



What We Heard Report

Employment Standards Act and Regulations

Stakeholder Engagement

February 2024

Rapport sur ce que nous avons entendu

Échanges avec les intervenants sur la Loi sur les
normes d'emploi et ses règlements

Février 2024

Le présent document contient la traduction française du sommaire

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Executive Summary

The Government of the Northwest Territories' (GNWT) Department of Education, Culture, and Employment (ECE) is reviewing the *Employment Standards Act* (the Act) and Regulations to ensure it is on par with other Canadian jurisdictions' minimum standards of work and given the new, post-COVID-19 realities of employment relationships and workplaces. Prior to this review, the Act and Regulations had not been subject to a comprehensive review in more than a decade.

To inform potential legislative changes to the Act and ensure that the perspectives of those most affected by the Act and Regulations are heard, ECE engaged with stakeholders and partners using a variety of engagement methods, including surveys, roundtable discussions, and written submissions. The findings outlined in this report will be used to inform the development of a legislative proposal for updating the Act.

Between April 24 and June 18, 2023, a total of 323 individuals participated, representing employers and employees subject to the Act; labour, employer, and non-governmental organizations; Indigenous governments and organizations; Northwest Territories (NWT) community governments; adjudicators appointed under the Act; GNWT employees; and NWT residents more broadly. Though the majority of survey respondents indicated that they work in the North Slave region, no significant regional differences were observed in the engagement findings. Additionally, no significant differences were observed between the survey data, which included GNWT employees, and the roundtable discussion findings, which excluded GNWT employees.

This report details the feedback ECE received in relation to the five key topics summarized below. Feedback received on additional topics is summarized in **Appendix B**.

Topic 1: Paid Sick Leave

- Participants were broadly in favour of the proposal to legislate paid sick leave in the NWT, with some citing the COVID-19 pandemic as evidence of the need for paid sick days.
- The majority of employers indicated that employees should receive between one and five paid sick days per year, whereas employees and participants from other stakeholder groups indicated that employees should receive anywhere from six paid sick days to more than 10.
- Participants identified a number of potential implementation challenges, in addition to offering a variety of suggestions and additional considerations.

Topic 2: Statutory Holidays

- Though employers were divided on whether to introduce a statutory holiday in February, employees and participants from other stakeholder groups supported the idea.
- Some participants indicated that a holiday in February would improve NWT residents' mental health and morale by providing a break in the middle of winter, while others indicated that they would prefer a holiday in April or May when the weather is better.
- Some participants argued that the NWT already has too many holidays, while others raised concerns regarding increased costs and lost revenue for small businesses.
- Participants largely agreed with the legislative requirements for calculating and paying wages associated with statutory holidays, but argued the language could be clearer. Some participants stated that the calculations are confusing for employees who work irregular hours or under an overtime averaging agreement.
- Participants were divided on the question of whether employers should be given the option to pay employees a percentage of their wages in lieu of statutory holiday pay.

Topic 3: Job-Protected Leave

- Participants were overwhelmingly in favour of the proposed introduction of Leave Related to Death or Disappearance of a Child, and the proposal to extend Bereavement Leave to include employees and their spouses who experience a prenatal pregnancy loss or stillbirth.
- Employees and participants from other stakeholder groups were overwhelmingly in favour of the proposed Family Responsibility Leave, which employers largely opposed. Stakeholder groups were similarly divided on the question of whether this proposed leave should be paid or unpaid, and on the number of days employees should receive each year.
- Employees and participants from other stakeholder groups supported the proposed Long-Term Medical Leave. More employers opposed this proposed leave than supported it.
- Employers were generally opposed to the proposed Leave for Traditional Indigenous Practices. Though employees and participants from other stakeholder groups expressed support for this proposed leave, and indicated that it should be paid leave, some argued that it should be broadened to include a range of cultural practices.

Topic 4: Termination of Employment

- Participants generally indicated that the current notice-of-termination requirements are reasonable, though some identified opportunities to improve these requirements.
- Participants were divided regarding the proposal to require employers to provide a letter to terminated employees outlining the reasons for their just-cause termination. Employers were split with respect to the proposed change, while the vast majority of employees and participants from other stakeholder groups supported it.
- Though participants were largely in favour of the proposal to require employees to provide notice of termination to their employers, participants highlighted several practical issues and implementation challenges.

- Participants were divided with respect to each of the proposed exemptions to notice-of-termination requirements.

Topic 5: Enforcement

- Participants were broadly in favour of the proposed establishment of an administrative monetary penalty scheme for employers who willfully contravene the Act.
- Employers were divided with respect to the proposed establishment of a public registry for employers with unpaid fines, a proposal supported by the vast majority of employees and participants from other stakeholder groups. Some participants expressed reservations about this proposal, which some characterized as unhelpful public shaming.

Sommaire

Le ministère de l'Éducation, de la Culture et de la Formation (MECF) du gouvernement des Territoires du Nord-Ouest (GTNO) examine en ce moment la *Loi sur les normes d'emploi* (la Loi) et ses règlements pour s'assurer que son contenu correspond aux normes minimales de travail en vigueur ailleurs au pays, ainsi qu'à la nouvelle réalité postpandémie des relations et des milieux professionnels. Avant cet examen, la Loi et ses règlements n'avaient pas fait l'objet d'un examen approfondi depuis plus de dix ans.

Pour orienter les changements qui seront apportés à la Loi et s'assurer que les points de vue des personnes les plus concernées sont pris en compte, le MECF a échangé avec les intervenants et leurs partenaires au moyen de diverses méthodes de consultation (sondages, tables rondes, observations écrites). Les résultats présentés dans le présent rapport contribueront à l'élaboration de projets de loi visant à actualiser la Loi.

Entre le 24 avril et le 18 juin 2023, un total de 323 personnes ont participé aux échanges, notamment des représentants d'employeurs et d'employés visés par la Loi; des organisations syndicales, patronales et non gouvernementales; des gouvernements et des organisations autochtones; des administrations communautaires des Territoires du Nord-Ouest; des arbitres nommés en vertu de la Loi; des employés du GTNO; et de façon plus générale, des résidents ténos. Bien que la majorité des répondants au sondage aient indiqué qu'ils travaillaient dans la région du Slave Nord, aucune différence significative n'a été observée entre les régions en ce qui concerne les commentaires recueillis. En outre, aucune différence significative n'a été observée entre les données du sondage auquel les employés du GTNO avaient participé et les discussions de la table ronde auxquelles ils n'avaient pas participé.

Le présent rapport fait état des commentaires reçus par le MECF concernant les cinq sujets principaux résumés ci-dessous. Les commentaires reçus sur d'autres sujets sont récapitulés à **l'annexe B**.

1er sujet : Congés de maladie payés

- Les participants se sont montrés largement favorables à la proposition de légiférer sur les congés de maladie payés aux TNO, certains invoquant la pandémie de COVID-19 comme preuve qu'il est nécessaire de les mettre en place.
- La majorité des employeurs ont indiqué que les employés devraient recevoir d'un à cinq jours de congés de maladie payés par an, tandis que les employés et les autres groupes d'intervenants ont indiqué que les employés devraient recevoir de six à dix jours de congés de maladie payés, voire plus.
- Les participants ont relevé un certain nombre de difficultés potentielles liées à la mise en œuvre des congés de maladie payés et ont formulé diverses suggestions et divers facteurs à prendre en compte à ce sujet.

2e sujet : Jours fériés

- Les employeurs ne soutenaient pas l'idée d'instaurer un jour férié en février, tandis que les employés et les autres groupes d'intervenants ont soutenu l'idée.
- Certains participants ont indiqué qu'un jour férié en février pourrait favoriser la santé mentale et le moral des résidents ténois en leur offrant une pause en plein cœur de l'hiver, tandis que d'autres ont indiqué qu'ils préféreraient un jour férié en avril ou en mai, lorsque le temps est plus clément.
- Certains participants ont fait valoir que les TNO comptaient déjà trop de jours fériés, tandis que d'autres se sont inquiétés de l'augmentation des coûts et de la perte de revenus pour les petites entreprises.
- Les participants étaient en majorité d'accord avec les exigences législatives en matière de calcul et de paiement des salaires liés aux jours fériés, mais ils ont estimé que la formulation pourrait être plus claire. Certains participants ont indiqué que les calculs pouvaient porter à confusion pour les employés qui travaillent selon un horaire irrégulier ou aux termes d'une entente relative à la moyenne des heures supplémentaires.
- Les participants étaient partagés sur la question de savoir si les employeurs devraient avoir la possibilité de verser à leurs employés un pourcentage de leur salaire au lieu de l'indemnité de jour férié.

3e sujet : Congés avec protection de l'emploi

- Les participants se sont majoritairement prononcés en faveur de la proposition d'introduire un congé lié au décès ou à la disparition d'un enfant, et de la proposition d'étendre le congé de décès aux employés qui subissent une fausse couche ou une mortinaissance et à leurs conjoints.
- Les employés et les participants d'autres groupes d'intervenants se sont montrés majoritairement favorables à la proposition de créer un congé pour obligations familiales, une proposition à laquelle les employeurs se sont largement opposés. Les autres groupes d'intervenants étaient tout aussi partagés sur la question de savoir si le congé proposé devait être rémunéré ou non, ou sur le nombre de jours dont les employés devaient bénéficier chaque année.
- Les employés et les participants d'autres groupes d'intervenants ont appuyé la proposition de créer un congé médical de longue durée. Plus d'employeurs étaient opposés à la proposition d'offrir des congés médicaux de longue durée qu'en faveur à celle-ci.
- En règle générale, les employeurs se sont opposés à la proposition de créer un congé pour pratiques autochtones traditionnelles. Bien que les employés et les participants d'autres groupes d'intervenants aient exprimé leur soutien à cette proposition et précisé qu'il devrait s'agir d'un congé rémunéré, certains ont fait valoir que sa définition devrait être élargie pour inclure un éventail de pratiques culturelles.

4e sujet : Cessation d'emploi

- En règle générale, les participants ont indiqué que les exigences en matière d'avis de cessation d'emploi sont raisonnables, bien que certains aient indiqué qu'il était possible d'améliorer ces exigences.
- Les participants étaient divisés sur la proposition visant à obliger les employeurs à fournir une lettre aux employés licenciés expliquant les raisons de leur licenciement pour motif raisonnable. Les employeurs étaient partagés sur le changement proposé, tandis que la grande majorité des employés et des participants d'autres groupes d'intervenants ont appuyé le changement.
- Bien que les participants se soient montrés largement favorables à la proposition visant à obliger les employés à donner un avis de cessation d'emploi à leur employeur, ils ont relevé que cette pratique pourrait être difficile à mettre en œuvre.
- Les participants étaient partagés sur chacune des exemptions proposées aux exigences en matière d'avis de cessation d'emploi.

5e sujet : Application de la loi

- Les participants se sont montrés largement favorables à la proposition d'instaurer un régime de sanctions administratives pécuniaires pour les employeurs qui enfreignent délibérément la Loi.
- Les employeurs étaient partagés quant à la proposition de créer un registre public des employeurs ayant des amendes impayées, mais la grande majorité des employés et des participants d'autres groupes d'intervenants ont appuyé cette proposition. Certains participants ont exprimé des réserves quant à cette proposition, certains l'ont même décrite comme de l'humiliation publique inutile.

Background

The Act and Regulations establish the minimum standards of employment in the NWT for hours of work, overtime pay, minimum wage, vacation pay, statutory holidays, job-protected leave, notice requirements for termination of employment, and payment of wages. The Act applies to most employees and employers that perform work in the NWT. However, it does not apply to federal government employees, GNWT employees, or workers in federally regulated industries such as airlines, banks, and most telecommunications operations. For additional information, please consult the Engagement Resource Guide provided in **Appendix A**.

Engagement Approach

ECE’s approach to engaging with stakeholders and partners was designed with the following objectives in mind:

1. Ensure employers, employees, stakeholders, partners, and residents are aware of and able to provide input during the legislative review.
2. Ensure that feedback is considered when amending the Act.

To achieve these objectives, ECE engaged with stakeholders and partners through multiple engagement activities, including virtual and in-person roundtable discussions, online surveys, interviews, and written submissions. These activities were facilitated in conjunction with DPRA Canada, a consulting firm contracted by ECE.

Engagement activities were guided by:

- The GNWT’s [Public Engagement Employee Guide](#) and the [Open Government Policy](#).
- The [three pillars of public participation](#) outlined by the International Association for Public Participation (IAP2) Canada.
- The GNWT and Executive and Indigenous Affairs’ protocols for engagement with Indigenous Governments and Organizations.

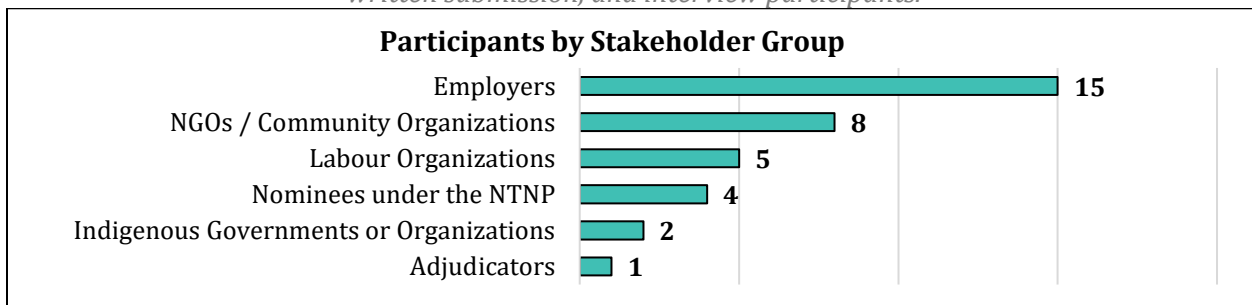
In total, **323** individuals participated in the engagement activities, which included online surveys, virtual and in-person roundtable discussions, written submissions, and an interview.

Roundtable Discussions, Written Submissions, and Interviews

Participants

Roundtable discussions were held from May 03 to June 16, 2023. A total of 14 roundtable discussions took place, 11 of which were hosted virtually. Additionally, three participants provided written submissions, and one participant was interviewed. Together, these engagement activities involved a total of 35 participants. A breakdown of these participants by stakeholder group is provided in Figure 1.

Figure 1: Stakeholder group breakdown for roundtable discussion, written submission, and interview participants.



Approach

Beginning on April 20, 2023, invitations to participate in virtual and in-person engagement sessions were sent to Indigenous governments and organizations, employers, labour organizations, non-governmental organizations, the NWT Association of Communities, adjudicators appointed under the Act, and nominees under the [Northwest Territories Nominee Program \(NTNP\)](#)¹.

Virtual roundtable discussions were hosted on the Microsoft Teams platform. In advance of each roundtable discussion, participants were sent an Engagement Resource Guide which included relevant, plain-language background information related to the Act and Regulations along with links to additional resources. The Guide, which has been reproduced in **Appendix A**, also includes a detailed overview of all five discussion topics, along with a list of primary and secondary questions for each topic.

During the roundtable discussions, participants were asked to speak to the primary questions and the facilitator followed up with the secondary questions where applicable. Participants were also given an opportunity to offer feedback on any topic of their choosing.

Roundtable discussions ranged from 60 minutes to 2.5 hours in length. DPRA Canada was responsible for facilitating the discussion and taking notes during each engagement session. Each session was attended by an ECE representative, who was available to address participants' questions related to the Act and Regulations.

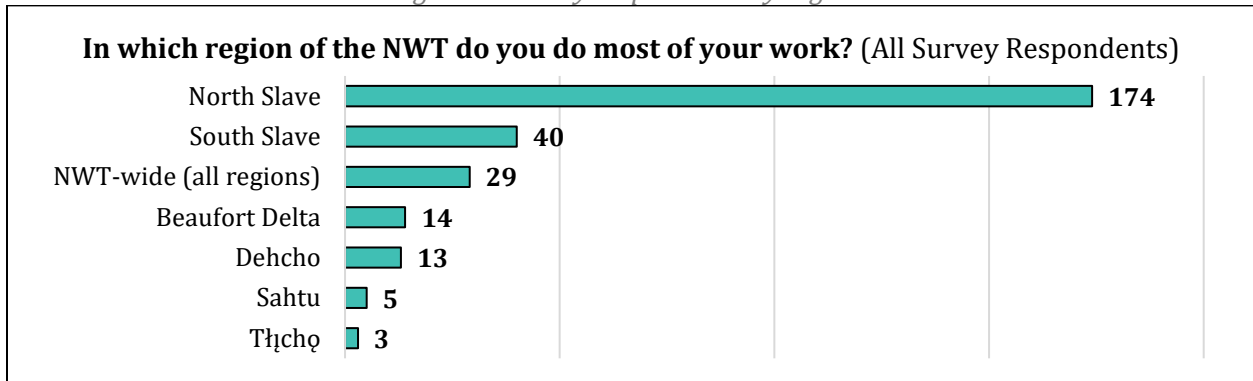
Online Surveys

Participants

Online surveys were administered to the public between April 24 and June 18, 2023. Two distinct surveys were administered during this period: one for employees or community members, and one for employers. In total, 287 individuals completed the survey, including 249 employees or community members and 38 employers. As respondents were given the option to skip questions or sections, the total number of responses presented in each figures varies. As shown in Figure 2, individuals from all six regions are represented in the survey data.

¹ Nominees under the NTNP are foreign nationals working in the NWT seeking to get permanent residency in Canada.

Figure 2: Survey respondents by region.



The survey data also includes the perspectives of employees/community members and employers who work in a variety of industries (refer to Figure 3 and Figure 4, respectively).

Figure 3: Survey respondents by industry (employees and community members only)

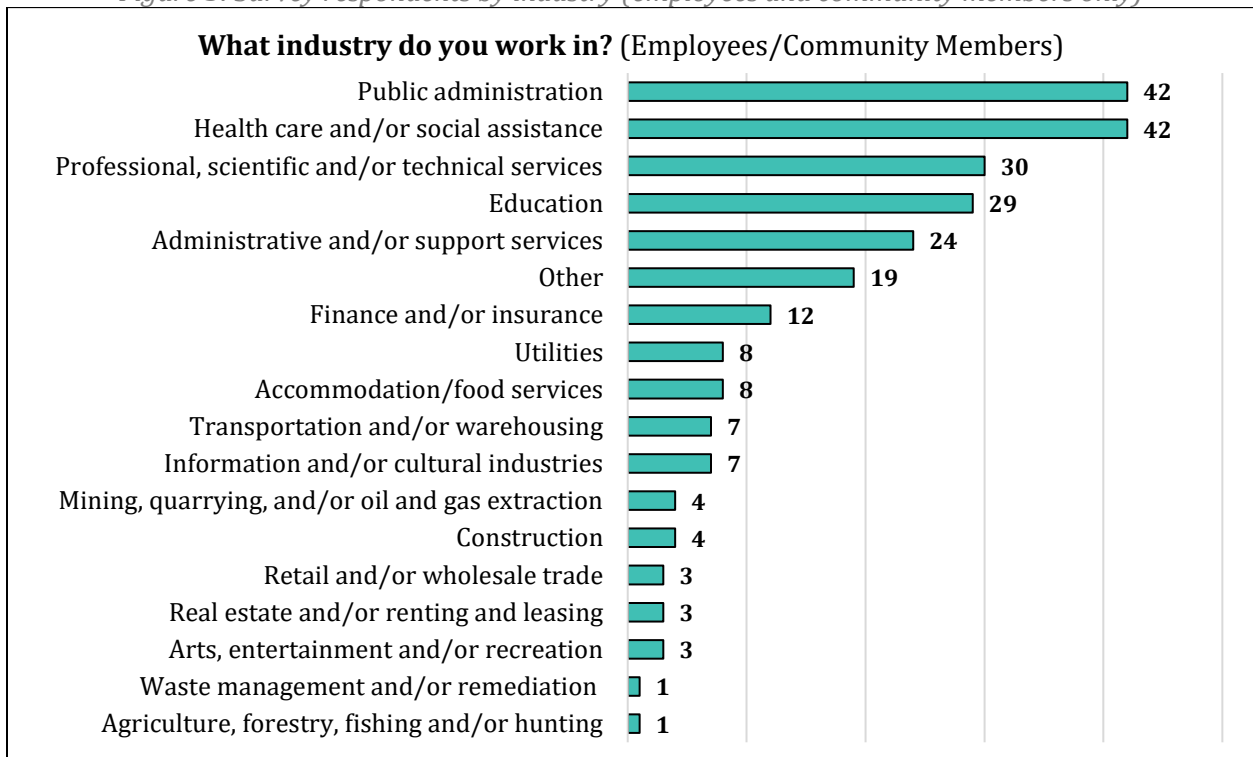
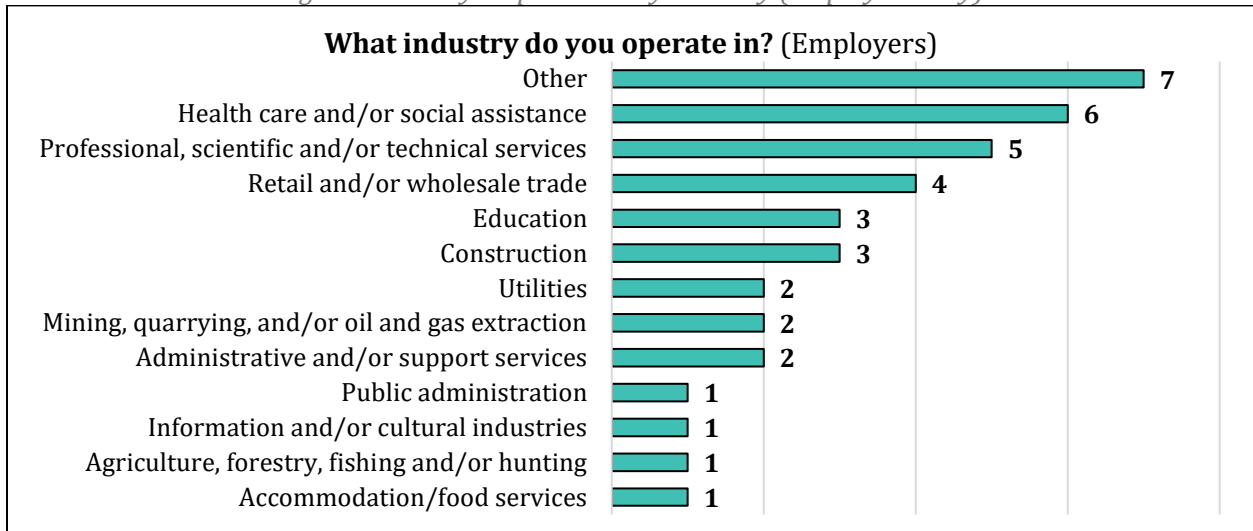


Figure 4: Survey respondents by industry (employers only)



Figures 5 and 6 show the stakeholder groups with whom that survey respondents identified.

