered fund to cover the costs of supplementing UI benefits during both pregnancy leave and subsequent parental leave. This fund would be financed through a payroll tax.**

The Second Requirement - Strict Non-Discrimination Rules

7. The Brooks v. Safeway decision represented a significant evolution in the Court's treatment of discrimination questions. Relying, however, on the courts and human rights tribunals to deal with these issues will result in a patchwork quilt made up of ad hoc precedents and shifting guidelines. This is precisely the opposite of what is needed in the workplace. What is required is clarity and certainty. In short, **what is needed is clear anti-discrimination language in the Employment Standards Act.**

8. **Women, for example, need to be protected from employer pressure to commence their pregnancy leave before it is justifiably necessary for them to do so.** As well, given the recent evolution of the principle of "reasonable accommodation" as an employer obligation it would be appropriate to require an employer to make an effort of "reasonable accommodation" before seeking to compel a pregnant employee to take leave from work. In previous submissions we urged that the following provisions be inserted in the Employment Standards Act:

(a) ... no employer shall require an employee to take a leave of absence from employment because the employee is pregnant.

(b) ... a pregnant employee who is unable to perform the essential duties of her job and for whom no appropriate alternative job is available may be required to take a leave of absence from employment only for such time as she is unable to perform the essential duties of her job.

(c) The burden of proving that a pregnant employee is unable to perform the essential duties of her jobs and that no appropriate alternative job is available rests upon the employer.

OFL: Proposed Amendments to the Employment Standards Act, submitted: August 5, 1986.

9. Further, we believe that **there should be clear direction in the Employment Standards Act prohibiting pregnancy-related distinctions in the application of non-statutory benefits.** In our view such an amendment is necessary if the full intent of Brooks v. Safeway is to be carried into statutory law. The discussion paper's proposal to simply codify Ontario's current practice of prohibiting discrimination only in regard to statutory benefits is inadequate.

The Third Requirement - Liberalized Eligibility

10. The government proposes to reduce the eligibility requirement to 6 months from the present 12 months plus 11 weeks (viz., 14.5 months). This is certainly a cautious step, albeit in the right direction. It is not at all clear to us why the eligibility for pregnancy leave should be 6 months when there is only a 3 month eligibility period for termination notice. Indeed, we do see a rationale for any service requirement. We note that proposed changes to the Quebec labour code would eliminate eligibility requirements.

11. **We therefore urge the government to eliminate any eligibility period for pregnancy leave.**

The Fourth Requirement - Continued Accrual of Seniority and Service-Related Benefits

12. The discussion paper proposes only to codify the current practice of the Employment Standards Branch. This practice is to treat service as continuing to accumulate during pregnancy leave for purposes of statutory entitlements. These entitlements are vacations, termination notice and severance benefits. Of course, we support this proposal. While commendable, however, mere codification of current practice will produce no <u>substantive</u> change.

13. The labour movement has fully aired the question of seniority and benefits. We have discussed the issue within our ranks. **It is our emphatic position that seniority and service-related benefits should continue to accrue to both women on pregnancy leave and to either parent when they are taking parental leave.** Direction to that effect should be founded in the Employment Standards Act.

The Fifth Requirement - Notice of Opportunities

14. An employee who is on either pregnancy or parental leave ought not to be prejudiced in regard to promotion or other employment opportunities by lack of information about such opportunities. We therefore urge the government to include in the Employment Standards Act the following direction to employers:

> **Every employee who intends to or is required to take a leave of absence from employment under the Part is entitled to be informed in writing in a timely fashion of every employment, promotion or training opportunity that arises during the period when the employee is on leave of absence from employment.**

OFL: Proposed Amendments to the Employment Standards Act, submitted: August 5, 1986.

The Sixth Requirement - Reasonable Notice Requirements

15. Two issues are raised by notice requirements. The first of these is the earliest permissible scheduling pregnancy leave. The current Act permits pregnancy leave to commence no earlier than 11 week prior to the expected delivery. The discussion paper speaks about "increased flexibility" in regard to scheduling. Practice, of course, is for most women to work as long as possible so as to take the greatest portion of their pregnancy leave after the birth of their child. Nevertheless, we must acknowledge that there will be difficult pregnancies in which a woman needs to commence her leave of absence much earlier than is typical. **We can see no reason for the Employment Standards Act to place a limitation on the scheduling of pregnancy leave. Surely the commencement of pregnancy leave should be determined by the mother not by either an employer or a statute.**

16. The second issue raised by the problem of notice requirements is the notice that should be given by a pregnant mother prior to commencement of her leave and the notice that should be given prior to return to work. The purpose of notice is to afford to an employer a reasonable opportunity to make necessary operational arrangements. **A two-week standard is surely appropriate, though it must be understood that there may be instances in which a woman is unable, for medical reasons, to provide even two weeks' notice.** The discussion paper's suggestion for a four-week standard reducible to two weeks with good reason strikes us as both excessive and cumbersome.

