



**THE NEWFOUNDLAND AND LABRADOR EMPLOYERS' COUNCIL'S POSITION
ON ENHANCING THE INTEGRITY OF THE EMPLOYMENT INSURANCE
SYSTEM**

Approved by the NLEC Board of Directors

June 23th, 2011

Introduction

The Newfoundland and Labrador Employers' Council (NLEC) is the lead employer advocacy group in the Province of Newfoundland and Labrador (NL) on matters that affect the employment relationship. Founded in 1982, the NLEC represents an employer membership that employs greater than 50% of all non-government employees in the province.

Major concern with the Employment Insurance (EI) system has emerged in recent discussions with employers in Newfoundland & Labrador. The EI operating account in this country is currently in a deficit and government must find a way to fund the system. The government freeze to EI premiums imposed during the recession has been lifted, and employer and employee premiums increased in 2011. While bringing the system back to a funded position is important for all Canadians, the NLEC does not agree with increasing premiums for employers and employees in order to do so. The research shows that increasing payroll tax, such as EI, has a damaging effect to both employers and employees, including placing a negative impact on both wages and employment levels. Before increasing EI premiums, government must examine the EI system and ensure it is being used as it was originally intended. Based on research and feedback from our membership, the NLEC feels that work can be done to tighten the integrity of the EI system through further investigation and control of claims, resulting in a cost savings to the system.

Management of the EI System is of particular importance to employers in Newfoundland & Labrador. While the economy of the province continues to grow, the unemployment rate is still amongst the highest in the country. The prevalence of seasonal work, combined with rural communities spread over a large geographic area, create a unique set of circumstances that challenge both employers and the EI system. The labour force in this province is shrinking due to an aging population, outmigration and a declining birth rate. While both the provincial and federal governments have developed programs and initiatives to address the tightening labour market, it is equally important to address the impact the EI program, and the use of EI benefits in this province, has on the labour market in Newfoundland & Labrador and the rest of Canada. Improper use of the EI system not only increases the cost of the system, but causes recruitment and retention challenges for employers in a tightening labour market.

Proper management of the EI program is crucial to the economy of Newfoundland & Labrador.

Current State of the EI System

According to the Canada Employment Insurance Financing Board (CEIFB), the EI operating account is expected to have an annual deficit of \$1.9 billion in 2011, and a cumulative deficit of \$10.4 billion by December 31, 2011. Pursuant to the CEIFB Act and amendments to the EI Act, the CEIFB is responsible for “implementing an improved EI premium rate-setting mechanism that will ensure that EI revenues and expenditures break even over time.” Since the implementation, the Federal government decided to overrule the board in 2009 and 2010, opting to keep premiums frozen at \$1.73 (per \$100 of insurance income) during the recession.

On September 30, 2010, Finance Minister Jim Flaherty announced the government would once again supersede the board by setting premiums for 2011 and “subsequent years”. In 2011, the employer EI premium rate increased by seven cents per \$100 of insurable income. Maximum insurable earnings also increased by \$1000, causing the maximum premium for employers to rise by \$55.16 to \$1,101.46.

Impact of Increases in Payroll Tax

The NLEC does not support increases to EI premiums as a way to address the current deficit in the EI operating account. Research shows that any increase in payroll tax will have negative implications on business growth, wages and employment levels.

In a survey conducted by the Canadian Federation of Independent Business (CFIB) in 2007, employers ranked payroll taxes, such as EI, as the form of tax that impacts the growth of their business the most, over corporate taxes, property taxes and sales taxes. Any tax or premium that is tied directly to the payroll of a company will apply negative pressure to salaries and employment levels. In research conducted by the NLEC through Tax on Labour Focus Groups, held throughout the province in 2010-2011, the majority of employers indicated that payroll taxes come directly from

their budget for payroll, meaning that these costs must be factored into any decisions to increase salaries or employment levels.

It is counterproductive for government to place increased tax on an item it hopes will grow. The Federal government must maintain an EI rate freeze and look to other cost saving measures to address the deficit in the EI account.

Use of EI and the Impact on Labour Market Shortages in NL

According to the Canada-Newfoundland and Labrador Labour Market Agreement Annual Plan (2009-10), NL has had a net loss of over 80,000 people over the last 20 years (ages 15-29 years old). In accordance with this out-migration, the province had one of the lowest rates of attraction and retention of immigrants. Employers in NL are experiencing and will continue to experience the greatest shortage of labour in the history of the province.

The NLEC commissioned Corporate Research Associates Inc. (CRA) to conduct a research study on Employment Insurance (EI) in 2009 and it was identified that one of the key areas of concern for employers was an employee's ability to turn down employment while on a claim for EI benefits. Thirty two percent of the persons polled stated the current EI rules inhibit an employers' ability to attract and retain employees, while forty-one percent of those polled stated an employee turned down an offer of employment because they were on an active EI claim. An alarming sixty percent of employers polled stated that an employee had asked for a layoff in order to receive EI benefits.

The EI Act defines EI Benefits as *"temporary financial assistance to unemployed Canadians who have lost their job through no fault of their own, while they look for work or upgrade their skills"*. The results of this survey provide a strong indication that the EI system is being used in ways outside its intended use in this province. The EI system is not to be misconstrued as a secondary source of income. EI recipients cannot dictate when they will return to work, nor can they advise their employer when they wish to finish an employment contract.