Figure 5: Survey respondents by stakeholder type (employees and community members only)

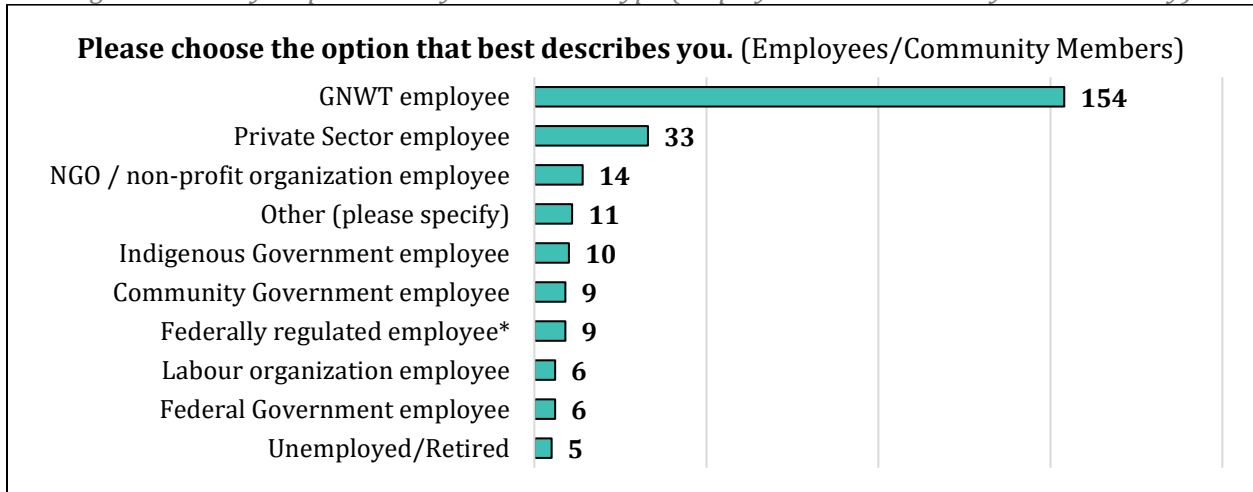
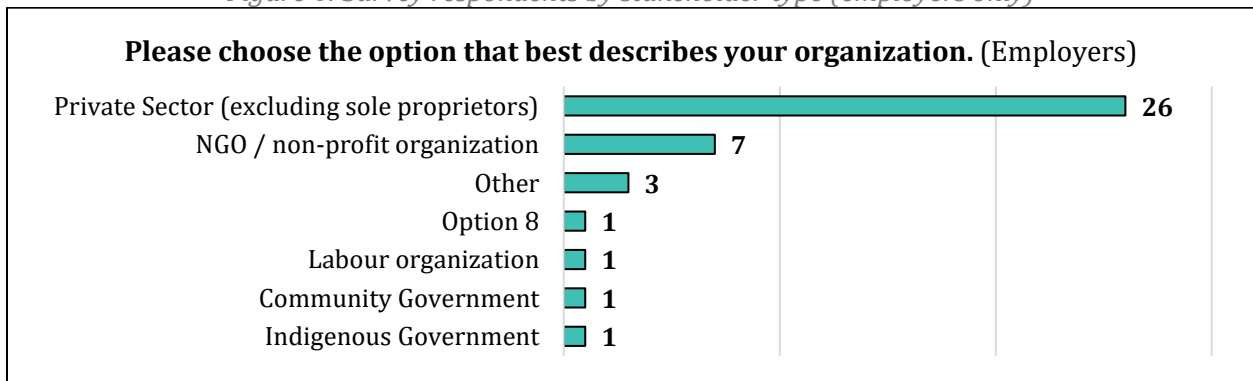


Figure 6: Survey respondents by stakeholder type (employers only)



Approach

Surveys were administered in English and French through the Bang the Table Engagement HQ platform and made available to the public through the NWT's [Have Your Say engagement portal](#). A news release announcing the surveys was issued on April 26, 2023. The surveys were promoted using digital, print, and social media advertising and on the ECE website. ECE also encouraged participation in the surveys in direct correspondence with stakeholders and partners, and during the roundtable discussion engagement sessions.

The surveys consisted of both closed and open-ended questions, including questions that aligned with roundtable discussion topics and several additional topics. The main body of this report summarizes the survey findings in relation to the roundtable discussion topics. Survey findings addressing the remaining topics are summarized in **Appendix B**.

Limitations

- Approximately 60% of those who completed the Employee/Community Member survey identified as GNWT employees. Although GNWT employees are not subject to the Act, they are nevertheless stakeholders for the purposes of this engagement, as they are employees who work in the NWT, and the Act and Regulations may have applied to them in the past or may apply to them in future employment. GNWT employees may also have friends and family members who are subject to the Act. As a mitigation measure, GNWT employees were not invited to participate in roundtable discussions. No significant differences were observed between the survey data, which included GNWT employees, and the roundtable discussion findings, which excluded GNWT employees. This suggests that the inclusion of GNWT employees in the survey data did not have a disproportionate impact on the results of this engagement.
- More than 60% of survey respondents indicated that they do most of their work in the North Slave region. Additionally, all three in-person roundtable discussions were held in Yellowknife. In-person roundtable discussions were planned for Inuvik and Hay River, but these sessions were ultimately moved online due to low uptake, and, as a consequence of the evacuation order issued during the engagement period for Hay River. To ensure regional balance, those who missed an engagement session were offered an opportunity to participate in makeup roundtable discussions or to submit written responses. Additional efforts were made to accommodate individuals who were subject to the Hay River evacuation order. No significant differences were observed in the survey data collected from respondents in different regions.

What We Heard

This section summarizes the results of ECE’s engagement with stakeholders and partners in relation to the five topics listed below:

1. Paid Sick Leave
2. Statutory Holidays
3. Job-Protected Leave
4. Termination of Employment
5. Enforcement

Please refer to the Engagement Resource Guide provided in **Appendix A** for detailed background information on each topic.

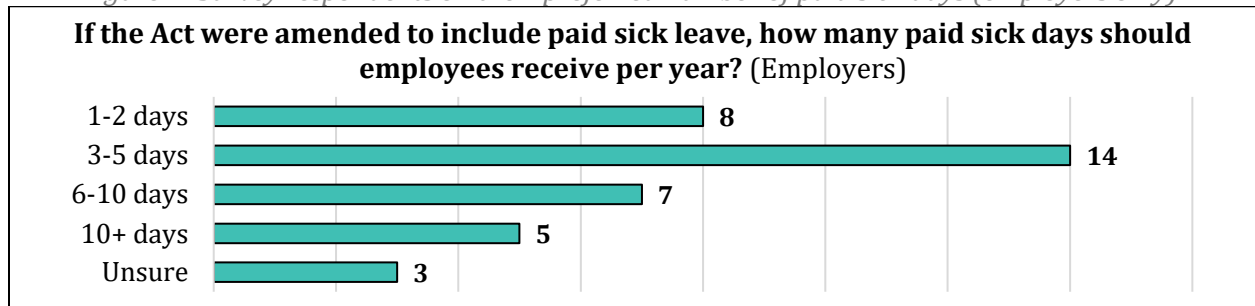
Topic #1: Paid Sick Leave

The Government of Canada has asked the provinces and territories to consider legislating paid sick leave. In turn, the GNWT committed to seeking feedback from stakeholders and partners on this topic. Currently, sick leave is addressed in the Act as unpaid leave, meaning employees are entitled to five days of sick leave, without pay, in a 12-month period. We asked participants whether employees should be entitled to a certain number of paid sick days per year and, if so, how many paid days.

What We Heard from Participants

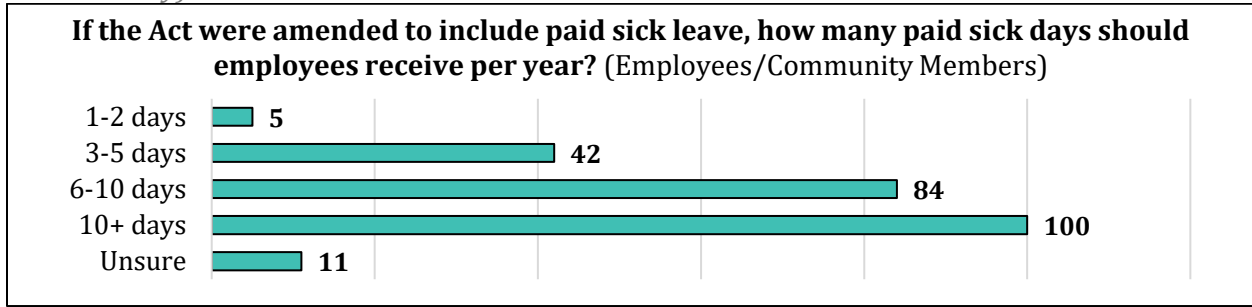
Participants from all stakeholder groups were largely in favour of the idea of legislating paid sick leave in the NWT. Stakeholder groups differed, however, in how they envisioned paid sick leave being implemented. When survey respondents were asked how many paid sick days employees should receive if the Act were amended to include paid sick leave, for instance, the majority of employers indicated that employees should receive between one and five paid sick days per year.

Figure 7: Survey respondents on their preferred number of paid sick days (employers only).



On the other hand, the majority of employees and community members indicated that employees should receive anywhere from six paid sick days to more than 10.

Figure 8: Survey respondents on their preferred number of paid sick days (employees and community members only).



Participants offered a variety of additional comments on implementation considerations for the proposed introduction of paid sick leave. These comments have been paraphrased and organized by theme.

Lessons learned during the COVID-19 pandemic.

- Without paid sick leave, employees are more likely to go to work while sick, spreading the illness to others, and increasing healthcare costs.
- Sick employees are not productive employees.
- Concerns about the cost for small businesses.
 - The government should offset the cost of paid sick leave for small businesses.
- Legislated paid sick leave will make it harder for small businesses to compete in the labour market with the territorial government.
- To carry forward, or not carry forward.
 - The ability to carry forward sick leave can improve employee morale.
 - Banked sick days can help to bridge the gap between sick leave and long-term disability.
 - Employees are less likely to abuse sick days with uncapped carryover.
- Sick leave documentation.
 - Consider if the need for a doctor’s note would create a burden on the healthcare system.
 - As not all communities have access to a full-time physician, employees should not be required to provide medical documentation when taking a paid sick day.
- What about mental health?
 - Consider providing additional paid sick days for mental health.
 - Having no paid sick days can negatively impact employees’ mental health as they may suffer from stress or anxiety regarding their finances when they are unable to work because they are sick.
- On working from home while sick.
 - Not everyone is able to work from home.
 - Employees who are home sick should be focused on recovering, not working.

“It would be great for employees to have paid sick leave, recognizing that other provinces are doing it. This will help to attract workers to the NWT, and it can help people take care of their mental health. Paid sick days will also ensure that people don’t come to work when they’re sick.”

- Implementation questions and challenges.
 - Will full-time and part-time employees be offered the same number of paid sick days?
 - Will new employees begin accruing paid sick leave immediately?
- Additional considerations or suggestions.
 - Paid sick days should not lead to the elimination of unpaid sick days.
 - Consider extending unpaid sick leave to bridge the gap between paid sick leave and EI benefits.
 - Consider a messaging switch by referring to 'sick days' as 'health days'.
 - Paid sick leave should extend to family members as well, especially for families with small children in daycare and/or school.
 - Provide at least 90-120 days to implement the legislation to give employers the time to be compliant.
 - Sick leave should be based on calendar years, and not the anniversary date that the employee was hired, because pro-rating sick days is a big burden on employers.

"I worry about knock-on effects. Will the introduction of paid sick days lead to the elimination of unpaid sick days? This means that someone's job could be in jeopardy because of a health issue. I also think there's a tension around balancing the cost, especially for smaller employers who only have a couple of employees or few employees."

Topic #2: Statutory Holidays

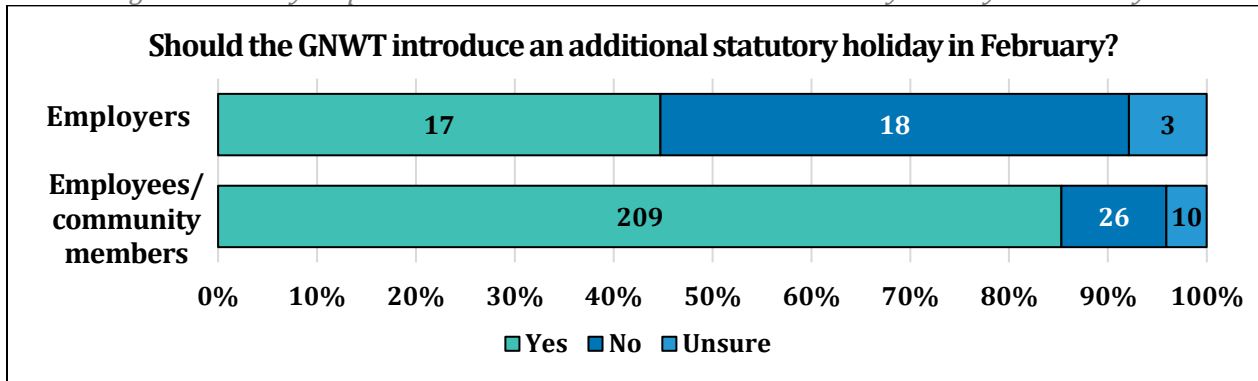
The GNWT committed to considering whether a new statutory holiday should be introduced in February during this review. Participants were asked to weigh in on whether they thought employees should be entitled to an additional statutory holiday.

Participants were also asked to provide input on the legislative requirements for the calculation and payment of wages associated with statutory holidays and whether they thought changes should be made to achieve better employer compliance. The payment of wages for weeks that contain statutory holidays is the biggest area of non-compliance that Employment Standards staff identify during inspections.

What We Heard from Participants

Though employers responding to the survey were divided on the question of whether the GNWT should introduce an additional statutory holiday in February, employees and participants from other stakeholder groups were largely supportive of the idea (refer to Figure 9).

Figure 9: Survey respondents on whether to introduce a statutory holiday in February.



Participants offered a variety of comments about whether the GNWT should introduce an additional statutory holiday in February. These comments have been paraphrased and organized by theme.

- A February holiday would improve NWT residents’ mental health.
 - The NWT has long, cold, dark winters, during which many residents experience considerable mental health challenges (e.g., seasonal affective disorder).
 - Employee morale and mental health is a huge problem between New Years and Easter, and a holiday in February would help reduce employee burnout.
- Support for Family Day in February.
 - Family Day would provide an opportunity for families to teach traditional skills.
 - Family Day would improve residents’ family life and help to attract new residents to the territory.
- A holiday in February would be less than ideal.
 - February is busy time of year for some construction companies, so introducing a new statutory holiday in this month would be problematic.
 - Would prefer a new statutory holiday in April or May when the weather is better.
- NWT has too many holidays.
 - Twelve holidays is one holiday too many. If this holiday is introduced, consider making one of these 12 holidays optional by allowing employers the flexibility to choose 11 to recognize as statutory holidays.
 - Employers who offer more than the minimum requirement indicated that they may be forced to claw back additional days to balance operational needs.

“I personally think we should introduce a new statutory holiday in February. We have a lot of holidays in the North, but we have a long period with barely any sunlight and a lot of mental health issues as a result, and so it would be good. New Years to Easter is a long stretch of time to have no holiday, particularly given the long, dark winters.”

“I prefer supporting business over supporting employees. But in the case of family life and work life balance, a holiday titled "family day" is probably a net good for society. We also need levers to attract people up here, so the more holidays the better, to an extent.”

- Difficult for businesses to align holidays across provincial/territorial borders with so many statutory holidays in the NWT.
- When a holiday is introduced partway through the school year, teachers have to make up the day off on another day (e.g. by giving up a Strengthening Teachers Instructional Practice day or shortening Christmas holidays, spring break or summer break) because the number of instructional days in the year are set.
- Concerns about increased costs and lost revenue for small businesses
 - Increases in wages may drive inflation and CPP payments, reducing profitability.
 - Another holiday further reduces the number of calendar days in which businesses can operate.

As shown in Figures 10 and 11, when asked whether they agreed with the current requirements for the calculation and payment of wages associated with statutory holidays in the NWT, the vast majority of survey respondents indicated that they agreed or strongly agreed with these requirements.

Figure 10: Survey respondents on statutory holiday requirements (Employees and community members only).

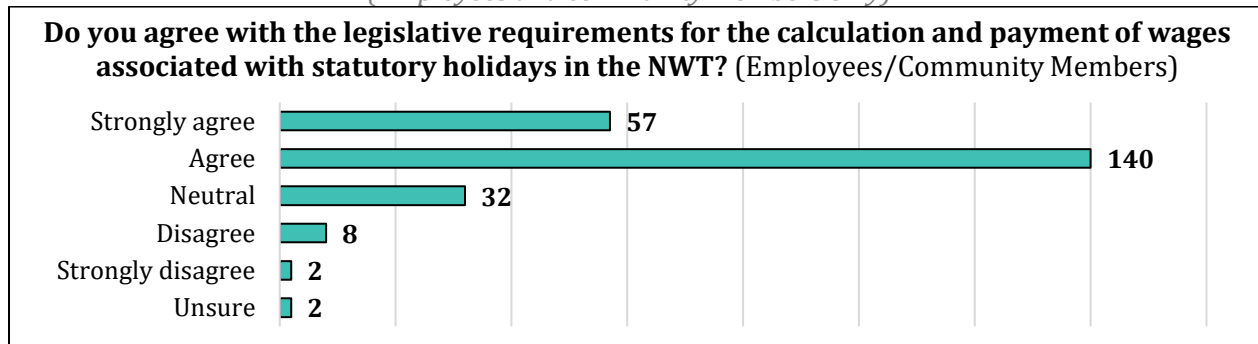
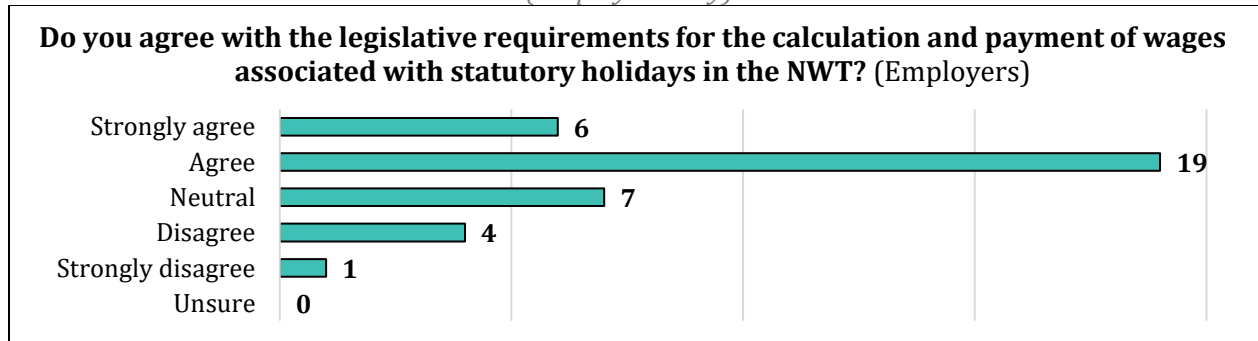


Figure 11: Survey respondents on statutory holiday requirements (Employers only).

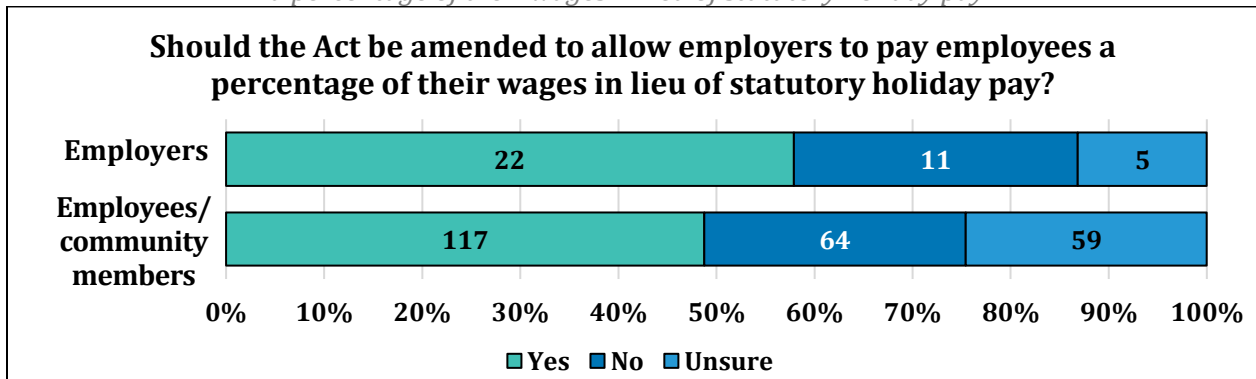


Participants provided additional comments on the benefits and challenges of the current calculation and payment of wages, as well as opportunities for improvement. These comments have been paraphrased and organized by theme.

- The current requirements are reasonable.
 - The calculation requirements are fine.
 - For full-time employees, the calculations are easy.
- The current requirements are problematic.
 - Requirements are burdensome when employees work irregular hours.
 - Rules are confusing for applying statutory holiday pay in scenarios which involve an overtime averaging agreement.
- The language could be made clearer.
 - Need simplified language and more straightforward calculations to determine statutory holiday pay and reduce administrative burden.

Survey respondents were divided on the question of whether employers should be given the option to pay employees a percentage of their wages in lieu of statutory holiday pay (refer to Figure 12).

Figure 12: Survey respondents on the option to pay employees a percentage of their wages in lieu of statutory holiday pay.



Participants’ comments largely reflected this division, with several respondents indicating that they required additional information before being able to determine whether this was a proposal they could support.

These comments have been paraphrased and organized by theme.

- Supportive of proposed change.
 - Recommend 5% of wages, which was implemented in Alberta but later repealed.
 - Allow employers the flexibility of paying per hour or as a percentage of pay.
 - The option to pay a percentage of wages may be attractive to employers whose employees work irregular hours.
- Opposed to proposed change.
 - Seems overly complicated without a clear benefit.
 - Percentage pay would be a net loss for employees, and a net gain for employers.

“For the employee, having time off on statutory holidays is more valuable than having additional percentage pay. For the employer, the higher cost will make them think twice about whether it’s worth opening their business on that day.”

- Additional information required.
 - Need to calculate how this change would impact payroll costs.
 - Support for this change if it resulted in an increase in employees' pay.

