



December 15, 2017

The Hon. Kevin Flynn
Minister of Labour
Ministry of Labour
400 University Avenue
Toronto, ON M7A 1T7

RE: Consultation on *Employment Standards Act* and *Labour Relations Act* Exemptions specific to Managers and Supervisors

Dear **Minister Flynn**,

Thank you for the opportunity to comment on the government's review of the exemptions and exclusions under the *Employment Standards Act (ESA)* and the *Labour Relations Act (LRA)*. The Ontario Restaurant Hotel and Motel Association (ORHMA) is submitting comments to you regarding exemptions for Managers and Supervisors as this impacts Ontario's restaurants, hotels and other accommodations.

The ORHMA and our membership have been actively engaged in addressing the impacts of the Province's *Fair Workplaces, Better Jobs Act (Bill 148)* and its effects on our industry. The legislation coming into force contains a range of costly amendments to the province's *Employment Standards Act (ESA)* and the *Labour Relations Act (LRA)*, including changes to minimum wage compensation, increases to paid vacation, overtime pay, personal emergency leave extended to all employees, employee misclassification, paid "on call" shifts and termination of assignment.

Currently under the ESA, managerial and supervisory employees are exempt from daily and weekly limits on hours of work, daily rest period rule, time off between shifts rule, weekly/bi-weekly rest period rule, and overtime pay. Your government contemplating casting a wider net for those who have not been entitled to key provisions under the *Employment Standards Act (ESA)* including hours of work, overtime and rest periods will have a major impact that will disrupt business in the hospitality industry.

The exemptions exist because past governments have acknowledged that a particular position or profession presents certain scheduling and workload management difficulties. Prior to amending the current exemptions, the government should be mindful to consider whether those scheduling and workload management difficulties exist, whether the elimination of the exemptions would create an impossible situation for employers, and to what extent are the employees otherwise protected. ORHMA and our membership believe that the current exemptions regarding managerial and supervisory employees should remain in place however, the current definition "persons whose work is supervisory or managerial in character and who perform non-supervisory or non-managerial tasks on an irregular or exceptional basis" is already very broad.

ORHMA's RECOMMENDATIONS:

Defining the Manager / Supervisor Role: It is challenging to determine the precise duties for all managers and supervisors. The government should consider the need to better define what activities might define the "character" of the job. The list is long and not necessarily all inclusive for all supervisory and or managerial roles. In our industry they plan, direct, assign, select, lead employees on behalf of their employer. They also have codified duties for safety (training and enforcement) under the Ontario Health and Safety Act; they assess the quality of work; generally, evaluate performance; scheduling time off and covering employee vacations. They are the first in line of defense for employee complaints and have team and champion lead roles for a variety of tasks. Even though many are responsible for hiring, terminating and disciplining employees others participate in performance reviews and overall recommendation roles. Furthermore due to various empowerment levels in different work places the supervisors and managers role varies to the degree of decision making and involvement. Overall the definition should allow flexibility.



With regards to linking the salary threshold to the general minimum wage we are concerned that this does not provide an appropriate point of reference as this can create an artificial exemption simply by changing the salary. Mandating or dictating what a manager salary should be based on minimum wage takes away earning abilities from the employees and it will impact their growth opportunities with existing employer.

What makes an employee a manager or supervisor should not be defined based on what is earned as this is market driven but rather by the duties performed and the job's responsibilities. The salary for managers and supervisors should not be subject to minimum wage rules and should remain covered under the ESA exemptions. Ontario's hospitality industry should have the flexibility to determine how they compensate managers and supervisors within their businesses. The Changing Work Place Review notes that "setting the rate too high may cause difficulty for some sectors, where genuine managerial employees are not well paid because of the overall level of wages in that sector." We believe dealing with this on a sectorial basis will create significant challenges. It is also important to note that compensation is not just a monetary value but many in our industry offer free and or discounted meals, educational funding, leadership opportunities and other perks for their managers and supervisors.

If changes to the exemptions are deemed necessary, the ORHMA strongly urges your government to conduct a complete economic impact analysis of potential change to the exemptions as well as comprehensive evidence-based research into the actual need for changing such exemptions.

The ORHMA would also urge your government to phase in any exemption changes after January 1, 2025 as our industry is already under significant pressure to meet coming into force dates contained in Bill 148.

CONCLUSION: Making the definition of managerial and supervisory employees overly prescriptive or removing the current exemptions for this occupation in haste and without proper analysis could have detrimental unintended consequences both to businesses and to their employees. Employees may be restricted in helping when demand calls for it or employees may not be promoted in a timely manner and hurt career paths.

If any changes must be made in any capacity to the current exemptions, these changes should be examined and be evidence-based and phased in after January 1, 2025 which would allow more time for consultations with stakeholders to ensure that any changes to the current exemptions do not contain unintended consequences for Ontario's hospitality industry or our economy.

The ORHMA believes the current definition in a complex role is clear and captures the right group of employees and should be kept unchanged.

The ORHMA will continue to work with you and your government ensuring that Ontario businesses and their employees truly have growth opportunities.

Yours truly,

A handwritten signature in black ink, appearing to read "Elenis", is positioned below the "Yours truly," text.

Tony Elenis
President & CEO
Ontario Restaurant Hotel & Motel Association

cc: Premier Wynne