Employers struggle with availability issues on a daily basis in NL as some EI recipients feel a sense of entitlement for EI benefits. In conversations with member employers during Tax on Labour Focus Groups, numerous NLEC members shared their frustration with workers who are unavailable for work due to eligibility for EI. According to the Digest of Benefit Entitlement Principles, section 10.1.3, a person's availability for work is described as *“a willingness to accept any offer of employment to which one is suited by skill, training, aptitude or experience and on a willingness to accept working conditions for which there is a demand in the labour market. Since availability is not to be interpreted solely as waiting passively for a job offer, being available also means acting in a way which reflects a sincere desire to work and the inability to find employment.”* EI recipients have been reported to deny offers of employment, postpone start dates, avoid/screen telephone calls, and request layoffs due to EI eligibility.

Although solid evidence exists that EI recipients are failing to comply with the EI Act & Regulations, the EI program continues to have a lack of stringent investigation and control. An employer's only recourse in these situations is to report the worker's fraudulent activity to Service Canada. Employers, however, are hesitant to report situations of an employee's unavailability. Employers fear damaging the employment relationship with employees, especially in rural areas of NL, because they depend on these employees for business sustainability.

In some areas and industries in this province, employers are competing not only with other businesses, but with the EI system for labour. There must be a stronger focus on the correlation between increased labour market shortages and an employee's availability for employment while on an active EI claim. The current EI Act & Regulations state, Section 18 (a), *“a claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was capable of and available for work and unable to obtain suitable employment.”* Contravening the act is a clear and fundamental breach of law.

EI Sickness Benefits

Through NLEC's Tax on Labour Focus Groups and employer inquiries, employers also report significant challenges with EI sickness benefits. Pursuant to the simplification process established in 2007, EI applicants are no longer required to submit medical documentation for benefits payable up

to 8 weeks. NLEC members recount situations where employees state they are ‘off for an indefinite period of time’, with no medical documentation providing functional abilities, however after the maximum 8 weeks payable (without a medical note) have been issued, the employee recovers and returns to work with no medical limitations. This lack of documentary evidence has caused increased financial strain on businesses in NL, as employers face difficulties dealing with employees who are absent for extended periods of time. As a result of minimal amounts of information exchange between employees, employers, and Service Canada, employers are left with uncertainty, stress, and recruiting, training and financial implications.

As with the unavailability issue, employers face challenges in managing an EI sick claim and maintaining a positive relationship with their employee. The lack of documentary evidence required by Service Canada creates little incentive for employees to return to work, or adhere to an employer’s attendance management policies, during the first 8 weeks of an EI sickness claim. The NLEC recommends that Service Canada explore implementation of a case management model, similar to that used by worker’s compensation boards and long-term disability providers, to facilitate a worker’s timely return, and connection to, the workplace.

The Need for Increased Communication, Investigation, Fact Finding and Control

Employers cannot act as regulators and investigators for the EI system. It is important that they maintain a positive relationship with their workforce in order to meet labour demands in a tightening labour market. Service Canada has a responsibility to increase their investigation and control of EI claims in order to ensure the system is being used as it was intended. This increased investigation and control would result in cost savings to the system, and address employer issues specified above. Employers have also expressed a lack of communication and access to information between Service Canada and the employer when dealing with EI claims. Increased investigation and due diligence within the system would help the employer facilitate attachment to the workplace in regular EI recipients.

Service Canada initiatives such as Claimant Information Sessions, claim monitoring reviews, fact-finding sessions, provision for documentary evidence, and investigations have been viewed by

employers to be helpful in curtailing the misuse of the EI program in this province. These activities seem to have decreased since the simplification process and the recent economic recession. While the NLEC understands the need for simplification of EI claims processing, it is important to maintain stringent investigation, fact finding and control within the EI system.

Conclusion

While bringing the EI operating account back to a funded position is important for all Canadians, the NLEC does not agree with increasing premiums in order to do so. Increasing payroll tax has negative implications for salaries and employment levels, and will not address the challenges seen within the EI system by the employer community. Addressing these challenges through greater investigation and control will not only create cost savings within the EI system, but will help address labour market challenges in Newfoundland & Labrador.

The NLEC firmly believes that there should be a stronger focus on the investigation and control of EI claims. Given the vast increase in EI claims from 2008-2010, due to the economic recession, it is essential to verify that all EI clients are abiding by the EI Act. While simplification improves the speed of pay and ensures EI clients are not bothered by cumbersome questions, Service Canada must increase their due diligence to ensure individuals are adhering to legislation. To ensure compliance Service Canada must evaluate ways to continue with stringent investigation, communication, and controls within the EI system.

In summary, NLEC makes the following recommendations:

- 1) *Maintain an EI rate freeze to allow for business growth, increases in wages and employment levels;*
- 2) *Enhance the integrity of the EI system by exploring avenues such as increased investigations, more Claimant Information Sessions, increased communication between Service Canada and stakeholders and claimant documentation. This increased integrity would increase cost savings within the EI system, decrease the likelihood for EI fraud, and assist with labour market shortages in NL.*