Topic #3: Job-Protected Leave

The *Employment Standards Act* entitles eligible employees to take various job-protected leaves for certain life circumstances, such as pregnancy leave, parental leave, sick leave, emergency leave, etc. While taking a job-protected leave, an employee cannot be terminated by their employer. The GNWT asked participants for their thoughts on whether one or more of the following job-protected leaves should be introduced:

- Family Responsibility Leave
- Long-Term Medical Leave
- Leave for Traditional Indigenous Practices
- Leave Related to Death or Disappearance of a Child

What We Heard from Participants

Participants offered a number of general comments regarding the proposed job-protected leaves which have been paraphrased and organized by theme.

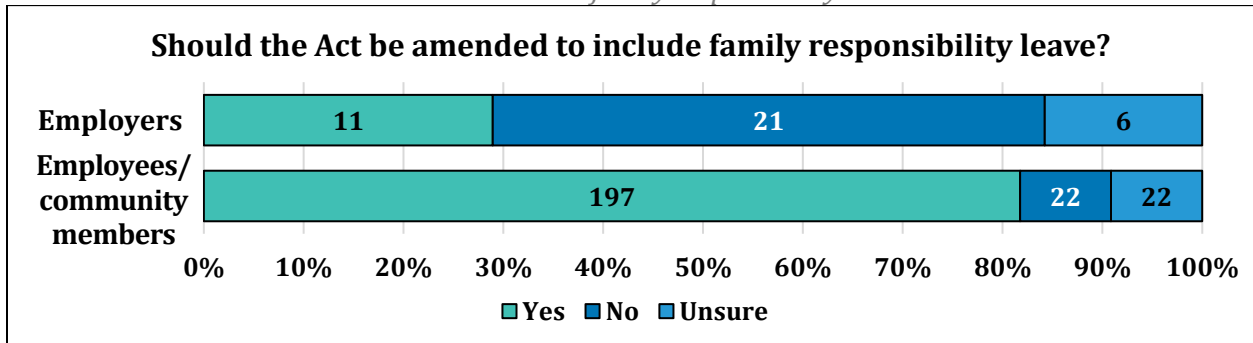
- Supportive of job-protected leaves.
 - Employees should not have to worry about whether their employers will allow them to handle a family emergency.
- Eligibility to take leaves.
 - Should include detailed parameters to ensure that they are not abused.
- Job-protected leaves can be hard to manage for employers whose employees work on rotation and/or remote work sites.
 - The impact of one- or two-days unpaid leave is amplified on a remote work site where employees need to be flown in.
 - It can be challenging to fill positions when employees who work on rotation are on leave, particularly when it's only for part of a rotation.
- Implementation challenges.
 - For employers who already offer paid personal leave for some of these reasons, it may be difficult to say whether they have met the minimum standards if these leaves are introduced.
- Additional considerations or suggestions.
 - These job-protected leaves may be an example of the government sticking its nose too much into the business world. Good employers would not tell people to come into work following a stillbirth, or other personal issues.

“I am in favour of all of these leaves, personally. As a mental health advocate, I am not personally opposed to job-protected leaves. If you have an emergency at home, you shouldn't have to worry about whether your employer will allow you to handle it. If it's not legislated, then not all employees would be protected, and they should be protected.”

- The GNWT should consider giving days off to people whose pets have died.
- The GNWT should consider providing financial support to help small businesses and NGOs to afford the additional leaves.

Survey respondents were divided on the question of whether the Act should be amended to include family responsibility leave, with employees and community members overwhelmingly in favour of the proposed leave, and employers largely opposed (refer to Figure 13).

Figure 13: Survey respondents on whether the Act should be amended to include family responsibility leave.



When asked how many days employees should receive per year, the majority of employers responding to the survey selected one to two days (refer to Figure 14), while the majority of employees and community members indicated that employees should be given between three and 10 days (refer to Figure 15).

Figure 14: Survey respondents on the number of family responsibility days employees should receive.

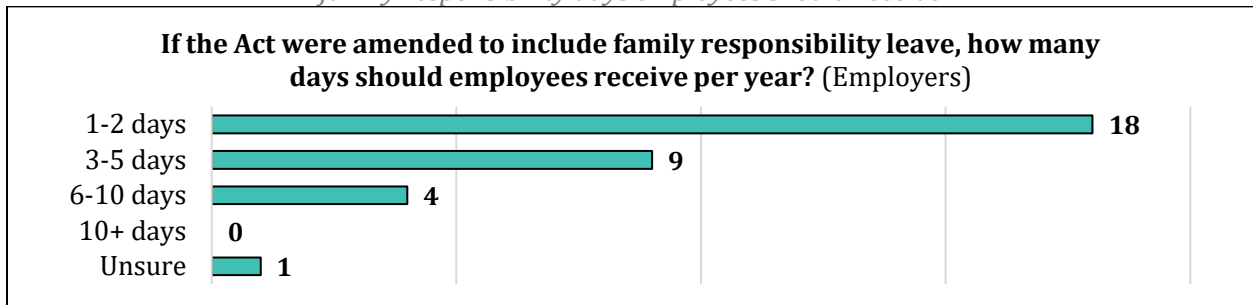
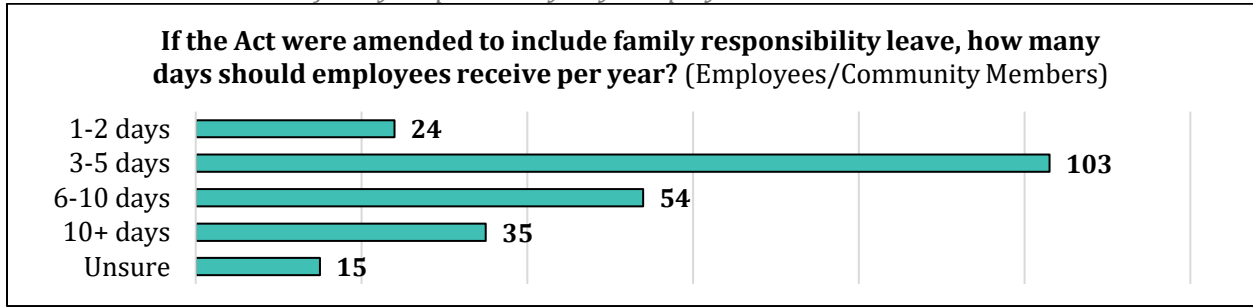
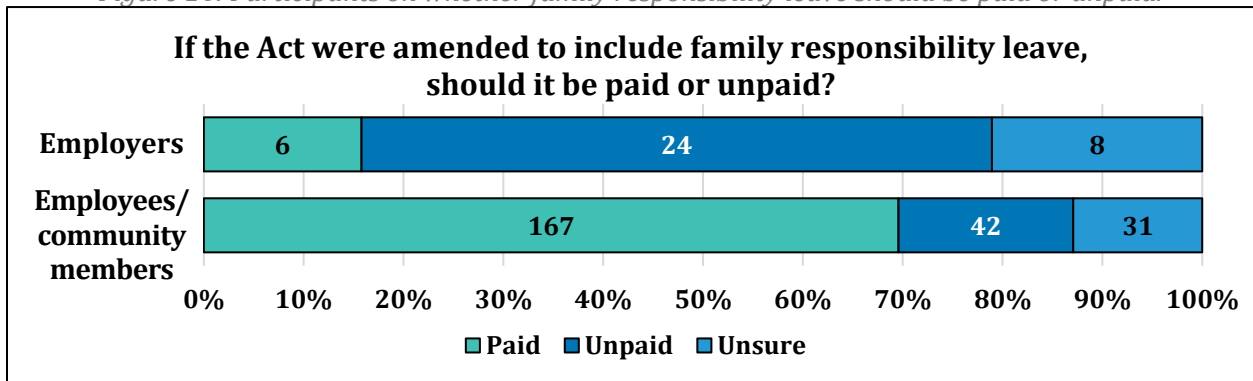


Figure 15: Survey respondents on the number of family responsibility days employees should receive.



As shown in Figure 16, the majority of employers surveyed indicated that if the Act were amended to include family responsibility leave, it should be unpaid, whereas the majority of employees and community members surveyed indicated that it should be paid.

Figure 16: Participants on whether family responsibility leave should be paid or unpaid.



Participants offered a range of comments about the proposed family responsibility leave. These comments have been paraphrased and organized by theme.

- Supportive of family responsibility leave.
 - Employees are less likely to call in sick or take a vacation day to deal with personal matters, which means fewer scheduling issues.
 - Employees should not have to use vacation time for a family emergency; vacation time should be used as a break from work.
 - Paid family responsibility leave can help preserve familial ties and help address intergenerational residential school trauma and other impacts of colonialism.
- On eligibility criteria and the definition of family.
 - A broad definition of family should be considered, to be respectful and inclusive of Indigenous family considerations and chosen family (e.g., 2SLGBTQQIA communities, single and childfree people).

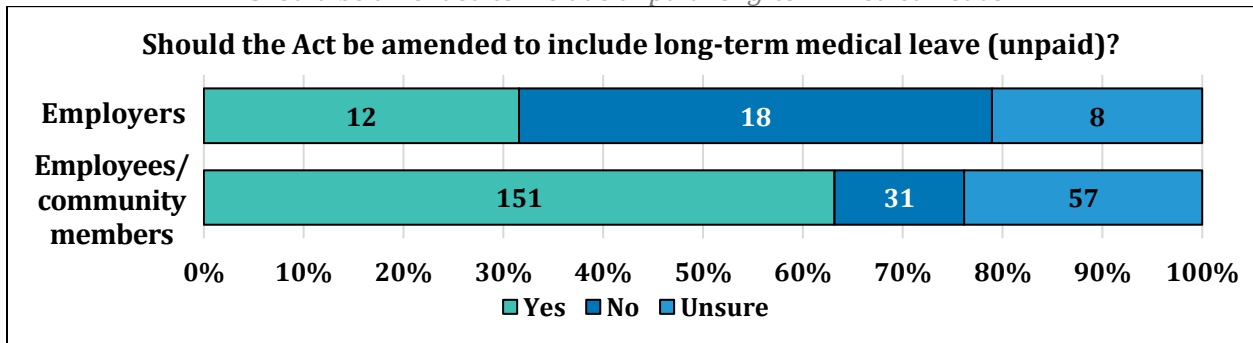
“Preservation of familial ties in the NWT is important in the work towards countering the impacts of colonialism on family structures. This type of leave will benefit the population.”

- ‘Family responsibility’ leave may be problematic for employers if it extends to childcare.
- As the definition of family can be convoluted in some communities, the proposed leave would need to address that.
- Opposed to family responsibility leave.
 - Employees may abuse the leave.
 - Good employers will offer this leave to their employees – it does not need to be legislated.
- Additional considerations or suggestions.
 - Provide at least one day of family responsibility leave per month per eligible family member.
 - Need to account for travel time when family members live in the south.
 - The number of days should vary depending on the situation. More days should be offered for emergency situations (e.g., terminally ill family member²).

“Our special leave can be used for family care. It is paid. As we give a maximum of 12 paid days per year for employees to use as needed, I do not feel we could afford more paid leave on top of this.”

Survey respondents were divided on the question of whether the Act should be amended to include unpaid long-term medical leave, with employees and community members in favour of the proposed leave, and more employers opposed to the leave than supporting it (refer to Figure 17).

Figure 17: Survey respondents on whether the Act should be amended to include unpaid long-term medical leave.



Participants offered a range of comments in relation to the proposed unpaid long-term medical leave. These comments have been paraphrased and organized by theme.

- Supportive of long-term medical leave.
 - Medical leave creates space to recover from illness or injury. Employees should not be punished for having medical conditions.
 - This leave should be paid.³ If an employee is unwell and needs time away from work to recover, their health will suffer even further if they are stressed about finances.

² There are leaves available under the Act for eligible employees who have a family member suffering from a serious medical condition with a significant risk of death (compassionate leave) or who need to care for or support a family member who is critically ill or injured (family caregiver leave).

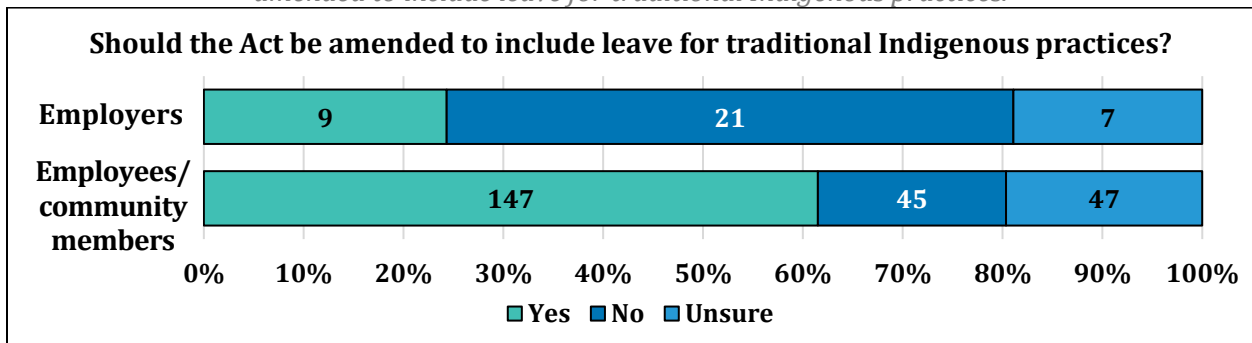
³ Note, the federal [Employment Insurance sickness benefits](#) provide 55% of earnings up to a maximum of \$650 per week for up to 26 weeks.

- Opposed to long-term medical leave.
 - For seasonal employees, long-term medical leave would not be practical.
 - Employers would have to hire someone to replace the employee on leave.
 - Less regulation is better.
- On the need for some kind of limitation.
 - Needs to be limited in terms of the length of time. Employers should not have to hold a job for someone who is not going to return.
 - Should be assessed at three months. If the employee is not returning to work, there should be a federal application for support.
- Additional considerations and suggestions.
 - To expand access to cancer care without undue financial burden, consider providing at least 26 weeks of unpaid, job-protected sick leave to align with federal employment insurance (EI) sickness benefit.
 - Employees are concerned about bridging from short-term to long-term leave.
 - The length of the leave could be based on length of employment.
 - The Act should include short-term disability leave and long-term disability leave. Sick leave is not usually enough to cover post-op recovery, and that could take eight weeks.
 - Long-term leave should be paid through insurance.

“The GNWT must be prepared to increase supports for people living with cancer in order for them to receive the treatment they need to recover, be healthy, adjust to a new normal and maintain or regain their productivity.”

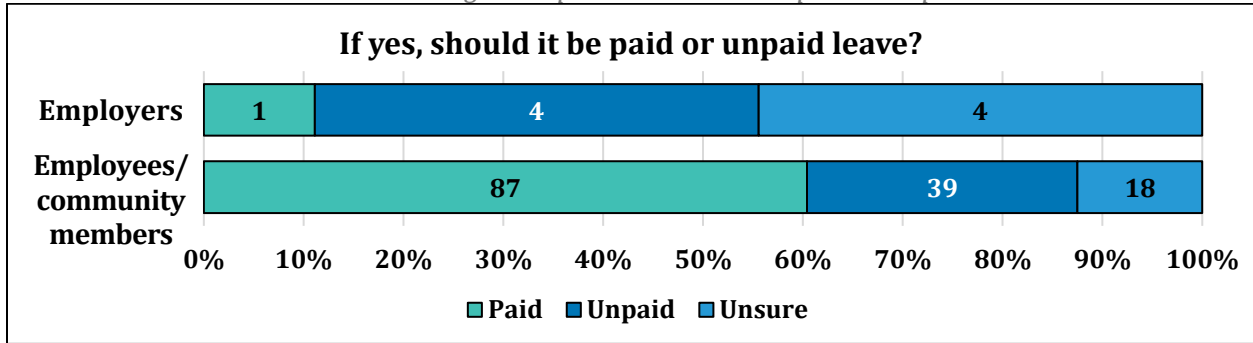
As shown in Figure 18, survey respondents were divided on whether to amend the Act to include leave for traditional Indigenous practices. Employees and community members were largely in favour of the proposed change, and employers were largely opposed.

Figure 18: Survey respondents on whether the Act should be amended to include leave for traditional Indigenous practices.



The majority of employees and community members in favour of the leave indicated that it should be paid, whereas employers were not in favour of making this a paid leave (refer to Figure 19).

Figure 19: Survey respondents on whether leave for traditional Indigenous practices should be paid or unpaid.



Participants offered a range of comments in relation to the proposed leave for traditional Indigenous practices. These comments have been paraphrased and organized by theme.

- Supportive of the proposed leave.
 - Important to remove barriers to engaging in traditional Indigenous practices.
 - In the spirit of reconciliation, employers should allow their employees opportunities to practice their culture without risking financial hardship.
- Opposed to the proposed leave.
 - These types of leaves typically favour Indigenous men, and not Indigenous women.
 - Though this is important, a small business cannot afford so many leaves.
- Supportive of the proposed leave, but only if broadened to include non-Indigenous people.
 - This should include a range of cultural practices.
 - Non-Indigenous people should be able to take leave to participate in, and learn about, traditional Indigenous practices.
- Additional considerations or suggestions.
 - Also consider adding a leave for language revitalization.
 - Neither employers nor the government should have the ability to determine the legitimacy of traditional Indigenous practices.
 - What happens when an employee and an employer disagree on the meaning of traditional Indigenous practice?
 - This question needs to be looked at through the lens of the United Nations Declaration on the Rights of Indigenous Peoples and the GNWT’s commitment to healing the harms of colonialism.

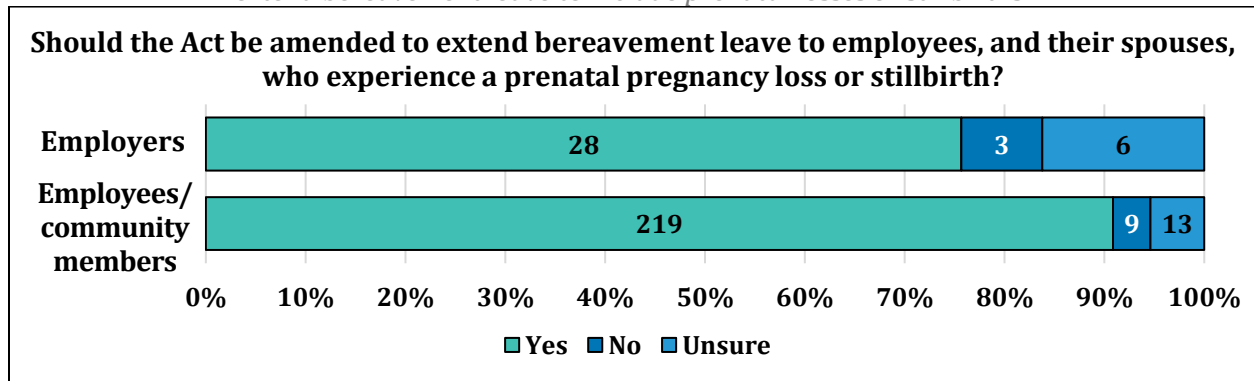
Among survey respondents who identified as Indigenous, 83% expressed support for the proposed leave for traditional Indigenous practices. Additionally, 87% of those who expressed support for the proposed leave indicated that it should be a paid leave. In their comments, multiple respondents indicated that the ability to engage in traditional practices without experiencing financial hardship represented an important step towards reconciliation. One respondent expressed surprise that this leave was not already offered given the demographic profile of the NWT.

When Indigenous participants and participating Indigenous Governments and Organizations were asked what type of documentation an employer should be able to request of an employee intending to take leave to engage in traditional Indigenous practices, participants offered several insights. These comments have been paraphrased:

- Within a First Nations community, where everyone knows everyone, nothing is needed. If it is another employer, where you're not in the community, and you do not know everyone's background, I think a status card and status number should be enough.
- We would not need that in our community, but I can see how a private employer might need it. In which case, a status card would probably make sense.
- In our organization and community, cultural leaves are approved on a case-by-case basis.
- Status card, beneficiary card, or letter from Band office.

As illustrated in Figure 20, survey respondents were overwhelmingly in favour of the proposal to amend the Act to extend bereavement leave to employees and their spouses who experience a prenatal pregnancy loss or stillbirth.

Figure 20: Survey respondents on whether to extend bereavement leave to include prenatal losses or stillbirths.



Participants offered a variety of comments about the proposal to extend bereavement leave to include employees and their spouses who experience a prenatal pregnancy loss or stillbirth. These comments have been paraphrased and organized by theme.

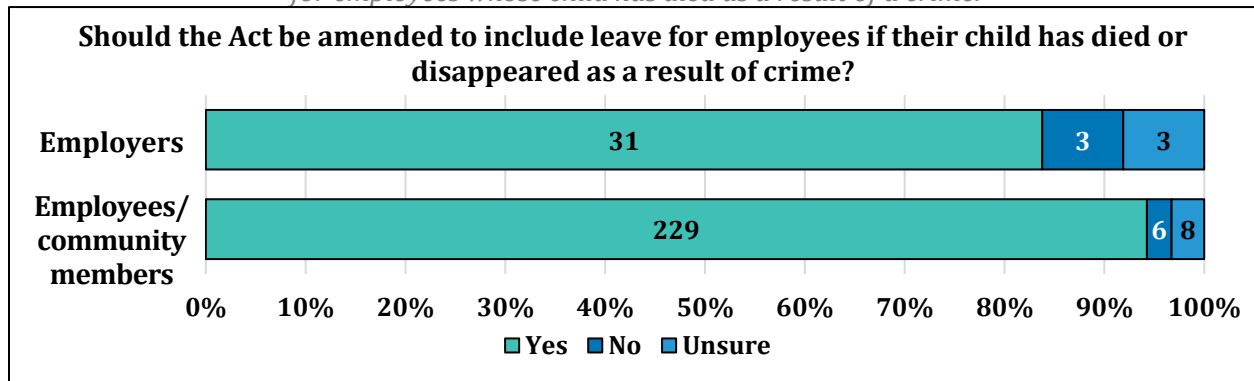
- The proposed change should go further.
 - People should be entitled to their expected maternity/paternity leave in the event of a stillbirth.
 - This should be paid leave, allowing the employee to grieve without having to worry about financial security.
- Concerned about the implications of the proposed change.
 - Hesitate to include this in bereavement leave only because of the women's rights situation in the United States.
- Additional considerations or suggestions.
 - Did not realize this was not already covered by the Act.

"This should be a paid leave. Losing a kid is impossible. Having to choose between grieving and financial security is not fair."

- Would an early miscarriage qualify for this? If so, would the number of days be equal to a late-term miscarriage or a stillbirth?

Survey respondents were overwhelmingly in favour of the proposal to amend the Act to include leave for employees whose child has died or disappeared as a result of a crime (refer to Figure 21).

Figure 21: Survey respondents on the proposed leave for employees whose child has died as a result of a crime.



