



**Canadian  
Franchise  
Association®**

**Growing Together**

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Precarious Worker Strategy  
Ministry of Labour  
Government of British Columbia

VIA EMAIL: [precariousworkstrategy@gov.bc.ca](mailto:precariousworkstrategy@gov.bc.ca)

**RE: PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS FOR APP-BASED RIDE HAIL AND FOOD DELIVERY WORKERS IN BRITISH COLUMBIA (BC) DISCUSSION PAPER**

Dear Sir/Madam:

The Canadian Franchise Association (CFA) welcomes the opportunity to respond to the British Columbia Ministry of Labour (MOL) discussion paper "*Proposing Employment Standards and Other Protections for App-Based Ride Hail and Food Delivery Workers in British Columbia.*" As the government regulates new areas, the CFA wants to work with the government to avoid unintended consequences that could negatively impact the franchise industry. Any changes to the BC Employment Standards Act must be written to ensure that benefits meant to apply to app-based workers do not extend beyond those workers and impact franchisors or franchisees.

The presence of app-based ride-hailing and food delivery is a benefit to the people of British Columbia. It benefits workers, who are able to make money at the time and place of their choosing. It benefits customers who utilize food delivery and ride-hail services. It also benefits restaurants and related businesses that use the platforms to have their products delivered to customers.

Many of these restaurants belong to franchise brands recognized across Canada and throughout the world and are owned and operated by franchisees who live and work in local communities. A local franchise business owner is in business for themselves, but not by themselves. By buying a franchise, the local franchisee gains access to a proven business concept, brand, and processes while running their own small business. In addition, the franchisor provides the franchisee with ongoing support and assistance to ensure the long-term success of the franchise, which leads to the long-term success of the franchise system as a whole. The strength of the franchise model lies in this foundational franchisee-franchisor relationship.

Any proposed amendments to employment standards must ensure that neither the franchisees (e.g., restaurants) who use the platforms, nor their franchisors are deemed to be the employer of platform operators' delivery driver workers. It is the platform operators' responsibility to ensure minimum standards are met. That responsibility and any corresponding obligations should not be passed on to restaurant franchisees or franchisors who are customers and users of the platform, not employers of the workers. In addition, any proposed amendments to employment standards must not inadvertently misclassify franchisees as employees.

The CFA also believes that this consultation is an opportunity to clarify the franchisor-franchisee relationship. The CFA has adopted the four-factor test to assist government in determining whether a common employer relationship exists between a franchisor and franchisee.

As the representative of franchising in Canada for more than fifty years, the CFA works with governments across Canada on issues that affect the franchise industry and small businesses. Please do not hesitate to contact the CFA to discuss this submission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sherry McNeil". The signature is fluid and cursive, with the first name "Sherry" being more prominent than the last name "McNeil".

Sherry McNeil  
President and CEO  
Canadian Franchise Association

## **Background on the Canadian Franchise Association (CFA)**

The CFA is a national, not-for-profit organization of more than 600 corporate members representing over 40,000 franchise business owners.<sup>1</sup> Canadian franchises contribute approximately \$120 billion per year to the Canadian economy and create jobs for almost 1.9 million Canadians. Accommodation and food services make up \$32.5 billion of that amount.<sup>2</sup>

CFA members represent a diverse cross-section of businesses and are from over 60 industries in Canada. CFA members range from very large, established franchise systems to smaller or emerging franchise brands. CFA members include a large number of franchises in the restaurant industry – from large national or international chains to more local smaller-scale restaurant franchises.

In British Columbia, in 2023 it is projected that there are 9,865 franchise establishments which will contribute \$17.5 billion to the nominal GDP of the province and create 255,500 jobs.<sup>3</sup> British Columbia franchises will contribute an estimated \$4.07 billion in federal and provincial tax revenue in 2023.<sup>4</sup>

Changes to employment standards for app-based ride-hail and food delivery workers will directly impact CFA members across British Columbia.

## **Who is Responsible for Ensuring Employment Standards or Other Protections?**

The CFA submits that any legislative amendments should clearly specify who is responsible for providing employment standards or other protections to the app-based food delivery and ride-hail workers who utilize platforms. Should app-based workers become entitled to minimum standards as independent contractors pursuant to legislative amendments, it is the platform operators who ought to be responsible for the provision of the minimum standards to workers, not the franchised restaurants who are users of the platform.