Paternity Leave

17. It is surely obvious to anyone who is a parent that the arrival of a new child causes considerable disruption to family routines. If there are other children, then arrangements for their care may have to be made. We believe that **an employer ought to be required to extend five days of fully paid leave to the male parent to be taken coincident with the birth of the new child**.

Parental Leave

18. The proposal suggested in the discussion paper is for unpaid parental leave in the amount of 18 weeks for each parent. As a result of Bill C-21, 10 weeks of UI benefits will be available for parental leave. Thus, Ontario's Employment Standards Act will allow for a total of 36 weeks' absence from employment of which only 10 of these weeks will be eligible for statutory wage replacement. Clearly this is unsatisfactory. **If parental leave is a legitimate and necessary benefit, then wage replacement during that leave is equally legitimate and necessary. Few workers will be able to avail themselves of a parental leave benefit when the wage loss for doing so is so severe.** Merely adopting permissive amendments without putting in place any funding mechanism to provide wage replacement is grossly unfair. For all practical purposes, the benefit of the additional parental leave promised

by the government will be accessible only to a minority of families with incomes significantly above the average.

19. **The Ontario Federation of Labour therefore urges that parental leave be accompanied by a fund which would provide for adequate wage replacement during the period of leave.** This, of course, would be the same fund referred to in paragraph 6 in which we discussed supplementing UI pregnancy leave benefits.

20. Setting aside the fundamental issue of wage replacement during parental leave, the government's proposal of 18 weeks for each parent is also unsatisfactory. The proposal that has been made by the labour movement and by virtually all women's organizations is for leave of (approximately) 35 weeks to be shared by the parents in the manner that they deem appropriate. In stating its preference for two discrete entitlements of 18 weeks, the government cites difficulties in administration. It should be pointed out that no such difficulties would arise if the fund that we have proposed were in operation. The combined parental entitlement would be for 35 weeks and the administration of the wage replacement benefit would provide a means of checking against pyramiding. **The OFL therefore continues to prefer a parental leave benefit that is provided as a combined benefit with the parents enjoying the right to determine the manner of its apportionment.** The government's proposal for separate entitlements appears to be designed to fit in with the unpaid character of the proposed parental leave than to accommodate the real needs of working parents.

Adoption Leave

21. The Ontario Federation of Labour believes that adoption leave provisions should mirror pregnancy and parental leave. For natural parents the benefits we have urged would be 17 paid weeks of pregnancy leave for the birthing mother and 35 paid weeks to be apportioned between the two parents as they deem appropriate. We noted previously that the vast majority of pregnant women elect to continue working as long as possible so as to take 15-16 weeks of their pregnancy leave after the birth of their child. The appropriate benchmark for adoption leave is therefore 52 weeks. Consequently the Ontario Federation of Labour has proposed paid adoption leave of a total of 52 weeks to be divided between the adopting parents in the manner they deem appropriate. The same fund which we described in relation to pregnancy leave and parental leave would finance wage replacement for adoption leave.

Leave for Family Responsibilities

22. The government's discussion paper proposes 5 unpaid days to be available to workers for family responsibilities. The proposal has four deficiencies:

    first, clearly, leave for family responsibility should be paid if we are serious about addressing conflicts between the workplace and family obligations;

second, five days are insufficient;

third, family responsibility leave should be available in half-days since many of the difficulties that are confronted can be attended to in half a day; and

fourth, family responsibility should be defined to include demands related to an aged parent or any family member living under the same roof.

23. The government's proposal for unpaid family responsibility leave is bad legislation. In our view, it will unintentionally put workers in a worse position. At present many employers allow workers to use sick leave credits for family responsibility purposes. This often amounts to a "blind eye" approach rather than an explicit company policy. By putting unpaid family responsibility leave into statute, employers will have a strong legal basis for abandoning this "blind eye" approach and insisting that leave taken for this purpose be unpaid.

24. What we are urging, of course, is not maintenance of the status quo, but **enactment of a reasonable standard of paid leave for family responsibilities. Further, we believe that this leave should be available in half-days and that it should apply to any legitimate family responsibility including problems related to an aging parent or to the illness of an immediate family member. Both the OFL and the Advisory Council on Women's Issues have urged the government to enact 10 paid days of family responsibility leave.**

25. The need for family responsibility leave arises directly from the changes in our workforce. Those changes are not going to be reversed. The government's proposal of 5 unpaid days of family responsibility leave is inadequate, unfair and ill considered.

*

26. The government's discussion paper, New Directions for Workers with Family Responsibilities has little to commend it. The discussion paper makes no serious attempt to come to grips with the real problems faced by thousands of workers as they endeavour to deal with the conflicting pressures of the workplace and their family. We urge the government to withdraw its discussion paper and to sit down with representatives of employers, trade unions and women and to develop proposals that will seriously address the realities of a changing workforce.

Respectfully submitted

THE ONTARIO FEDERATION OF LABOUR

November 30, 1989

opeiu:343