Participants offered a range of comments with respect to the proposed leave for employees whose child has died or disappeared as a result of a crime. These comments have been paraphrased and organized by theme.

- Supportive of the proposed leave.
 - Given an employee’s mindset would likely be affected, they should have the option to take leave.
- The proposed leave is welcome, but it should go further.
 - Should include allowances for people who need to travel outside the territory to search for or bury their children.
 - The leave should be paid, especially if the income received will most likely be spent in search of the lost child.⁴
 - This should be paid leave, even if the federal government offers assistance. You have so much to worry about that you should not have to worry about money.
- Additional considerations or suggestions.
 - How is ‘crime’ defined in this context?

Topic #4: Termination of Employment

Participants were asked to provide feedback on the current notice-of-termination requirements in the *Employment Standards Act*, including whether changes should be made to the length of notice

⁴ Note, the federal [Canadian Benefit for Parents of Young Victims of Crime](#) provides eligible parents with payments of \$500 per week, paid every two weeks, for a maximum of 35 weeks over a period of three years.

employees are entitled to, whether employees should be required to provide their employers notice when they resign, and whether employers should be relieved of the requirement to provide employees notice of termination under certain circumstances.

What We Heard From Participants

When asked whether they agreed with the notice-of-termination requirements in the Act, the majority of survey respondents indicated that they agreed or strongly agreed with these requirements (refer to Figures 22 and 23).

Figure 22: Survey respondents on notice of termination requirements (employers only).

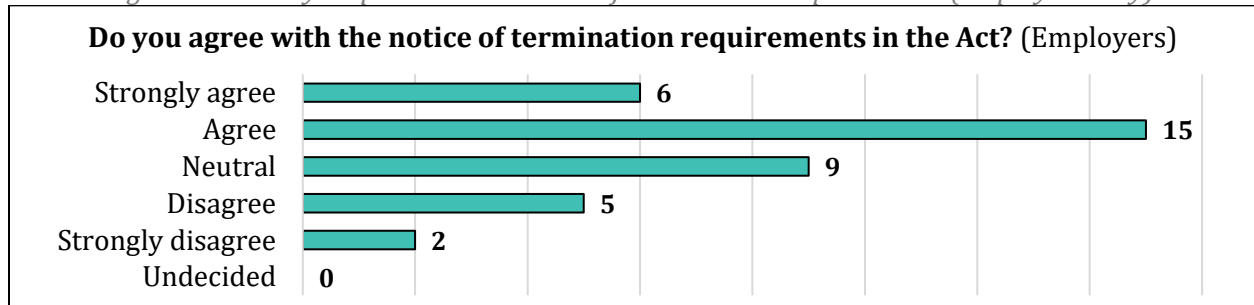
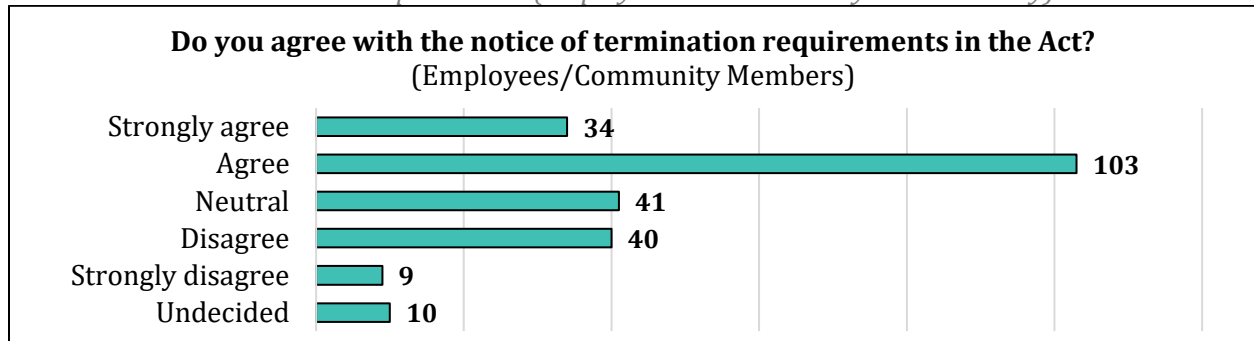


Figure 23: Survey respondents on notice of termination requirements (employees and community members only).



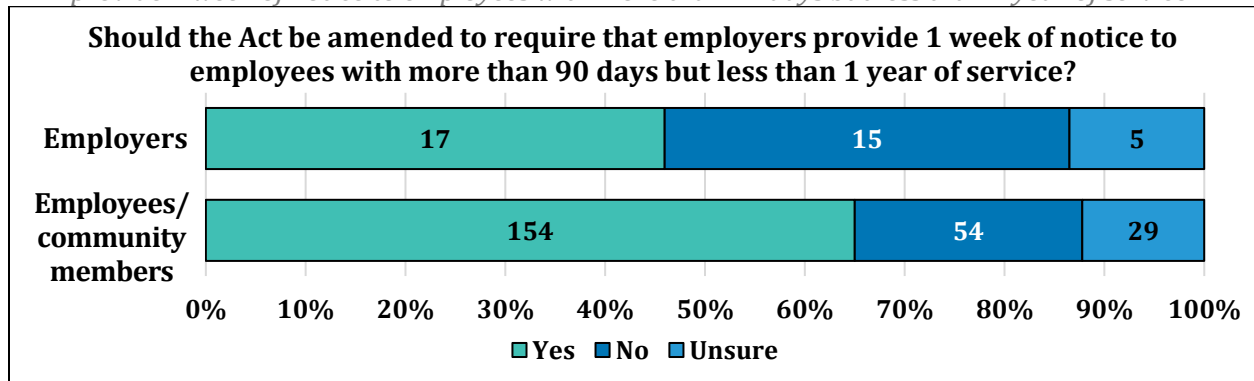
In their comments regarding the notice-of-termination requirements, some participants indicated that the current requirements are reasonable, while others identified opportunities for improvement. These comments have been paraphrased and organized by theme.

- The current notice-of-termination requirements are fine.
 - The current requirements for employers to employees are fair and reasonable.
 - Employees should go to the courts or negotiate a better contract if they think they deserve more than the minimum.
- Consider revising the notice-of-termination requirements.
 - Consider adding an intermediate step between 90 days and three years of service in the notice-of-termination requirements for employers to employees.
 - Consider requiring additional weeks of notice required for employees with more than eight years of service time (e.g., 10 weeks for 10 years, 15 weeks for 15 years, etc.).

- Consider requiring one week’s notice for employees with less than 90 days of service time.
- Consider adding at least one week to each step in the notice requirements.
- Additional considerations or suggestions.
 - Consider revising notice-of-termination requirements to account for situations in which the employee is experiencing abuse, racism, sexism, etc.
 - Indeterminate employees should be given another job in the same workplace rather than being laid off.
 - When revising notice requirements, consider how this would impact rotational job sites.
- Need to redefine construction industry in the Act and consider revising associated exemption.
 - Construction site supervisors can be laid off suddenly after eight years and not be entitled to receive termination pay.
 - Receptionists or bookkeepers are not entitled to notice in the construction industry.
 - If miners create new infrastructure within underground mines, should they be considered part of the construction industry?

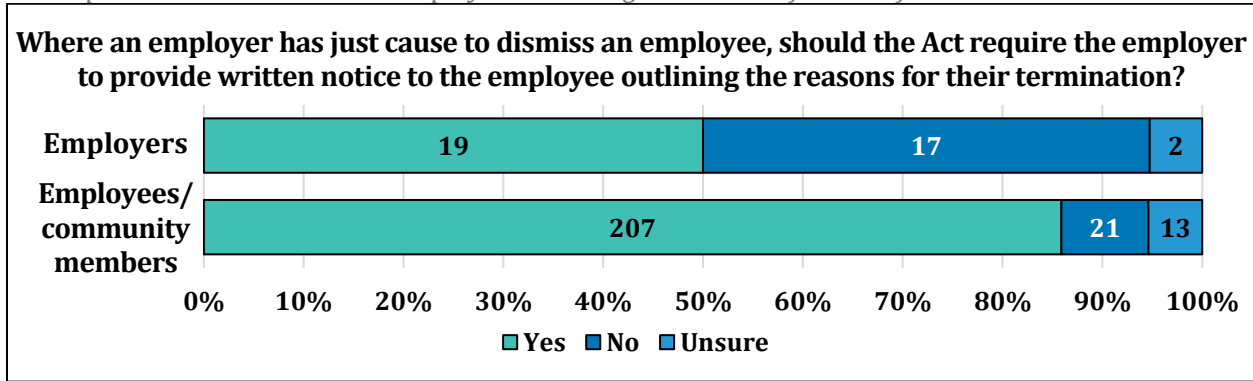
On the specific question of whether the Act should be amended to require that employers provide one week of notice to employees with more than 90 days of service but less than one year, employers responding to the survey were divided, whereas employees and community members responding to the survey were largely supportive (refer to Figure 24).

Figure 24: Survey respondents on whether to amend the Act to require employers to provide 1 week of notice to employees with more than 90 days but less than 1 year of service.



Participant groups were divided on whether to revise the Act to require employers to provide written notice to terminated employees outlining the reasons for their just-cause termination. Employers were split with respect to the proposed change, which was supported by the vast majority of employees and community members (refer to Figure 25).

Figure 25: Survey respondents on whether to amend the Act to require employers to provide written notice to employees outlining the reasons for their just-cause termination.



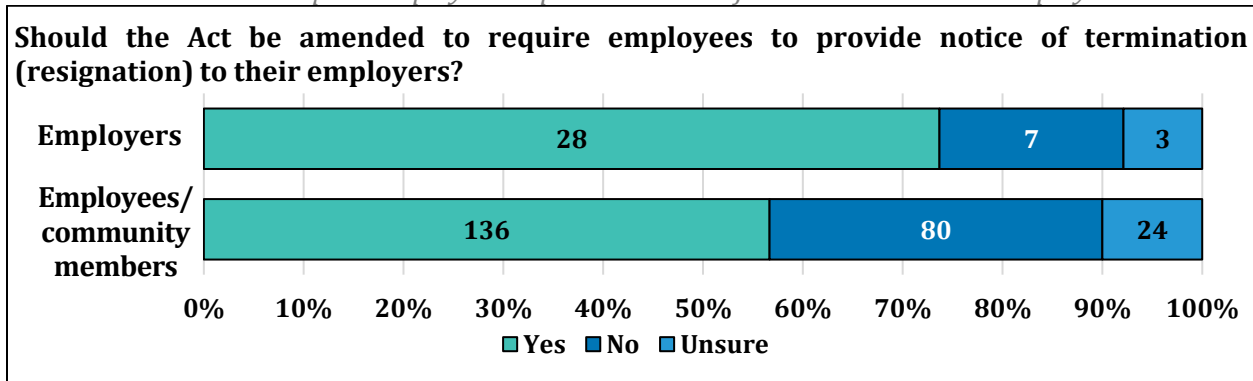
Participants provided comments in support of and opposition to the proposal to require employers to provide written notice to employees outlining the reasons for their just-cause termination of the change as well as offered additional considerations. These comments have been paraphrased and organized by theme.

- Support for the proposed change.
 - This is best practice, as employees should know why they are being terminated.
 - Employees should be given a clear, transparent reason for the termination.
 - This could reduce the number of wrongful dismissal cases or human rights issues.
 - Requiring that written notice of termination be provided could lead to fewer instances of vexatious or frivolous terminations.
- Opposition to the proposed change and concerns regarding potential litigation.
 - Concerns about the need to protect employee privacy.
 - This is problematic because anything in a termination letter can then be debated and may be subject to litigation.
- Additional considerations or suggestions.
 - If this is being considered to prevent employers from dismissing employees in the heat of the moment, then perhaps this points to the need for better management training.
 - Most employers do not claim cause because it is too hard to prove, and many have not done their due diligence around progressive discipline.

“Employers should definitely provide termination notice in writing, though I still don’t know if they need to provide the reasons for termination in the letter – those should be documented in the employee file, and the employee should be aware that it’s happening.”

As shown in Figure 26, when asked whether the Act should be amended to require employees to provide notice of termination (resignation) to their employers, the majority of survey respondents were supportive of the proposed change.

Figure 26: Survey respondents on whether the Act should be amended to require employees to provide notice of termination to their employers.



Though a majority of survey respondents expressed their support for the proposal to require employees to provide notice of termination to their employers, participants’ comments highlighted some potential implementation challenges related to this proposal, among other potential issues. These comments have been paraphrased and organized by theme.

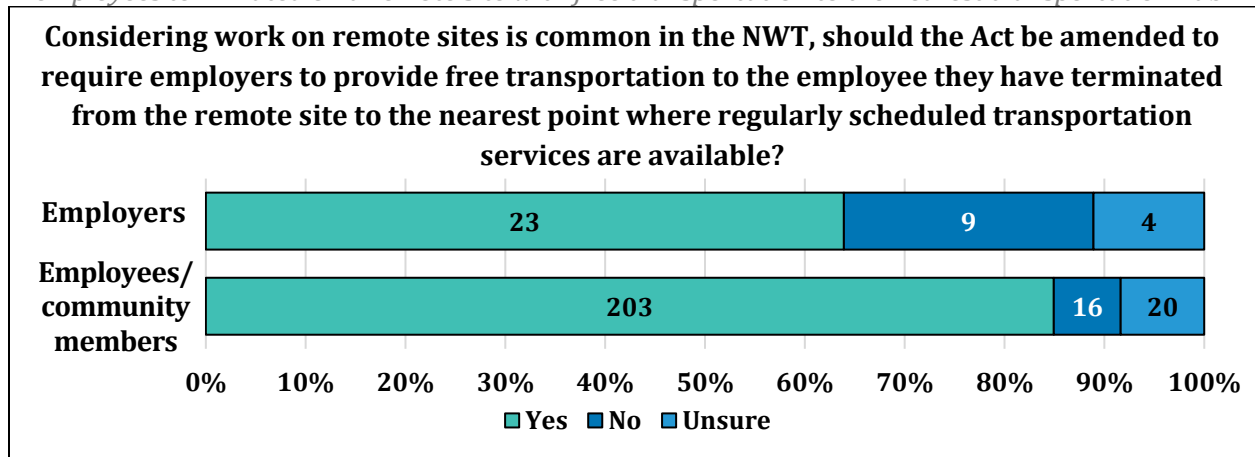
- Support for the proposed change.
 - If employers are required to provide notice of termination to employees, employees should be required to do the same.
 - Employees should be required to provide at least two weeks’ notice, as inadequate notice can really affect a business’s ability to operate.
 - This change would make employees accountable for succession planning by helping employers to find and train an adequate replacement.
 - As NGOs in the NWT experience staff poaching and quick turnaround with start dates, it would be helpful to standardize notice requirements to lessen the effects of poaching.
- Opposition to the proposed change.
 - Given the power imbalance involved, employees should not be required to give notice unless they want to, and employers certainly should not be clawing money back from employees who do not give notice.
 - As life events may prevent employees from providing notice, it is wrong to impose financial penalties on an employee for failing to provide sufficient notice.
- If an employee is resigning because they feel unsafe in the workplace, requiring them to provide two weeks’ notice will only prolong their exposure to an unsafe environment. Practical limitations and implementation challenges.
 - This would be very difficult to enforce, as it would place a significant burden on the Employment Standards Office and may not be worth employers’ time.
 - As employees intending to quit may already be ‘checked out’, they may perform poorly, call in sick, or simply refuse to show up during the required notice period.
- Additional considerations or suggestions.
 - Employers whose employees work on rotations indicated that it would be helpful if employees were required to provide notice that is effective after the last day of a rotation, and not just two weeks.

- To ensure compliance, consider withholding employee wages or allowing employers to recover pay from employees who do not provide adequate notice.
- Many participants indicated that they believed this was already a requirement.

Given that work on remote sites is common in the NWT, survey respondents were asked whether the Act should be amended to require employers to provide employees terminated on a remote site with free transportation to the nearest transportation hub. As illustrated in Figure 27, the majority of respondents expressed support for this proposal.

“How would this work enforcement-wise? What happens if an employee does not provide the requisite notice? I don’t understand what the consequences would be. I also feel like this would put a lot of additional work on the Employment Standards Office. It’s not uncommon for employees to not give notice, and I wonder if employers would even want to put a lot of time and effort into addressing that.”

Figure 27: Survey respondents on whether to amend the Act to require employers to provide employees terminated on a remote site with free transportation to the nearest transportation hub.

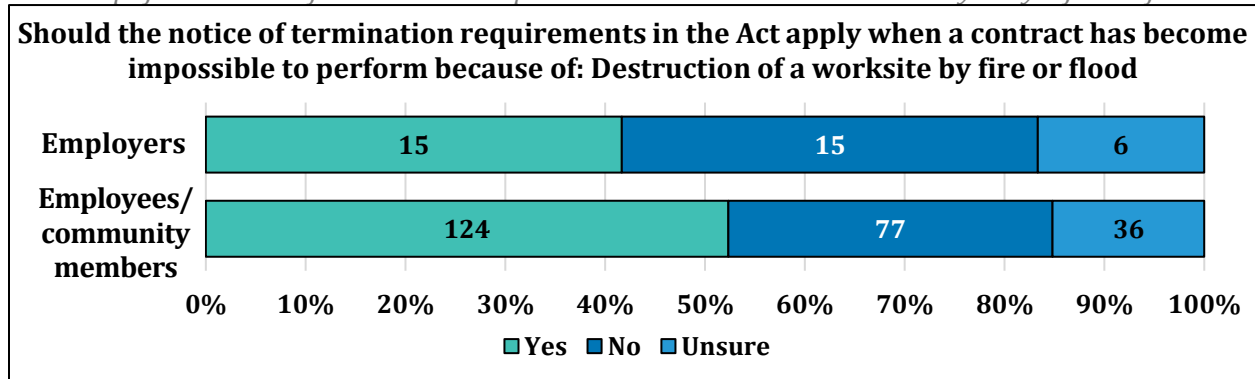


Participants offered a variety of comments on the proposal to provide employees terminated on remote work sites with free transportation to the nearest transportation hub. These comments have been paraphrased and organized by theme.

- Support for the proposed change.
 - This change makes sense, as a terminated employee could cause issues on the worksite.
 - This would ensure the health and safety of employees terminated on remote worksites.
 - If forced to arrange transportation home, employees face unreasonable exit barriers.
- Proposed change does not go far enough.
 - As Yellowknife is effectively the only transportation hub in the NWT, the employer should be responsible for arranging, and covering the costs associated with, transporting terminated employees to wherever they happen to live in the NWT.
- Opposition to the proposed change.
 - As NWT employers understand that it is best practice to fly terminated employees home, this does not need to be regulated.

Participants were divided on the question of whether employers should be exempt from notice-of-termination requirements when a worksite is destroyed by a fire or flood. A small majority of the employees and community members who completed the survey indicated that the notice-of-termination requirements should apply in this situation, whereas less than half of employers who completed the survey indicated that these requirements should still apply.

Figure 28: Survey respondents on whether employers should be exempt from notice-of-termination requirements when a worksite is destroyed by a fire or flood.

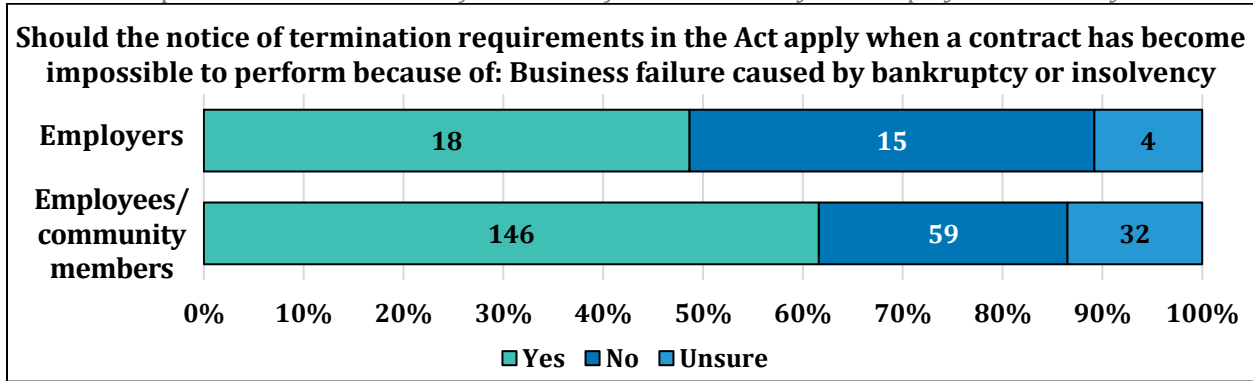


Participants provided comments in support of and against the option of whether the notice-of-termination requirements should apply when a worksite is destroyed by a fire or flood. These comments have been paraphrased and organized by theme.

- The notice-of-termination requirements should apply.
 - These kinds of losses should be covered by some form of insurance. The doctrine of frustration should not be put on the employee.
 - The employees may have lost their houses or careers because of the fire or flood.
 - Employees should be covered for events that are completely out of their control.
- The notice-of-termination requirements should not apply.
 - This would lead to a significant financial burden on the employer.
 - A fire or flood is usually an event you cannot foresee, or an ‘Act of God’.
- Unsure as to whether the notice-of-termination requirements should apply.
 - Many participants indicated that they were torn on this issue, and that they were sympathetic to the arguments on both sides of the issue.

As indicated in Figure 29, the majority of employees and community members responding to the survey indicated that, when a business fails due to bankruptcy or insolvency, the notice-of-termination requirements should still apply, a sentiment expressed by less than half of employers who completed the survey.

Figure 29: Survey respondents on whether employers should be exempt from notice-of-termination requirements in the event of a business failure caused by bankruptcy or insolvency.



In their comments, participants expressed considerable opposition to the idea that a business failure due to bankruptcy or insolvency could exempt an employer from having to meet notice-of-termination requirements. These comments have been paraphrased and organized by theme.

- The notice-of-termination requirements should apply.
 - Bankruptcy or insolvency does not happen overnight.
 - Employers have a moral obligation to their employees when declaring bankruptcy. Employees should not be penalized for their employer’s poor business sense.
 - Employers may use this exemption maliciously.
- The notice-of-termination requirements should not apply.
 - Requirements should not apply when a business fails due to bankruptcy or insolvency.