Alternatively, if these workers are employees, they are employees of the platform operators, not the restaurants who use the platform.

The CFA urges the Ministry to not “overreach” on any definition of worker classification. If not carefully considered and worded it could have an inadvertent impact on the franchisor-franchisee relationship. It is critical that the franchisee-franchisor relationship remains as is – that a franchisee is a separate independently run business from the franchisor.

## **Franchisees Are Not Employees Nor Should They Be Inadvertently Captured as Workers by Any Legislative Amendments**

Whether a business structure constitutes a franchise in British Columbia is determined by whether that business structure falls within the definition of a “franchise” under the British Columbia Franchises Act.<sup>5</sup> Intrinsic to the definition of a “franchise” is the exercise of significant control by the franchisor over the franchisee’s method of business operation.

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<sup>1</sup> Canadian Franchise Association, “About the Canadian Franchise Association” online: <https://cfa.ca/about-cfa-2/>

<sup>2</sup> Canadian Centre for Economic Analysis, “Canadian Franchise Industry Economic Outlook 2023” (April 2023), online: Canadian Franchise Association [https://issuu.com/franchisecanada/docs/cfa\\_economicoutlook\\_2023?fr=s0ThmYzc0Mik](https://issuu.com/franchisecanada/docs/cfa_economicoutlook_2023?fr=s0ThmYzc0Mik) at p 9 Table 4 [Canadian Franchise Industry Economic Outlook 2023]

<sup>3</sup> Canadian Franchise Industry Economic Outlook 2023 at p 8 Table 2

<sup>4</sup> Canadian Franchise Industry Economic Outlook 2023 at p 8 Table 3.

<sup>5</sup> SBC 2015, c 35, s 1 (1).

If the Ministry creates or utilizes any test to determine whether app-based workers are employees, it is likely that that test will include a consideration of the level of control exercised by the putative employer over the app-based worker. Any such test must be cognizant of the exercise of significant control by franchisors over the operations of their franchisees and not inadvertently deem franchisees to be employees or to otherwise characterize franchisees as workers that are subject to any protections given to app-based workers.

The CFA further calls on the Ministry to protect the franchisor-franchisee relationship by changing the definition of employee to specifically exclude franchisees from the definition of employee, to recognize that a franchisee is not the employee of their franchisor. The legislation should reflect the reality that being a franchisee is about being in business for yourself, although not by yourself.

### **A Four-Factor Test to Determine Whether a Common Employer Relationship Exists Between a Franchisee and Franchisor**

In order to assist in ensuring clarity, the CFA suggests that a four-factor test be legislated to determine whether a common employer relationship exists between a franchisee and a franchisor.

The concept of a common employer allows courts and administrative decision-makers to treat separate legal entities as a single employer for the purposes of attaching liability for things such as wages, vacation pay, benefits, termination notice, and wrongful and constructive dismissal.

The CFA recommends the Ministry take this opportunity to adopt a clear test to determine who is the employer between a franchisee and a franchisor. This clarity will assist both employees and employers by bringing certainty to the determination of who the employer is in a franchise relationship. In general, it is the franchisee, not the franchisor, who carries the hallmarks of the employment relationship.

Franchising is a contractual business relationship whereby the franchisor allows an independent business owner, the franchisee, to use the franchisor's branding, business model and other intellectual property. Typically, the franchisee agrees in return to pay an upfront franchise fee, plus ongoing royalties to the franchisor.

The most common type of franchise arrangement is the business format franchise. In this model, the franchisor allows the franchisee to do business using their trademarks and business model in exchange for fees and, typically, a recurring percentage of sales revenue. Franchises under this model are operated in accordance with the franchisor's standards.

While a franchisor requires its franchisees to meet system standards to maintain consistency in products, services and customer experience across the franchise system, this control does not extend to determining the essential terms and conditions of the employment relationship between a franchisee and its employees.

Franchising is a unique licensing model that allows individuals interested in starting their own business the opportunity to do so with support by an existing franchise system. Much of the success of the franchisor and franchisee rely on the consistent application of system standards set out above and the preservation of the franchisor's "brand". Franchisees invest in, own, and operate their business "for themselves, but not by themselves", as they operate under the rules prescribed by the franchisor's "system".