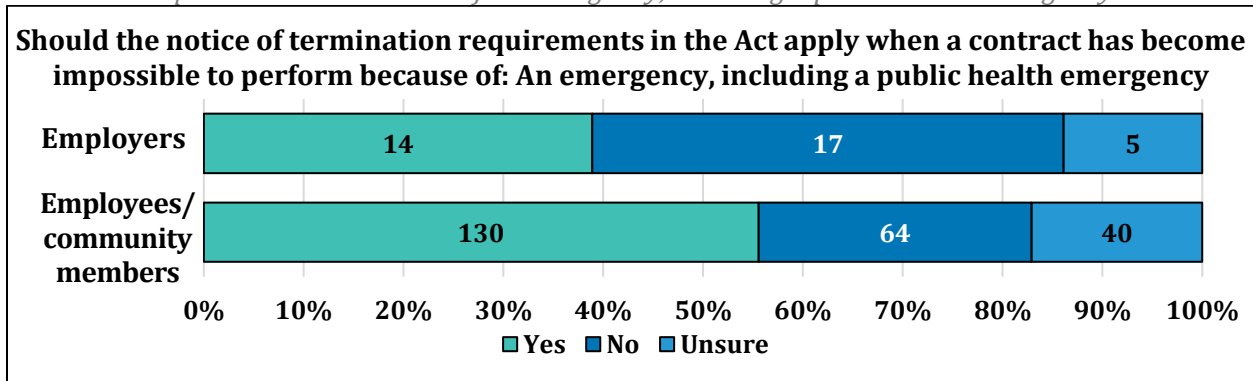
Additional considerations or suggestions.

- This problem should be accounted for legislatively. Can the Act stipulate that employees should be paid first?⁵
- As NGOs work on a funding basis, the NWT should consider a provision similar to this one which applies to NGOs that have had their funding discontinued.

The majority of employees and community members responding to the survey indicated that, when a business fails due to an emergency (including a public health emergency), the notice-of-termination requirements should still apply, a sentiment expressed by less than half of employers who completed the survey (refer to Figure 30).

⁵ Note that bankruptcy and insolvency falls under federal law, which is paramount to territorial legislation. Accordingly, the *Employment Standards Act* cannot be amended to change the priority of creditors.

Figure 30: Survey respondents on whether employers should be exempt from notice-of-termination requirements in the event of an emergency, including a public health emergency.

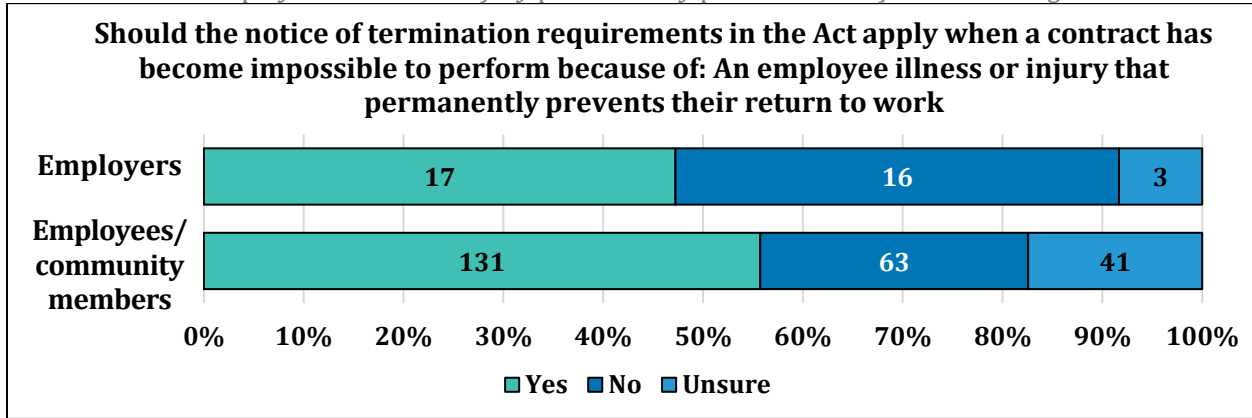


Participants offered a range of comments on whether the notice-of-termination requirements should apply in this instance. These comments have been paraphrased and organized by theme.

- The notice-of-termination requirements should apply.
 - While this is not the employer’s fault, it also should not be put on their employees.
- The notice-of-termination requirements should not apply.
 - As this is out of employers’ control, the requirements should not apply.
- The notice-of-termination requirements should not apply under certain conditions.
 - Exemptions should be provided for emergencies from an instructive list of examples.
 - As emergencies can take many forms, exemptions would need to be evaluated on a case-by-case basis.
- Unsure as to whether the notice-of-termination requirements should apply.
 - Many participants indicated that they were torn on this issue, and that they were sympathetic to the arguments on both sides of the issue.
- Additional considerations or suggestions.
 - If the government is responsible for forcing businesses to close, they should be responsible for footing the bill (e.g., the Canada Emergency Response Benefit).

Survey respondents were divided on the question of whether notice-of-termination requirements should apply when an employee is permanently prevented from returning to work as a result of an illness or injury. As illustrated in Figure 31, just less than half of the employers who responded to the survey indicated that the requirements should apply in this situation, whereas a small majority of employees and community members indicated that the requirements should apply.

Figure 31: Survey respondents on whether employers should be exempt from notice-of-termination requirements when an employee's illness or injury permanently prevents them from returning to work.



While some participants provided comments in support of and against the option of whether the notice-of-termination requirements should apply when an employee illness or injury permanently prevents them from returning to work, others expressed confusion regarding the overlapping types of leave. These comments have been paraphrased and organized by theme.

- The notice-of-termination requirements should apply.
 - Employers should not rush injured or ill employees back to work, especially not without accommodating them, which they’re required to do under human rights legislation.
 - Employees should be provided notice because if you terminate them, they lose employer-sponsored benefits.
 - The employer should pay for a deal or settle with the employee (i.e., a severance package) when it becomes apparent that the employee will never return to work.
- The notice-of-termination requirements should not apply.
 - The notice-of-termination requirements should not apply when an injured or ill employee is permanently prevented from returning to work.
- Confusion regarding overlap with long-term disability, medical leave, or other programs.
 - Some participants had questions about overlap with the Workers’ Safety and Compensation Commission, workplace disability, or long-term medical leave.
- Additional considerations or suggestions.
 - Consider expanding the Act on medical termination to provide more security and process for individuals going through that in the workplace.

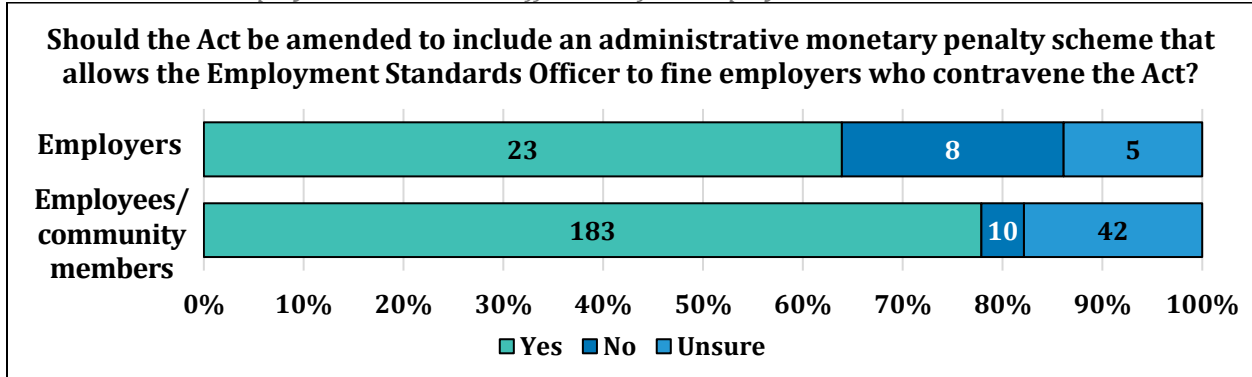
Topic #5: Enforcement

The Employment Standards Office has limited ways to make an employer comply with the Act when it comes to issues other than the non-payment of wages. For some contraventions to the Act, the only mechanism that the Office has is prosecution. Prosecution is costly and time consuming. The GNWT is considering changes to the Act to provide the Employment Standards Office with additional enforcement options, such as establishing an administrative monetary penalty scheme, when employers are wilfully non-compliant with the legislation.

What We Heard From Participants

Figure 32 shows that survey respondents were largely in agreement that the Act should be amended to include a monetary penalty scheme that allows Employment Standards Officers to fine employers who contravene the Act.

Figure 32: Survey respondents on whether the Act should be amended to allow Employment Standards Officers to fine employers who contravene the Act.



Participants offered a range of comments, including considerations and suggestions, on whether the Act should be amended to include a monetary penalty scheme that allows Employment Standards Officers to fine employers who contravene the Act.

These comments have been paraphrased and organized by theme.

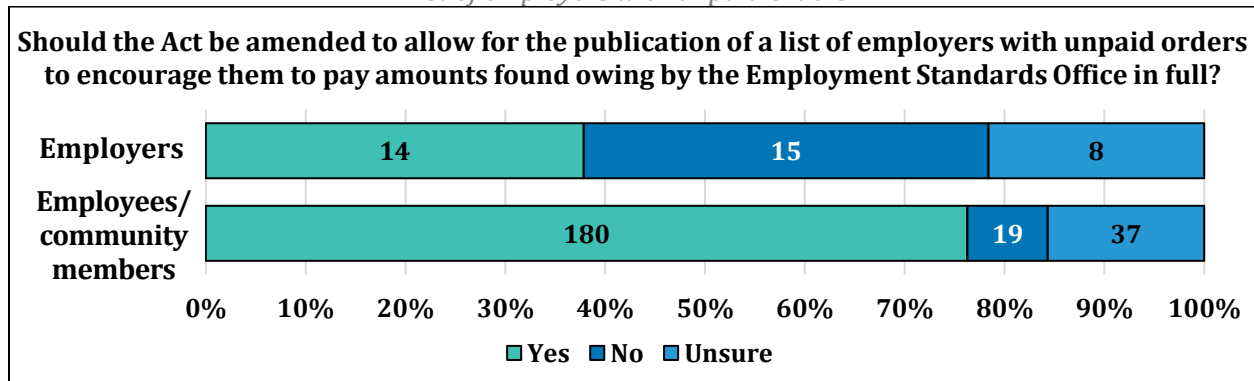
- Support for the proposed amendment.
 - Better to have standards enforced by the Employment Standards Office than the courts.
 - It does not seem fair to the good employers, if the employers who are not complying with the Act are getting away with it.
 - Employers should be accountable for upholding and adhering to the Act.
 - Many employers claim ignorance of the rules and regulations. This would incentivize employers to understand their responsibilities under the Act.
- Opposition to the proposed amendment.
 - Bureaucrats should not be able to act as judges.
- Confusion regarding current authority of Employment Standards Officers.
 - Some participants were surprised to learn that Employment Standards Officers lacked the authority to fine employers for violations unrelated to the non-payment of wages.
- Additional considerations or suggestions.
 - This change should include an increase in random audits from Employment Standards.
 - This change should be considered internally by the Employment Standards Office.

“For many employees, the Employment Standards Office is their only avenue to rectify issues, and if the legislation has no teeth, then they’re the one left holding the empty bag for an extended period of time while the employer goes about their business.”

- Look at other jurisdictions to determine how best to administer penalties.
- The administrative penalties should be progressive – that is, start with a warning and then issue a small fine which increases if non-compliance continues.
- Penalties should be paid to the affected employees.
- Penalties should have an automatic review clause to ensure they remain relevant as a deterrent.
- Need to ensure the cost-benefit equation is appropriate – that is, the cost of the penalty must outweigh the benefit of the violation.
- Penalties should differ based on the size of the business, so as not to disproportionately punish small businesses.

Survey respondents were divided on the question of whether the Act should be amended to allow for the publication of a list of employers with unpaid orders. Though the vast majority of employees and community members who responded to the survey were in support of this proposed change, no such consensus was evident among the employers who responded to the survey (see Figure 33).

Figure 33: Survey respondents on whether the Act should be amended to allow for the publication of a list of employers with unpaid orders.



Participants provided a range of comments on whether the Act should be amended to allow for the publication of a list of employers with unpaid orders. These comments have been paraphrased and organized by theme.

- Support for the proposed amendment.
 - A public registry that employees can search would be beneficial.
- Opposition to the proposed amendment.
 - Enforcement is helpful. Public shaming is not.
 - Concerned that a public registry could lead to the unfair, widespread public judgement of a business.
- Additional considerations or suggestions.
 - The Employment Standards Office will need to increase staffing, random inspections.

“I don’t think a public registry is a good idea, as shaming people is not a good or healthy motivator. This would cost the government more money than it would collect in fines.”

- Employers should only be added to the list after a specified period (i.e., 90 days from the date of an order), provided appeal processes are exhausted.
- Employers should be removed from the list after they have paid the amounts owed.
- If ECE proceeds with this change, it should be reserved for companies who are extremely willful in their non-compliance.
- Consider taking a whole-of-government approach to encouraging compliance (e.g., by denying a willfully non-compliant employer access to the Business Incentive Program and grants or loans from the NWT Business Development and Investment Corporation).

Additional Findings

In addition to the findings detailed in the preceding section and those summarized in **Appendix B**, ECE received feedback from stakeholders and partners on a variety of additional topics. This feedback has been summarized below in no particular order.

Employment Standards Reference Materials

Several participants pointed to the need for improved, updated, plain-language reference materials for employment standards in the NWT. One participant noted that she regularly refers to her employment standards factsheet, and she requested that a new one be issued after the Act is amended. Another participant pointed to the Government of Ontario website as an example the GNWT should follow when providing informative, example-based documentation on employment standards and related issues. Another participant suggested that the GNWT should provide all new corporate registrants with a copy of the *Employment Standards Act* and Regulations to ensure that all employers doing business in the territory understand the rules.

Need for Streamlined Approach to Recovery of Overpayment

Some participants indicated that employers require a more streamlined approach to recovering overpayments when, for example, an employee takes all their vacation time early in the year and then quits without notice. Currently, employers require written consent from the employee to recover overpayment. In Alberta, however, it is possible to recover overpayment without the employee's permission. These participants indicated that they would like to see something similar in the NWT.

Permit Automatic Deductions for Contributions to Group Pension Plans

One participant recommended that the GNWT amend the Act to permit employers to make automatic deductions from employee pay for the purpose of contributing to voluntary workplace pension and savings plans, thereby allowing employees to benefit from matching company contributions. Though employees would not need to consent to benefit from these deductions, they would maintain the ability to opt out.

Miscellaneous Suggestions

- One participant suggested that the Act be amended to require employers to provide employees with a written copy of their employment contract no later than one month after the employment relationship has begun. The aim of this suggestion, according to the participant, is to establish a standardized practice for ensuring that both employees and employers possess a shared understanding of the employment contract.
- One participant suggested that employees should be able to work in excess of 10 hours per day if they elect to do so.

Next Steps

The next step in the process of updating the *Employment Standards Act* is the development of a legislative proposal for a bill that would amend the Act. This legislative proposal will be informed by the feedback received over the course of the engagement period, as summarized in this report, and will be considered by Members of the Legislative Assembly.

Appendix A: Engagement Resource Guide

Engagement Background

- The *Employment Standards Act* and Regulations establish the minimum standards of employment in the Northwest Territories (NWT) for hours of work, overtime pay, minimum wage, vacation pay, statutory holidays, job-protected leave, notice requirements for termination of employment, and payment of wages.
- The *Employment Standards Act* applies to most employees and employers that perform work in the Northwest Territories.
- The Act does not apply to federal government employees, GNWT employees or workers in federally regulated industries such as airlines, banks, and most telecommunications operations. First Nations band councils and Indigenous self-governments may be federally regulated; main band council activities, such as overall band administration and governance, typically fall under federal jurisdiction. Whether or not an employer is federally regulated is determined on a case-by-case basis.

Additional Resources

Plain-language resources:

- Employment Standards Fact Sheet:
https://www.ece.gov.nt.ca/sites/ece/files/resources/2021_08-factsheet-employment_standards_-_english_1.pdf
- *Employment Standards Act* FAQs:
https://www.ece.gov.nt.ca/sites/ece/files/resources/2021-10-faq-employment_standards_act_-_english_1.pdf

Relevant legislation and regulations:

- *Employment Standards Act*:
<https://www.justice.gov.nt.ca/en/files/legislation/employment-standards/employment-standards.a.pdf>
- Employment Standards Regulations:
<https://www.justice.gov.nt.ca/en/files/legislation/employment-standards/employment-standards.r1.pdf>
- Additional Regulations: <https://www.justice.gov.nt.ca/en/legislation/#gn-filebrowse-0:/e/employment-standards/>

Topic #1: Paid Sick Leave

The Government of Canada has asked the provinces and territories to consider legislating paid sick leave.

Current Treatment

Currently, sick leave is addressed in the *Employment Standards Act* as unpaid leave; an employee is entitled to 5 days of sick leave, without pay, in a 12-month period.

Potential Changes Being Considered

This change would:

- Entitle employees subject to the *Employment Standards Act* to a certain number of days of sick leave, with pay, in a 12-month period; and
- Require employers subject to the *Employment Standards Act* to pay employees taking sick leave up to a certain number of days in a 12-month period.

Relevant Standards in Other Jurisdictions

- In 2021, the Government of Canada amended the medical leave provisions in the Canada Labour Code to provide 10 days of paid sick leave to all federally regulated private sector employees.
- On January 1, 2022, workers in British Columbia became entitled to 5 days of paid sick leave, following amendments to BC's Employment Standards Regulations.

Questions for Participants

1. What are your thoughts on legislating paid sick leave in the NWT?
2. If the GNWT were to legislate paid sick leave, how many paid sick days should employees receive per year?

Additional Questions

3. Do you provide your employees paid sick leave? If so:
 - a. How many paid sick days are your employees entitled to in a year?
 - b. What percentage of your employees do you think use all of the paid sick days they are entitled to each year?
 - c. Are your employees able to carry over unused paid sick days from one year to the next?
4. On average, how many sick days per year did your employees use (paid or unpaid)?
5. Are your employees able to work from home when they are sick?

Topic #2: Statutory Holidays

The GNWT is:

- A. looking for feedback on whether to consider the introduction of a statutory holiday in February; and

- B. reviewing the legislative requirements for the calculation and payment of wages associated with statutory holidays to achieve better employer compliance.

Current Treatment

- A. The *Employment Standards Act* currently recognizes the following 11 statutory holidays:

- New Year's Day
- Good Friday
- Victoria Day
- National Indigenous Peoples Day
- Canada Day
- First Monday in August
- Labour Day
- National Day for Truth and Reconciliation
- Thanksgiving Day
- Remembrance Day
- Christmas Day

- B. The current requirements for the calculation and payment of wages associated with statutory holidays are as follows:

- If an employee meets all the conditions for entitlement to statutory holiday pay, they are entitled to receive an average day's pay for the holiday whether they work on the holiday.
 - Where an employee generally works the same number of hours each day, or on that particular day of the week, the normal number of hours ordinarily worked on that day is used to calculate the entitlement to holiday pay.
 - To calculate the average day's pay for an employee paid based on time but who works irregular hours, the average of the hours the employee worked in the four weeks immediately preceding the week in which the statutory holiday occurs is used to calculate the entitlement to holiday pay.
 - If an employee's average day's pay is more than 8 hours (the standard hours of work in a day), any time in excess of 8 hours would be calculated at an overtime rate (1.5 times the employee's regular rate of pay).
- If an employee meets all the conditions for entitlement to statutory holiday pay and works on a statutory holiday, they must receive payment for the hours that they worked at the rate of time and one half, plus an average day's pay.
 - Alternatively, the employer may transfer the holiday to another day, giving the employee a day off with pay.
- Overtime is usually paid after 8 hours per day and 40 hours per week. During a week containing a statutory holiday, overtime is calculated after 8 hours per day and 32 regular hours in that week. The payment for the statutory holiday is calculated separately.

Potential Changes Being Considered

- A. Whether to consider the introduction of a new statutory holiday in February.
- B. Revising requirements for the calculation and payment of wages associated with statutory holidays.

Relevant Standards in Other Jurisdictions

- A. Regarding the potential introduction of a statutory holiday in February:
 - Five provinces (i.e., Alberta, British Columbia, New Brunswick, Ontario, Saskatchewan) recognize a statutory holiday in February called "Family Day".

- With 11 statutory holidays, the NWT is among the jurisdictions with the highest number of paid holidays in their employment standards legislation in Canada.
 - With six statutory holidays, Newfoundland and Labrador is the jurisdiction with the lowest number of paid holidays.
- B. Regarding the calculation of statutory holiday pay.
- Some jurisdictions allow employers to pay employees a percentage of their wages in lieu of statutory holiday pay, like vacation pay. In some jurisdictions, this option is only payable to employees who work irregular hours. In other jurisdictions, this option applies to employees in specific industries.
 - For example, in the Yukon, if an employee works less than the standard hours or works irregular hours, they must be paid general holiday pay of 10% of the wages (excluding vacation pay) they earned for the hours worked in the two calendar weeks immediately prior to the week in which the holiday falls. This includes any overtime earned in that period.
 - In Alberta, construction employees are entitled to holiday pay of at least 3.6% of their wages when they begin employment. Construction employees in Alberta are not required to be provided a day off for holidays and if they work on a holiday, it is treated as a regular day of work with respect to the calculation and payment of wages and overtime pay.

Questions for Participants

- A. **Should the GNWT introduce an additional statutory holiday in February? Why or why not?**
- B. **What do you think of the current requirements for the calculation and payment of wages associated with statutory holidays in the NWT?**

Additional Question

- Should the NWT amend the Act to allow employers to pay employees a percentage of their wages in lieu of statutory holiday pay?

Topic #3: Job Protected Leave

The GNWT is considering the introduction of additional job-protected leaves. While taking a job-protected leave, an employee cannot be terminated by their employer.

Current Treatment

The *Employment Standards Act* currently includes the following job-protected leaves:

- Pregnancy leave (unpaid)
- Parental leave (unpaid)
- Sick leave (unpaid)
- Compassionate leave (unpaid)
- Family caregiver leave (unpaid)
- Emergency leave (unpaid)
- Family violence leave (5 days paid; 5 days unpaid)
- Bereavement leave (unpaid; does not include unborn children)
- Court leave (unpaid)
- Reservist leave (unpaid)

Potential Changes Being Considered

Introduce one or more of the following job-protected leaves:

- Family Responsibility Leave (unpaid)
- Long-Term Medical Leave (unpaid)
- Leave for Traditional Indigenous Practices (unpaid)
- Leave Related to Death or Disappearance of a Child (unpaid)

Revise the following job-protected leave:

- Bereavement Leave (unpaid) to include employees and spouses who experience a prenatal pregnancy loss or stillbirth.

Relevant Standards in Other Jurisdictions

- In Ontario, [Family Responsibility Leave](#) provides eligible employees with up to three unpaid days of leave each calendar year due to an illness, injury, medical emergency or urgent matter relating to certain family members.
- In some jurisdictions, Long-Term Medical Leave provides eligible employees who are unable to work due to personal illness or injury with leave for an extended period.
 - In Alberta, [Long-Term Illness and Injury Leave](#) provides eligible employees with up to 16 weeks of unpaid long-term illness and injury leave each calendar year.
 - In Manitoba, through [Long-Term Leave for Serious Injury or Illness](#), employees who are suffering from a serious injury or illness, which will prevent them from being at work for at least two weeks, may be entitled to up to 17 weeks of unpaid leave.
 - In federally-regulated workplaces, employees are entitled to [unpaid medical leave protection](#) for up to 27 weeks for illness or injury, organ or tissue donation, attending medical appointments, or quarantine.
- The Government of Canada provides qualified Indigenous employees (i.e., those who have completed three months of continuous employment) with 5 days of unpaid leave to engage in traditional practices, including fishing, hunting, harvesting, and other practices as prescribed by regulation.
- In 2021, Prince Edward Island amended its bereavement leave to include employees and their spouses who experience a prenatal pregnancy loss or stillbirth.
- Most jurisdictions provide for job protected leave to employees if their child has died or disappeared as a probable result of crime, in line with the [Canadian Benefit for Parents of Young Victims of Crime](#).

Question for All Participants

1. Should the GNWT consider introducing new job-protected leaves under the Act? Please explain.

Questions for Indigenous Governments and Organizations

2. Should the GNWT amend the Act to include leave for traditional Indigenous practices (unpaid)?

3. If you support the GNWT amending the *Employment Standards Act* to include leave for traditional Indigenous practices, what type of documentation should an employer be allowed to request to demonstrate that an employee is Indigenous?

Topic #4: Termination of Employment

The GNWT is looking for feedback regarding the current notice-of-termination requirements in the *Employment Standards Act*.

Current Treatment

- A. There is no obligation under the *Employment Standards Act* for an employee to give notice to their employer that they are terminating their employment. If an employee gives notice, it would be considered a courtesy.
- B. If an employee has been employed for 90 days or more, they are entitled to receive either written notice of termination or termination pay in lieu of notice based on their length of employment as follows:

Length of Employment	Notice Required
Less than 90 days	None
90 days but less than 3 years	2 weeks
3 years but less than 4 years	3 weeks
4 years but less than 5 years	4 weeks
5 years but less than 6 years	5 weeks
6 years but less than 7 years	6 weeks
7 years but less than 8 years	7 weeks
8 years or more	8 weeks

Current exceptions to the above rule—i.e., conditions under which an employee can be dismissed without notice or pay in lieu—are:

- The employer has just cause to dismiss the employee.
- The employee has refused an offer of reasonable alternative work made by the employer.
- The employee is employed in the construction industry.
- The employee is employed for a specific term or task and completes that term.
- The employee is employed seasonally.
- The employee works for less than 25 hours per week.

The *Employment Standards Act* does not require employers to set out the reason why an employee’s employment is being terminated in their notice of termination. Likewise, when an employee is dismissed for cause, the employer is not required by the Act to set out the reasons for the employee’s dismissal in writing.

Potential Changes Being Considered

- A. Require employees to provide notice of termination to employers.

B. Revise notice-of-termination requirements and/or exceptions.

Relevant Standards in Other Jurisdictions

- In several jurisdictions (including Alberta, Manitoba, Newfoundland & Labrador, Nova Scotia, Prince Edward Island, Saskatchewan, and Yukon), employees are required to provide their employers notice of termination.
 - In some jurisdictions, an employee’s failure to provide sufficient notice to their employer can result in the employee being required to pay the employer in lieu of notice. Some jurisdictions allow employers to deduct such payments in lieu of notice from employees’ wages.
 - In [Yukon](#), if the employee does not give their employer enough notice, the employer may withhold one week’s wages from the employee’s last paycheque with the employee’s consent. If the employee does not consent, the employer must pay the Employment Standards Office the amount they wish to deduct from the employee. The director of the Employment Standards Office will investigate and decide the course of action – to repay the employer, or to pay the amount to the employee if the deduction was not compliant with the Act or it would be unfair to deprive the employee of their wages.
- In some jurisdictions (Alberta, BC, Manitoba, Ontario, Quebec, Saskatchewan, and Yukon) employees who work more than a prescribed number of days but less than 1 year, are only entitled to 1 week of notice of termination or pay in lieu of notice.
 - In Newfoundland & Labrador and Nova Scotia, employees who work more than 90 days but less than 2 years are only entitled to 1 weeks’ notice.
 - In New Brunswick, PEI and Yukon, an employee must work for 6 months before becoming entitled to notice of termination.
- Most jurisdictions contain exceptions to the notice of termination requirements in their legislation in situations where the employment contract has become impossible to perform due to unforeseeable events outside of the employee and the employer’s control.
 - In BC, examples of situations where a contract has become impossible to perform include destruction of a work site by fire/flood or when an employee is permanently disabled due to illness or injury and will never be able to return to the workplace.
 - However, business failure caused by insolvency would not discharge an employer’s obligation to provide notice of termination in BC, as this is considered to be part of the normal business cycle and cannot be construed as “unforeseen”.
 - In Ontario, if an employment contract becomes impossible to perform because of the destruction of a work site by fire/flood, the notice of termination requirements do not apply.
 - However, employees are still entitled to notice of termination if a contract becomes impossible to perform because of bankruptcy/insolvency or because of an injury or illness suffered by an employee.
 - When an employer dismisses an employee for cause in New Brunswick, the employer is required by legislation to set out the reasons why the employee

was dismissed, in writing. If the employer fails to do so, the employer is no longer exempt from the requirement to terminate their employment without notice.

Question for Participants

- 1. What are your thoughts on the notice of termination requirements in the NWT *Employment Standards Act*?**

Additional Questions

2. Should the GNWT consider amending the Act to require employees to provide notice of termination to their employers? Why or why not?
3. Should the GNWT amend the requirements for the length of notice of termination that employers are required to provide to employees? If so, how?
4. Should the notice of termination requirements in the Act apply when a contract has become impossible to perform because of: (in each case, please explain why or why not)
 - Destruction of a worksite by fire or flood?
 - Business failure caused by bankruptcy or insolvency?
 - An emergency, including a public health emergency?
 - An employee's illness or injury that permanently prevents them from returning to the workplace?
5. Where an employer has just cause to terminate an employee's employment, should the Act require the employer to provide written notice to the employee outlining the reasons for their termination? Why or why not?

Topic #5: Enforcement

The GNWT is considering changes to provide the Employment Standards Office with additional enforcement options.

Current Treatment

- When it is found that an employer owes an employee wages, the Employment Standards Officer can issue an order against the employer in the amount of the wages found owing. The Employment Standards Officer can enforce the payment of such orders by making demands to parties who are indebted to the employer and/or require the employer to provide a bond or other security for the payment of all wages owed. A reciprocal order can be issued in any other jurisdiction in Canada, if the Employment Standards Officer believes the employer is operating in another province or territory. An order of the Employment Standards Officer may be enforced in the same manner as an order of the Supreme Court.
- When employers are willfully non-compliant with the Act regarding matters other than the non-payment of wages (i.e., keeping inaccurate records, requiring employees to work in excess of the maximum hour of work), the only mechanism that the Employment Standards Office has to enforce compliance is prosecution. This means, unless the Employment

Standards Officer takes an employer to court, they have limited ways to make an employer comply with the Act. Prosecution is costly and time consuming.

Potential Change Being Considered

Establish an administrative monetary penalty scheme for non-compliance with the Act.

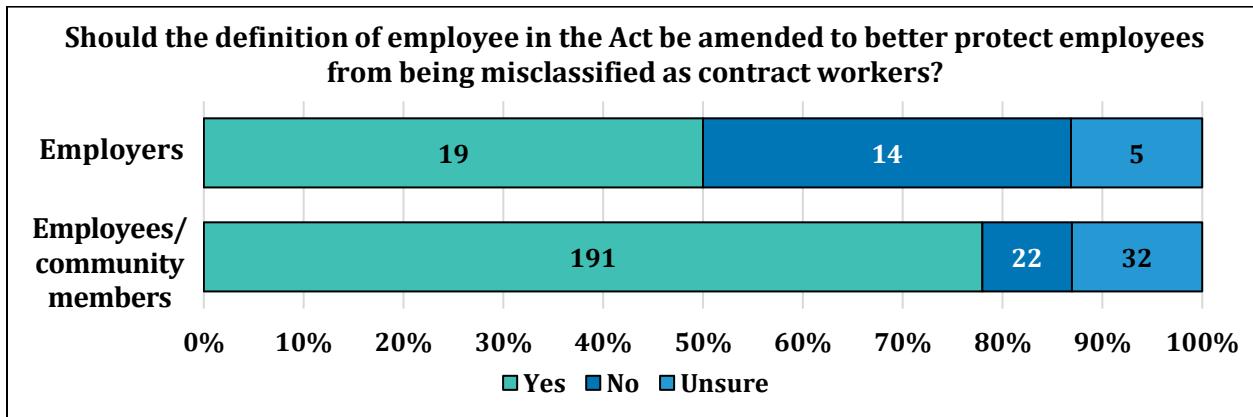
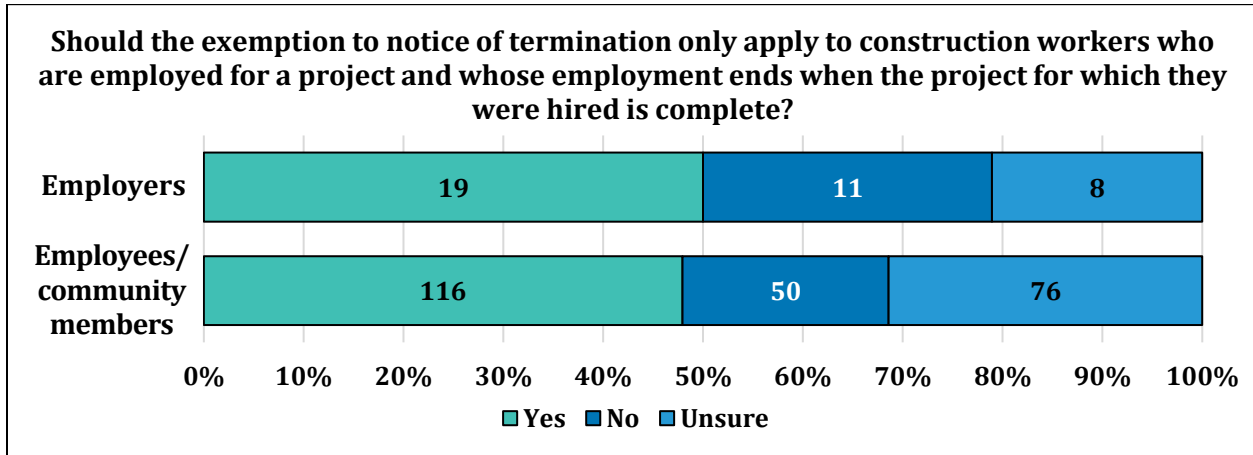
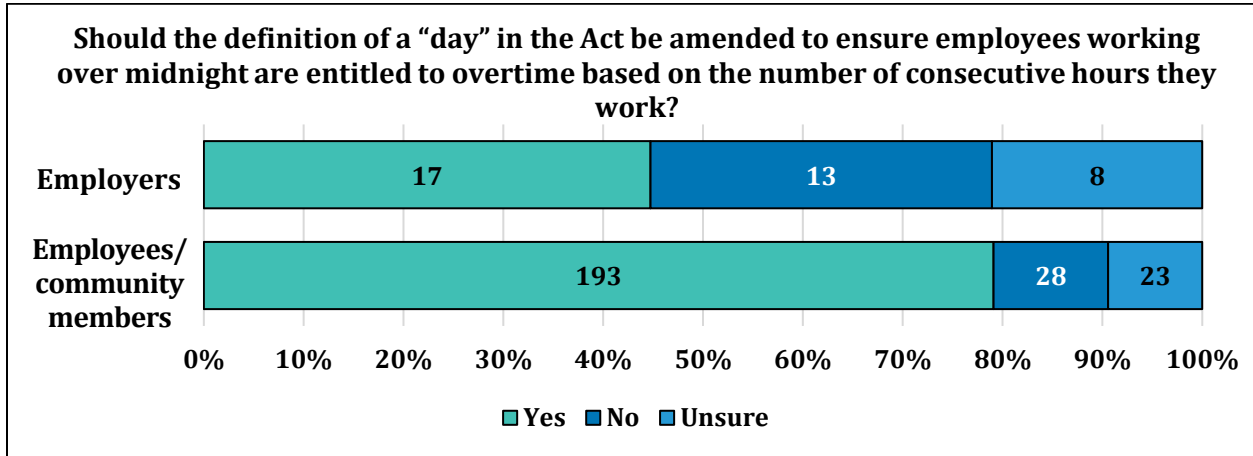
Relevant Standards in Other Jurisdictions

- Some jurisdictions (including [Alberta](#), [British Columbia](#), and [federally-regulated workplaces](#)) have an administrative monetary penalty scheme that they can use to address non-compliance with their legislation. This allows employment standards officials to fine employers when they have been found to contravene the legislation. Penalties for first offences are typically smaller and can increase in size for each subsequent offence. More serious offences can be subject to greater fines than less serious offences.
- Alberta maintains a public registry of employers with unpaid administrative penalties. When an employer contravenes Alberta's Employment Standards Code and is issued an administrative penalty, they are added to a publicly accessible list. This may both help discourage employers from contravening their Code and encourage them to pay any fines issued by their employment standards officials.

Question for Participants

1. **Should the Employment Standards Office be able to fine and/or maintain a public registry of employers who willfully contravene the Act? Why or why not?**

Appendix B: Additional Feedback Received Definitions in the Act and Regulations



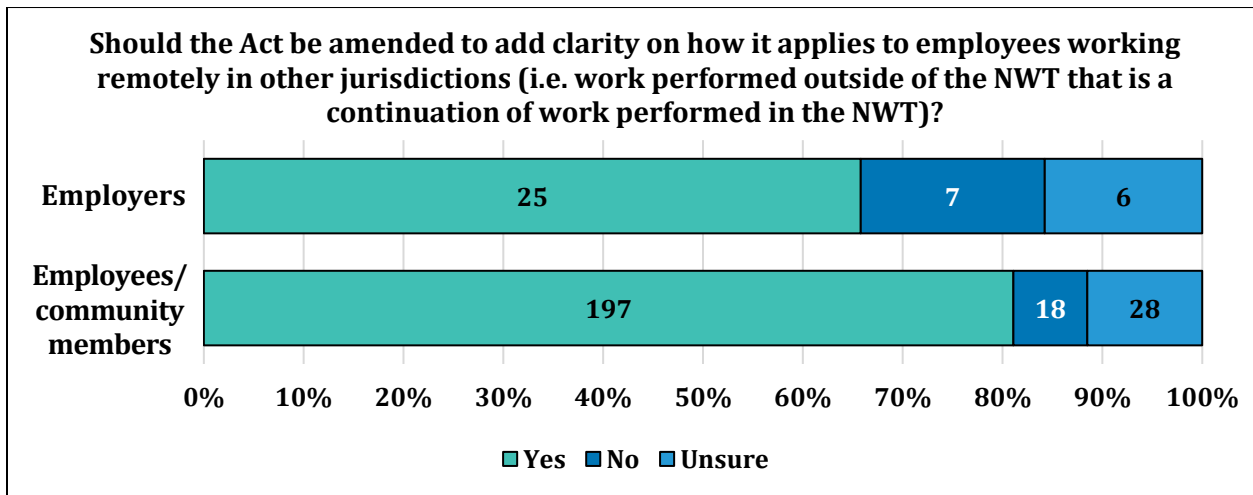
What We Heard From Respondents

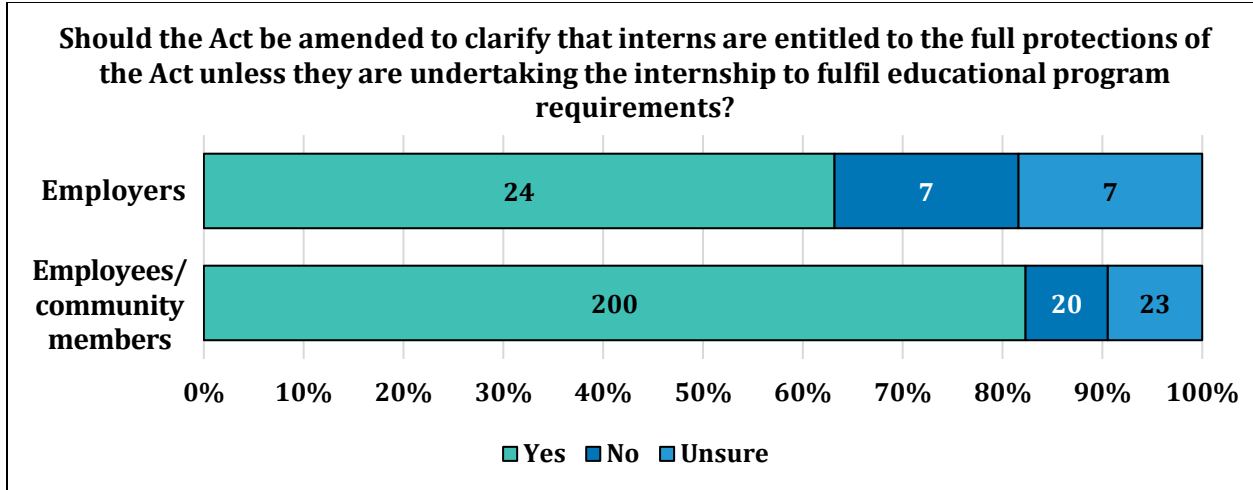
- Employees/community members commented that contract and gig workers should have some protections under the Act and that employers should not be able to deliberately misclassify employees as contract workers.
- Employers stated that if a person wants to work as a subcontractor, they should be allowed to.

“If an employee wants to be treated as a contractor that should be [their] decision, agreed they are forgoing traditional employment protections but in almost all cases they know that going in.”

“There is a serious issue with companies deliberately misidentifying employees as "contractors" to avoid compensating them as they deserve despite strictly controlling all aspects of their employment. These companies then get massive profits off the backs of their most vulnerable workers, and society as a whole suffers.”

Scope of the Act





What We Heard From Respondents

- Both employers and employees/community members stated that employees of NWT employers should be entitled to the same protections, even if they are located elsewhere.
- Some employees/community members said that GNWT employees should not be allowed to work remotely outside of the territory.⁶
- Some employers felt all interns should be paid.
- One employer pointed out interns require supervision and support from other staff that takes away income from the business.
- Many employees/community members suggested that all interns should be entitled to the full protections of the Act regardless of whether they are undertaking the internship to fulfil educational program requirements.
- A few employees/community members felt that incorporating internships under the Act could limit the availability of internship opportunities.

“I feel that employees can and should be allowed to work remotely if possible. However, I believe the employee should live in the province/territory in which the employment began. They would be paying taxes in a different province/territory but taking from the economy of another.”

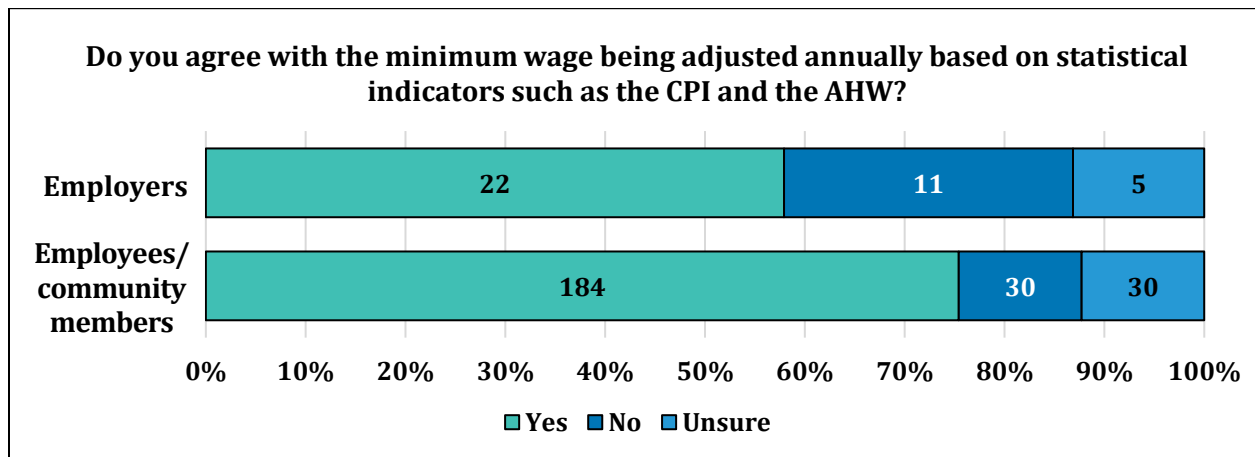
“It seems logical that work being done for an NWT employer is governed by NWT standards, even if the employee is located elsewhere. To do otherwise would place NWT employers at the mercy of non-NWT jurisdictions, which could add to or change their requirements without notice. Ensuring compliance with many different pieces of legislation from across the country would add a significant cost.”

⁶ Regulating remote work agreements for GNWT employees is outside of the scope of the *Employment Standards Act*; GNWT employees are exempt from the *Employment Standards Act*, as their employment falls under the jurisdiction of the *NWT Public Service Act*. This was included in the report as a general comment.

Minimum Wage

When it comes to setting the minimum wage rate, please rank the following factors: Cost of living changes, Average wage rates in the NWT, Higher wages for employees, Economic growth, Impact of increased costs on employer, other jurisdictions' min wage rates.

Employers		Employees / Community Members	
Factor	Average Rank	Factor	Average Rank
Cost of living changes	2.16	Cost of living changes	1.55
Impact of increased costs on employer	2.87	Average wage rates in the NWT	3.23
Economic growth	3.18	Higher wages for employees	3.44
Higher wages for employees	3.95	Economic growth	3.80
Average wage rates in the NWT	4.03	Impact of increased costs on employer	4.22
Other jurisdictions' minimum wage rates	4.82	Other jurisdictions' minimum wage rates	4.62



What We Heard From Respondents

- Several employees/community members stated that the minimum wage should align with the living wage in the NWT or that the minimum wage should be adjusted based on the CPI, due to the high cost of living in the North.