Employment law can penalize franchisors for establishing control mechanisms to protect their intellectual property and enforce standards that protect the brand to ensure that products/services within the franchise network meet customers' expectations everywhere. The law can be interpreted such that

franchisors create a joint employment relationship with the franchisee with respect to the franchisees' employees by exercising control over system standards, trademarks and intellectual property.

There needs to be clarity in employment law on this issue so franchisors can protect the intellectual property of their brand while at the same time protecting the position of franchisees as independent business owners. The law should be clear that while franchisees follow a franchisor's systems and guidance and leverage ongoing support, they remain the owners of the business and employers of their staff. While a franchise agreement requires that a franchisee follow brand guidelines and standards, they remain in control of the business within the parameters of the franchise agreement.

In light of the above, the CFA proposes the following test for determining whether a franchisor is an employer of a franchisee's employee:

**Does the franchisor:**

- 1. Hire or terminate the employee;**
- 2. Supervise and control the employee's work schedule or conditions of employment;**
- 3. Determine the employee's rate and method of payment; and,**
- 4. Maintain the employee's employment records.**

A franchisor that does not engage in this activity should not be considered a joint employer of the franchisee's employees in the context of a franchisee-franchisor relationship.

This type of provision is not unique. There are many jurisdictions in the United States that have enacted similar provisions to provide that a franchisee is not an employee of their franchisor, and a franchisee's employees are not employees of the franchisor.

The process for clarifying the standard began in 2015 in Louisiana and Texas. In 2016, six states enacted similar language, in 2017 nine more states enacted such laws and one more state did the same in 2018. The states are as follows:

Alabama	(2017)	North Carolina	(2017)
Arizona	(2017)	North Dakota	(2017)
Arkansas	(2017)	Oklahoma	(2016)
Georgia	(2016)	South Dakota	(2017)
Idaho	(2018)	Tennessee	(2015)
Indiana	(2016)	Texas	(2015)
Kentucky	(2017)	Utah	(2016)
Louisiana	(2015)	Wisconsin	(2016)
Michigan <sup>6</sup>	(2016)	Wyoming	(2017)
New Hampshire	(2017)		

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<sup>6</sup> For instance, and as an alternative, the Michigan Worker's Disability Compensation Act of 1969 now provides as follows:

418.120 Employee of franchisee as employee of franchisor. Sec. 120.

An employee of a franchisee is not an employee of the franchisor for purposes of this act unless both of the following apply:

- (a) The franchisee and franchisor share in the determination of or codetermine the matters governing the essential terms and conditions of the employee's employment.
- (b) The franchisee and franchisor both directly and immediately control matters relating to the employment relationship, such as hiring, firing, discipline, supervision, and direction.

An amendment ensures that a franchisor can act in the best interest of protecting their brand and trademark without the risk of being found to be a common/related employer. It will bring much-needed clarity to franchising in British Columbia and allow for continued growth, job creation and new franchise systems entering British Columbia.

## **Response to Discussion Questions**

The CFA believes in the fair and equitable treatment of all independent contractors, employees, and app-based workers. The continued viability of the industry is beneficial to many British Columbian workers, customers, and businesses. In contemplating proposed benefits for app-based workers, it is important to recognize that these workers have a contractual arrangement with app-based platforms and not with businesses that use those platforms. Any legislative amendments should preserve that connection and not create any new responsibility for those workers by the businesses using the platforms.

### **1. Determination of Minimum Wage**

The CFA does not have an opinion on whether a minimum wage should be determined on an engaged or unengaged basis.

### **2. Work-Related Expenses**

The CFA does not take a position on this issue.

### **3. Tips**

The CFA's members, restaurants who use the platforms, are not contracting with the workers in question. Thus, the CFA does not take a position on how tips should be addressed in the app-based work industry. This is an issue best addressed between the platform operators and the workers.

### **4. Pay Transparency**

For the reasons outlined above in response to Question #3, the CFA does not take a position on this issue.

### **5. Destination Transparency**

For the reasons outlined above in response to Question #3, this is an issue best addressed by the platform operators and workers.

### **6. Account Suspensions, Deactivations and Terminations**

The CFA believes that the issue of account suspensions and deactivations is an issue between app-based workers and platform operators. Therefore, the CFA does not take a position on this issue.

### **7. Workers' Compensation and Occupational Health and Safety Coverage**

The CFA believes that the issue of workers' compensation and occupational health and safety coverage is an issue between app-based workers and platform operators. Therefore, the CFA does not take a position on this issue.