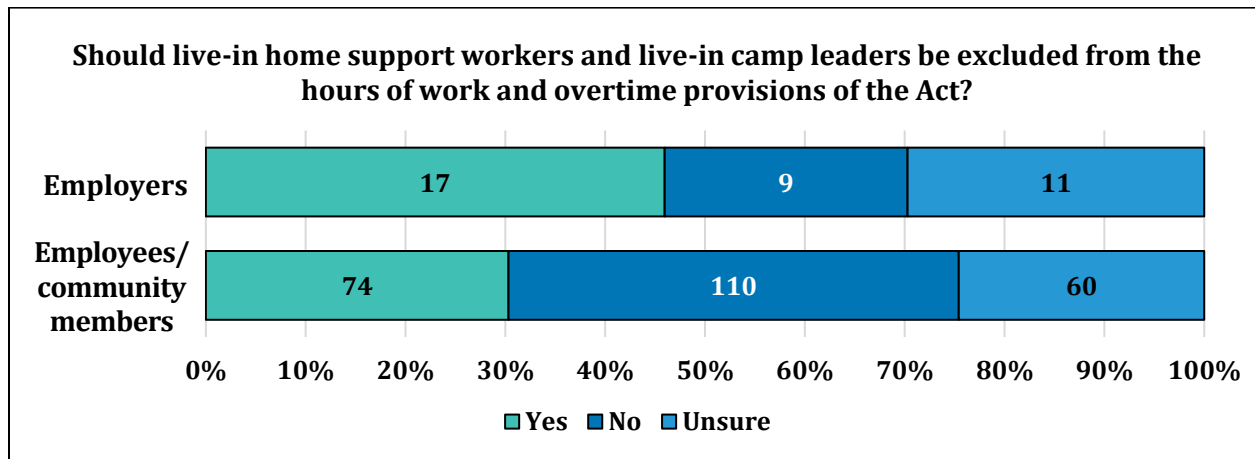
“Minimum wage should really be brought closer to the living wage as someone working at minimum wage on a single income would be unable to make ends meet without having multiple jobs.”

“A huge factor in this is the cost of living in Yellowknife, inflation and that I cannot compete with the wage inequalities offered by government institutions.”

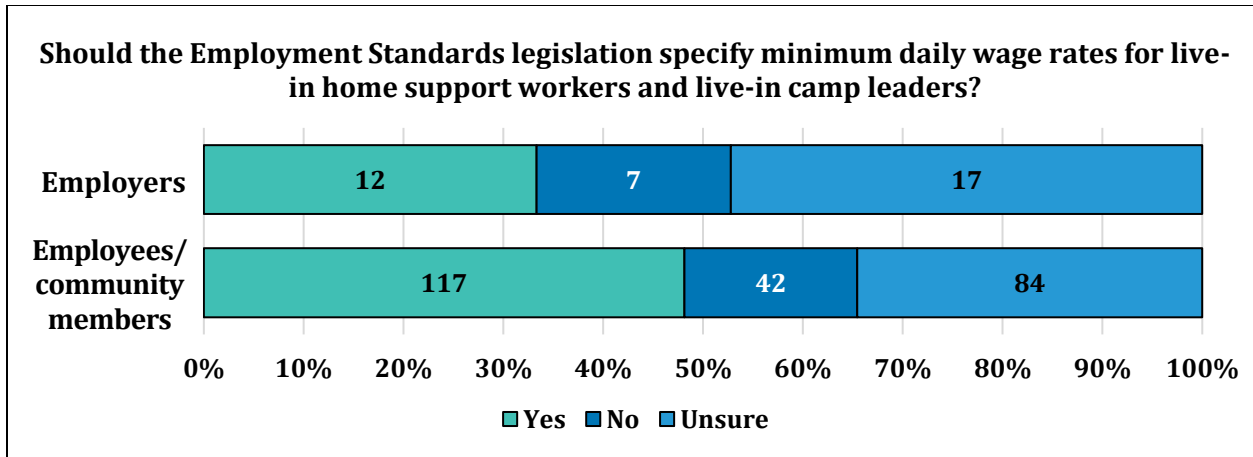
- Other employees/community members noted that adjusting the rate based on the CPI could lead to too much variance, that the minimum wage rate should never go down, and that regional variations in costs need to be considered.
- Some employees/community members said that adjusting the rate every year could become unsustainable and expressed concern about the effect on NWT businesses.
- A few employers agreed with increasing the minimum wage.
- One employer commented that significant increases put added stress on small businesses that are already facing a number of headwinds.
- Another employer noted that they are unable to find anyone who will work for the minimum wage.

“As the saying goes, a rising tide lifts all boats. In my experience, increases to minimum wage levels have resulted in increased business which has more than offset any increases in labour costs. It has generally also resulted in employees that work harder, are more reliable, and more productive.”

Minimum Daily Wage Rates⁷



⁷ Two sub-questions in the survey under this section were included in error. If a respondent answered “Yes” to the question “Should the Employment Standards legislation specify minimum daily wage rates for live-in home support workers and live-in camp leaders?” the survey asked, “If yes, how many hours of pay should they be entitled to?” and “If yes, should they be paid at their regular rate of pay or the minimum wage?”. These two questions were intended to be included in the section regarding reporting pay. As they were included under this section in error, we have not included the results.



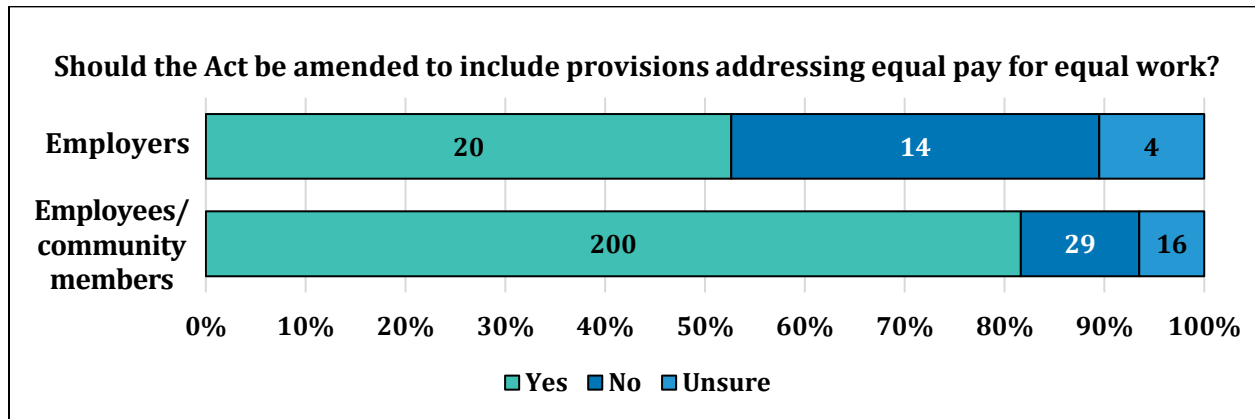
What We Heard from Respondents

- Employees/community members were split, with some agreeing that this type of worker should have a different scheme under the Act and others stating they should have the same protections as other workers.
- One employee noted that many seniors rely on live-in care and making this care unaffordable will only hurt more people.
- Employers’ comments varied. One employer commented that establishing minimum daily wages for remote tourism operators could help prevent employers from potentially lowering wages as a result of the high cost of overtime for these types of employees.
- One employer commented that the legislation should not specify “live-in home support and camp workers”, it should just allow for daily wage rates for positions in general.
- One employer noted they were opposed to any provisions that would allow a lower hourly wage to be paid to employees who are required to remain at the worksite 24-hours a day, as that would provide an unfair advantage to employers that utilize such arrangements.

“The hourly wage could be lower and include OT as long as the total wage bill is reasonable for that same day. A person's time remains valuable and that concentrated time remains valuable, despite the nature of the job. A person should be compensated appropriately.”

“This makes sense for many remote tourism operators in hunting, paddling, and fishing to legitimize daily rates for guides taking care of guests essentially all of the time. If a bear walks into camp you don’t let the guests fend for themselves because you are “off”. Otherwise enforcing overtime provisions on these kind of operations may force employers to drive down wages to the minimum wage. Or hire fewer guides and just have larger client to staff ratios which is not as safe.”

Equal Pay for Equal Work



What We Heard from Respondents

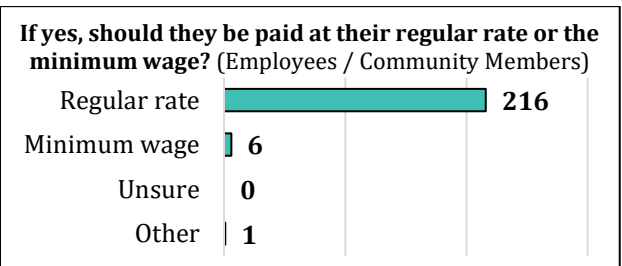
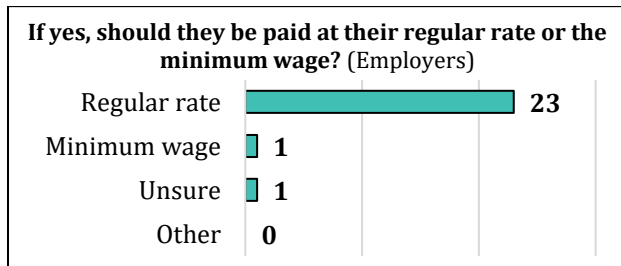
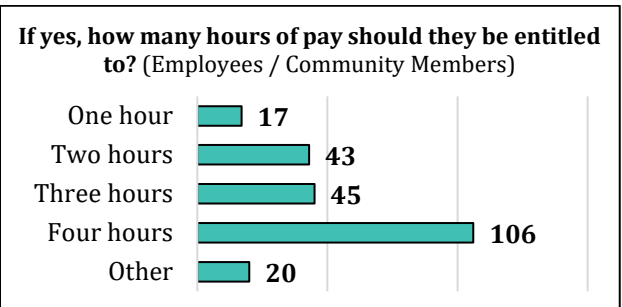
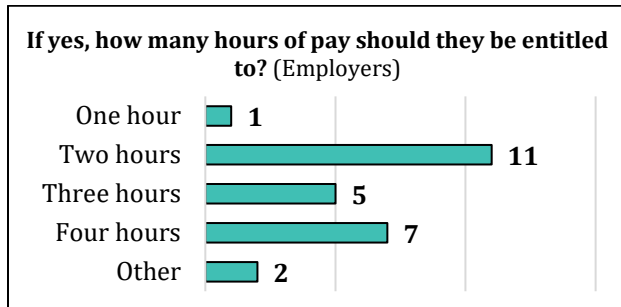
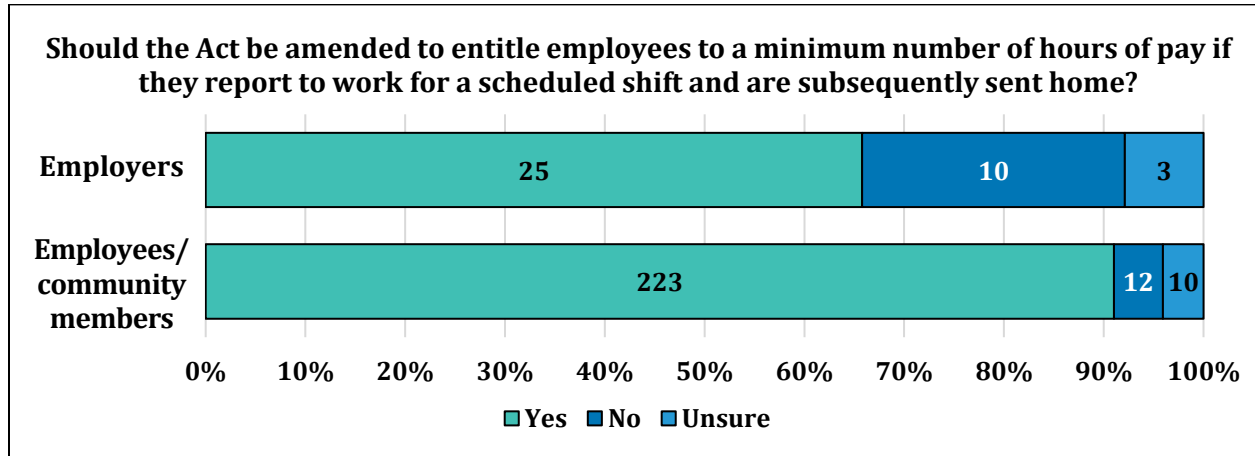
- The majority of employees/community members' comments were in support of addressing equal pay for equal work under the *Employment Standards Act*.
- Both employers and employees/community members stated that consideration needs to be given to performance and/or length of service.
- Both employers and employees/community members expressed concern about including such provisions in the Act because they are already addressed in other legislation, they could create an unmanageable burden on small businesses, or because this is not considered to be a big issue.

"There is an incredible systemic issue with women being underpaid for the same work, due to societal factors that individuals cannot address. A systemic issue requires systemic change, which must come from legislation."

"I support equal pay for equal work, not equal pay for the same job position if the work requirement is not equal."

"Experience, training, seniority, and motivation all play important parts in determining what an employee is paid."

Reporting Pay



What We Heard from Respondents

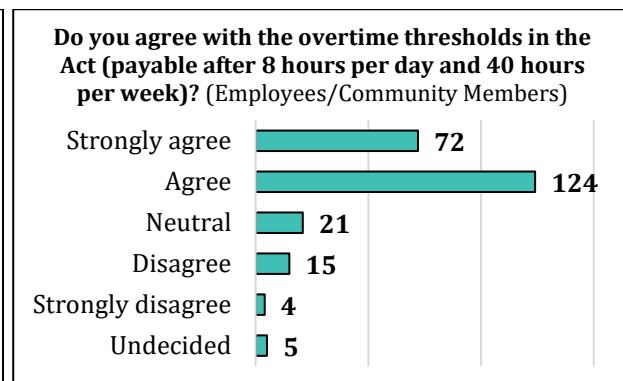
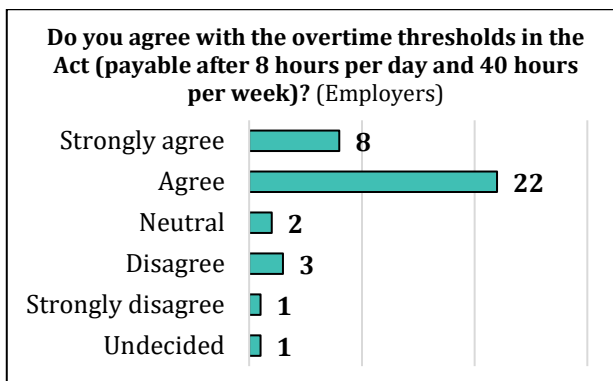
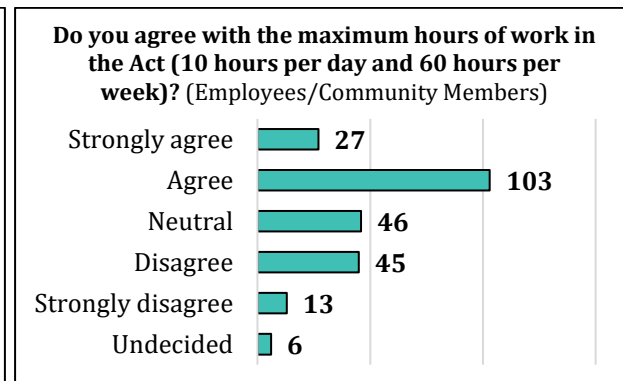
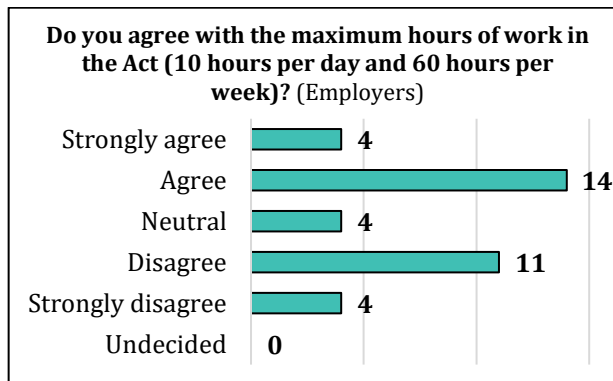
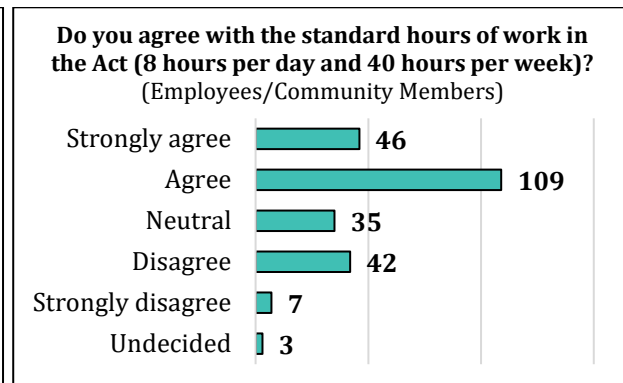
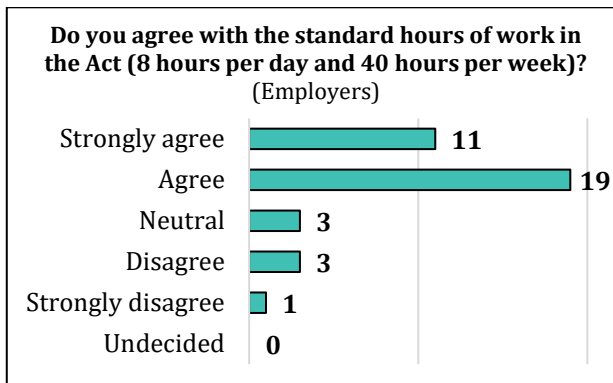
- Employees/community members agreed that workers should be entitled to a minimum number of hours of pay if they report to work for a scheduled shift and are sent home, noting that doing so would encourage employers to schedule and plan properly.
- Several employees/community members indicated that workers should be compensated for half of the length of their scheduled shift.
- Other employees/community members felt that workers should receive a full day's pay.
- Employees/community members agreed that the hours should be paid at the regular rate of pay of the worker.

“If a person is showing up to work and there is no work to do, the employee should be compensated for their effort in showing up to work... to leave the job site empty handed seems unfair.”

- A few employers said that reporting pay would be a financial burden on employers.
- Some employers agreed with reporting pay. However, they thought parameters would be required to ensure employees are not being compensated when they show up to work late and the employer has filled their shift or to ensure it's not being used to require employers to schedule a minimum number of hours per shift.

“Finding a good employee here is already hard [a]nd... giving more burden on employer[s] will not help the economy to grow. Forcing an employer to pay for the undone work seems not right.”

Hours of Work



What We Heard from Respondents

- Most employees/community members commented in support of a reduction in the standard hours of work in the Act.
- Some employers and employees/community members stated that the standard hours of work in a day should be increased to 10 hours per day to allow for a 4-day work week.
- Other employees/community members felt that the maximum hours in a day should be increased to reduce the number of Extended Hours Orders employers would need to apply for, to better suit certain industries/operations, and to give employees the option to work when the work is available.
- Some employees/community members said that the overtime threshold should be reduced, and that overtime should be payable at double time.
- One employee noted that overtime is not being applied properly to salaried workers.
- Employers commented that the standard hours of work should stay the same.
- Regarding the maximum hours of work in the Act, employers stated they should be increased in certain circumstances (i.e., in the construction industry, when a store is doing inventory, during peak season).
- One employer noted that the maximum number of hours do not make sense for employees who work more than one job.
- One employer indicated that the Act should specifically address “fly in, fly out” situations as a large portion of the NWT is employed in this type of work.

“Exclusions for professionals and management/supervisors is a bit backward, in large corps, they are just employees.”

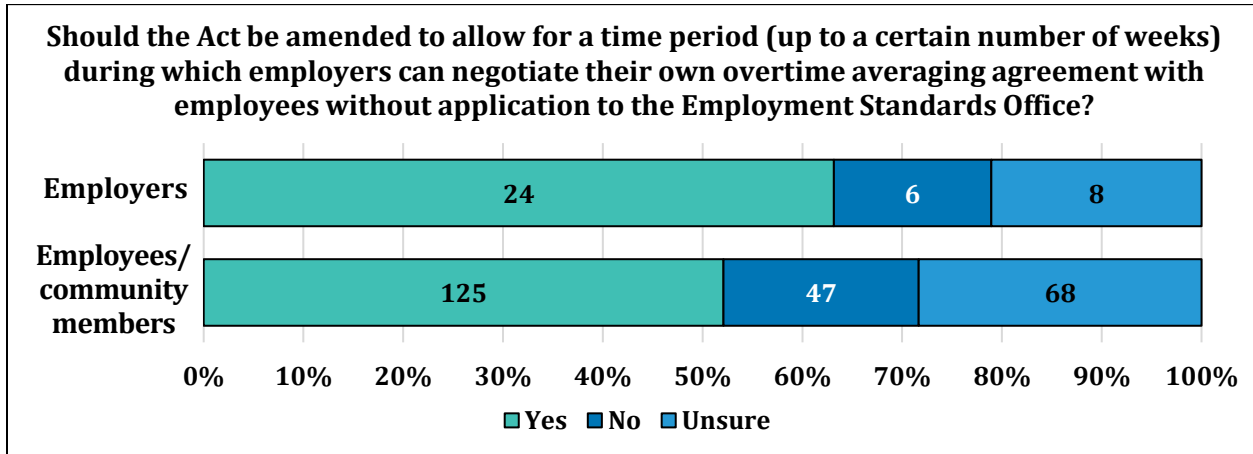
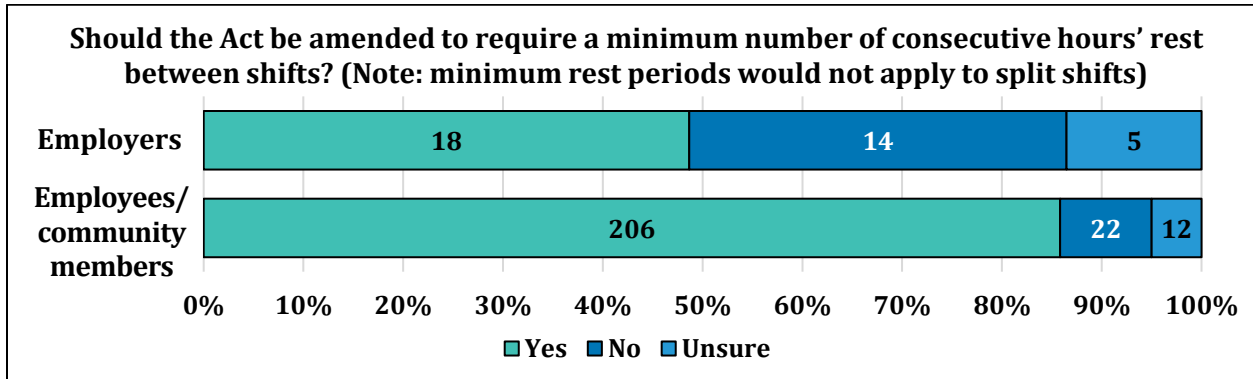
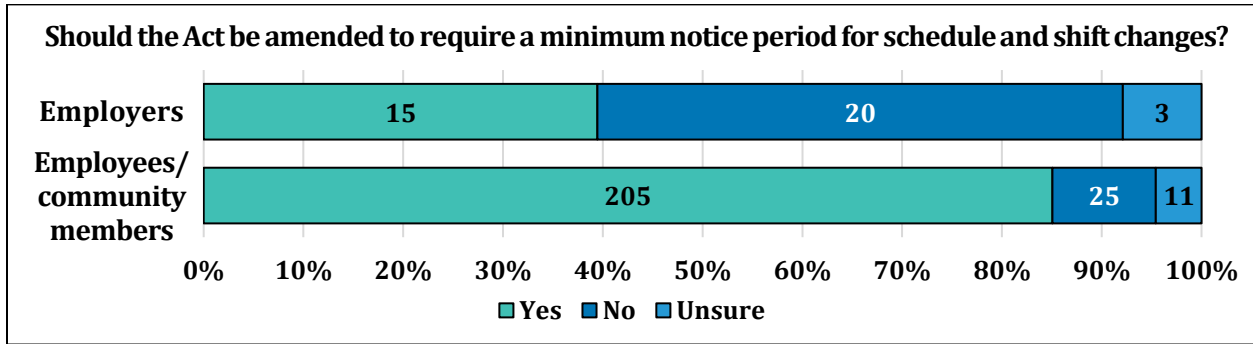
“Most work is seasonal and employees should have the option to work longer hours when they are able.”

“Need to consider flexibility when defining regular work hours and total hours in a regular week. The scale of the NWT, the remoteness of its communities and the composition of the demographics are all factors which position the NWT to be a leader in a shift to a reduced work week.”

“These have been standard and around for a long time. There are a number of headwinds facing businesses right now. To try to reduce these hours would be damaging to say the least. To increase them would be very unpopular with employees.”

“[For people] working more [than] one job... they are already crossing that limit... the act is only restricting [hours of work] for one employer. It would give people more flexibility if they are allowed to work more with one employer only. That way they can also earn overtime pay with the same employer.”

Schedules, Rest Periods, and Overtime Averaging



What We Heard from Respondents

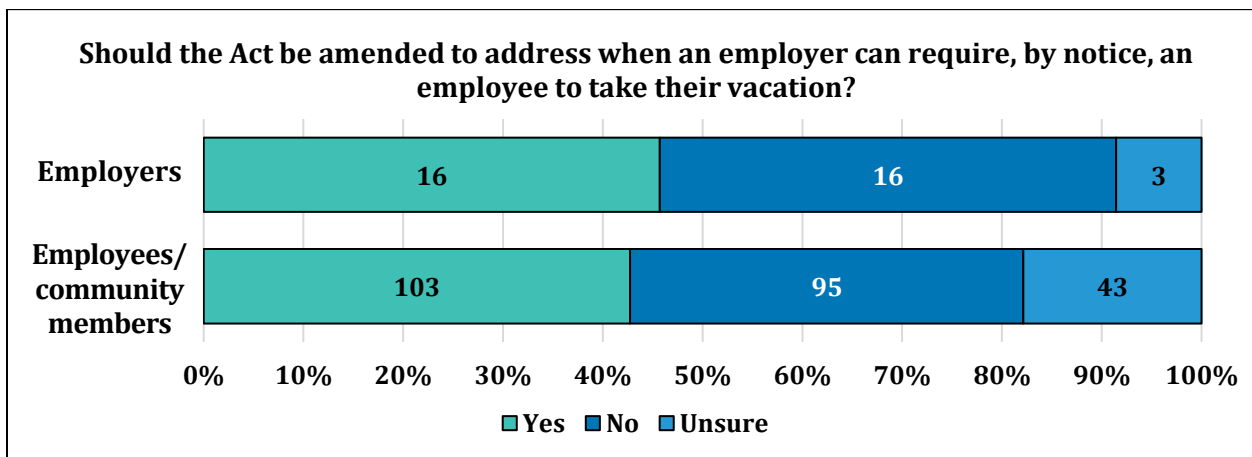
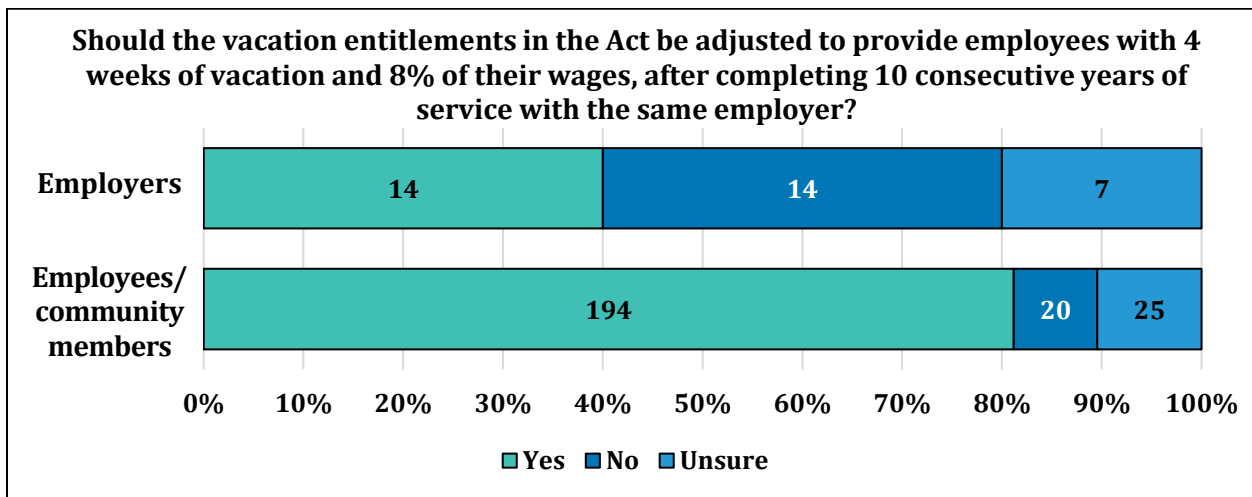
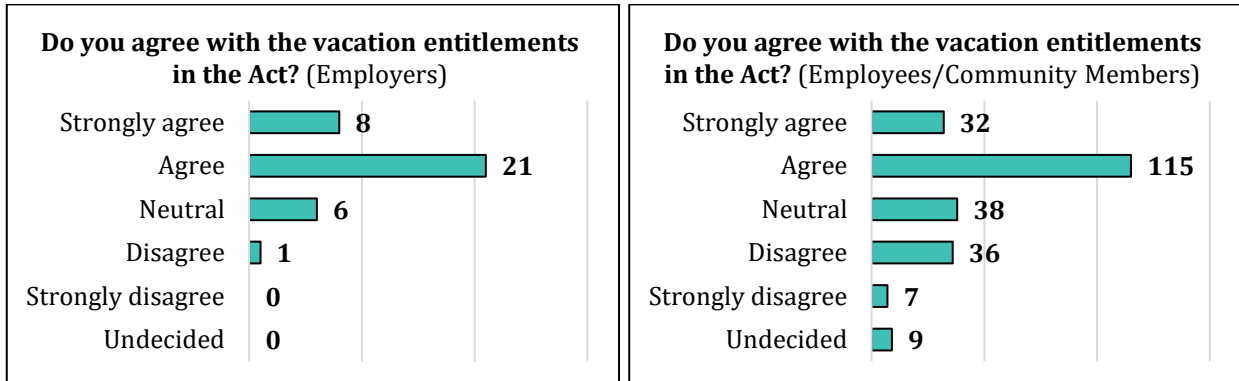
- Regarding minimum notice for schedule changes, employees/community members noted there should be an option for employees to keep their original shift if preferred or try out different schedules.
- Employees/community members were supportive of having a minimum number of hours of rest between shifts; one comment warned that the legislation would have to consider the time change twice a year.
- Employee/community members were split on overtime averaging without application; some thought it would better to allow for compressed work weeks (e.g., 4-day work week), while others thought this type of scheme would only benefit employers.
- Employers commented that if the Act were amended to address minimum notice for schedule changes it would need to take into account when an unforeseen event occurs that requires a last-minute schedule change and when employees agree to shorten the minimum notice period because they want to work.
- Employers supported overtime averaging without application, stating employers should be able to enter into averaging agreements for special circumstances.
- Two employers commented that there needed to be less government regulation in the areas addressed in this section.

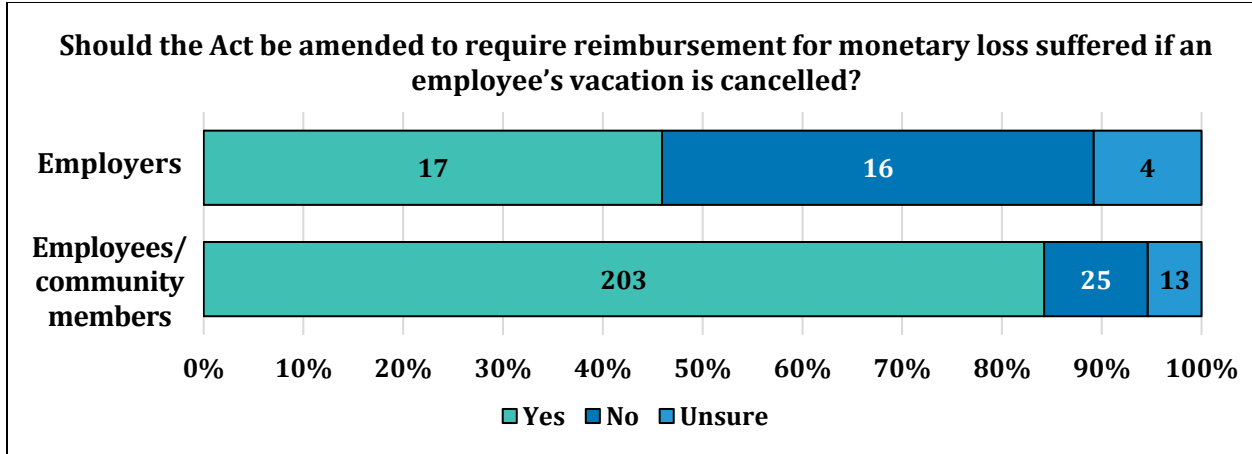
“Employers have all of the power over their employees, and this will just mean employers forcing employees to ‘agree’ to these arrangements or be fired.”

“There are many employees who are starving for work and would likely agree (want) more hours from time to time. Further, we are in a period where there is a significant labor shortage in many industries. I would be cautious about making any changes that may further exacerbate that situation.”

“I just find that we have regulated ourselves out of competitiveness with these sorts of things. Like I said earlier, it used to be an expectation that you worked hard and now there seems to be more of an expectation that you hardly work. We keep regulating ourselves to the hardly work program.”

Vacations





What We Heard from Respondents

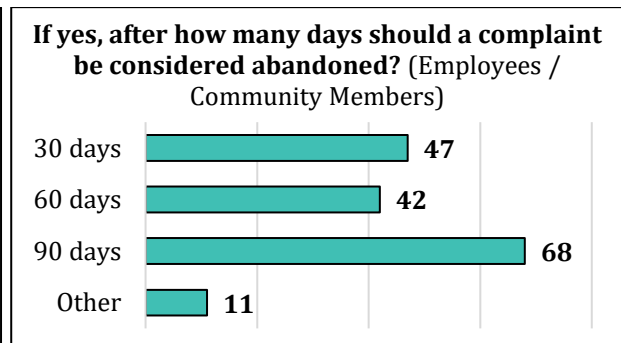
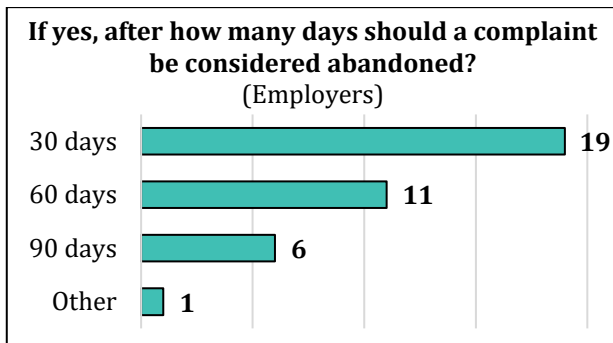
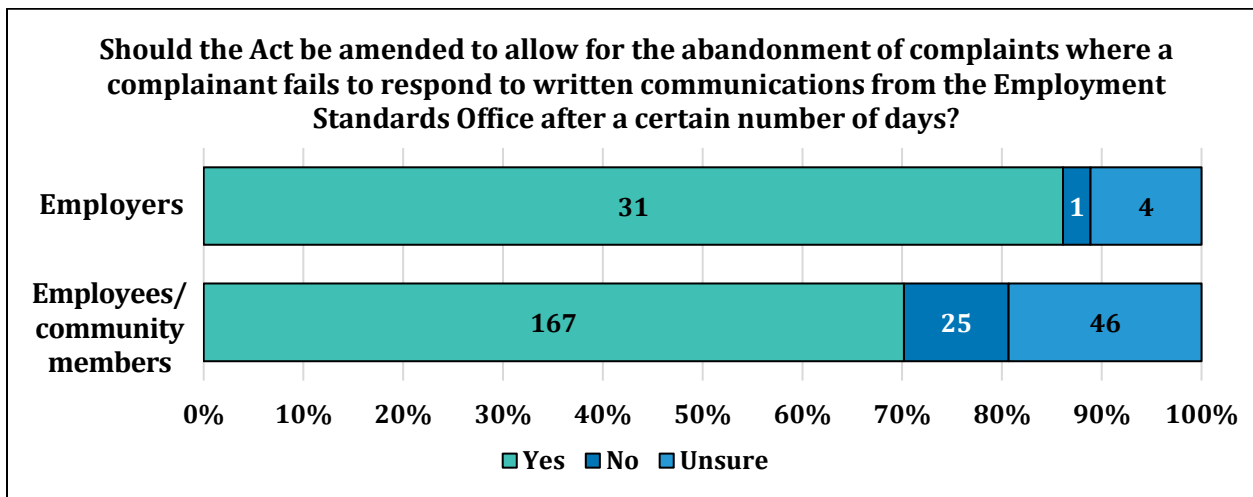
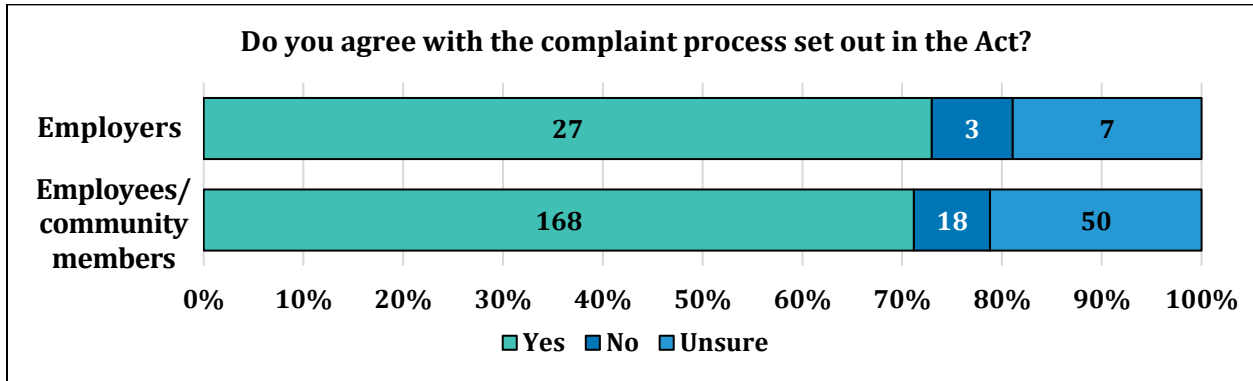
- Employees/community members supported increasing the vacation entitlements in the Act either by reducing the length of service thresholds, increasing the amount of vacation pay/time employees receive, or by doing both.
- Employees/community members commented that they did not think an employer should be able to dictate when an employee takes their vacation.
- Employees/community members agreed with employers having to reimburse employees for monetary loss if their pre-approved vacation is cancelled.
- A few employees/community members noted that employees should have the right to demand that their employer accrue their vacation pay to use when they take their vacation time rather than paying it out on every cheque.
- Employers agreed that they should have to reimburse employees for monetary loss for cancelling a pre-approved vacation. However, one employer commented that they did not think this should be included in the Act.
- One employer stated that, as we live in the North, employees should be allowed to accumulate 2 years of vacation time/pay so they can have a longer vacation with family.

“I believe the employer could incentivize when employees should take their vacation, but they should not be allowed to demand that an employee takes time off in a certain period of time.”

“Allowing an employer to spread vacation pay across paychecks instead of providing an employee with paid vacation days means a lot of workers... don't take vacation days. When it's lumped in with your pay, taking a day off feels more like unpaid leave and it discourages people from taking it... Workers should be able to have the choice to have it spread out, or allocated as paid days off, rather than leaving it up

“Good employers should do the right thing and reimburse those employees and, for long term employees, should offer more vacation, but those are all good business items and not items that should be mandated and made law. Labour laws are in place to protect people, not put in a reward system.”

Complaint Process



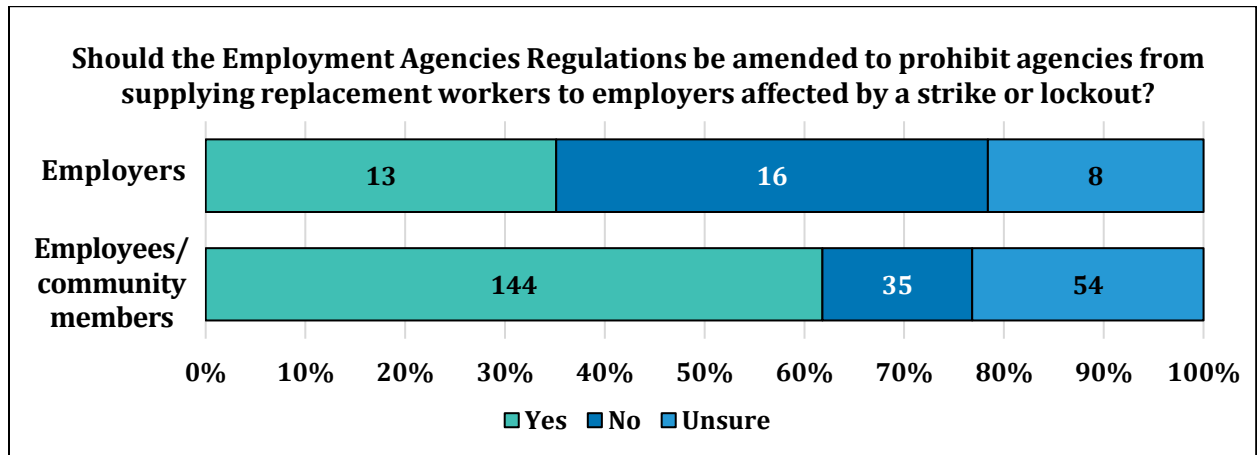
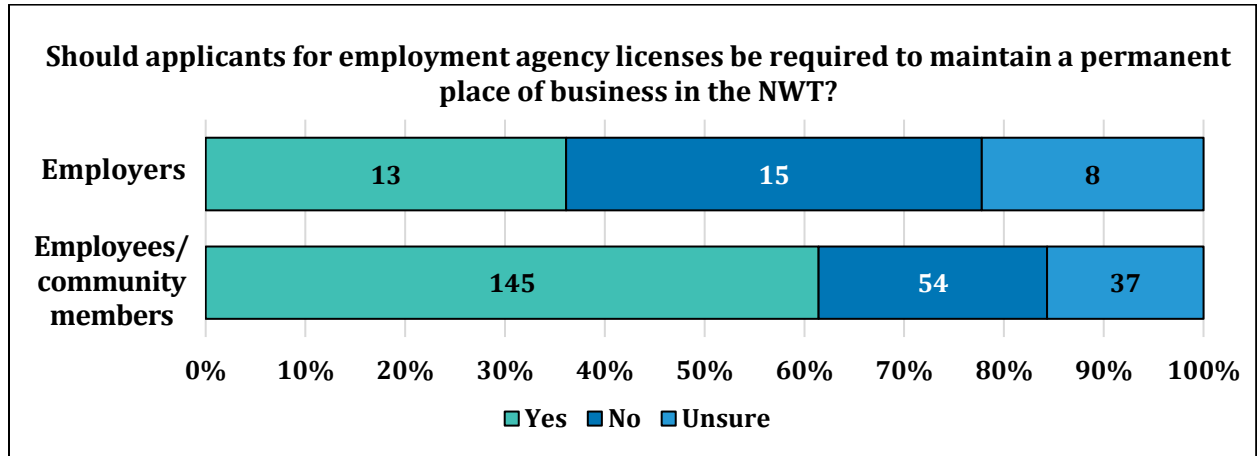
What We Heard from Respondents

- Employees/community members, and one employer, commented that if the Act was amended to allow for the abandonment of complaints there would need to be provisions that require the Employment Standards Office to make reasonable attempts to contact the complainant using different means of communication and to consider exceptional circumstances.

- A couple of employees/community members disagreed with the 12-month limitation period to file a complaint, while other employees commented that the complaint process is too slow and too narrow.

“Consider implementation of mandatory mediation before investigating the complaint.”

Employment Agencies⁸



⁸ One employer pointed out that the information included with the question “Should the Employment Agencies Regulations be amended to prohibit agencies from supplying replacement workers to employers affected by a strike or lockout?” was an incorrect statement of Alberta law. The information that accompanied this question stated, “For example, in Alberta employment agencies are prohibited from sending employees or potential employees to businesses affected by strike or lockout, which may help limit the use of replacement workers.” This was an oversimplification by ECE. Section 14 of Alberta’s [Employment Agency Business and Licensing Regulation](#) states:

When a legal strike or lockout is in progress, no employment agency business operator shall knowingly

- (a) send or assist in sending any person, or
- (b) cause any person to be sent to take employment in place of an employee who is on strike or locked out ***without informing the person of the existence of the strike or lockout.***

What We Heard From Respondents

- Some employees/community members commented that allowing southern agencies to operate in the North harms the local economy and suppresses wages, while some agreed that their services were required but that they should be regulated in some way.
- Several employee/community members, and one employer, stated that employment agencies should not be allowed to supply replacement workers during a strike or a lock out as it undermines the job action.
- Some employees commented that agency fees should be limited.
- One employer thought the *Employment Standards Act* was not the appropriate place to take a position on whether businesses should be able to use replacement workers.

“Maybe there could be a benefit of some sort or incentive for those agencies who have an NWT office.”

“[Employment agencies] often provide incorrect information to the employer... in order to secure much higher hiring fees. This drives the wages up, and costs northern businesses even more. Those harmful practices should be stopped if possible.”