



# Enforce Employment Standards

Unpaid wages. Unpaid overtime. No vacation pay or public holiday pay. With an estimated 1 in 3 employers breaking the employment standards law, all too many Ontario workers are facing lawless workplaces.<sup>1</sup>

The government's current commitment to workplace inspections means that companies have a less than 1% chance of ever being inspected to make sure they are following the law.<sup>2</sup> The onus is put on workers who have the least power to enforce basic minimum labour standards.<sup>3</sup> Most can't do that while they are on the job. So workers are forced to put up with substandard conditions or leave the job. The barriers to pursuing rights through the Ministry of Labour means that most workers shoulder the costs of unpaid wages and job loss.

For the few workers that do come forward, there is no guarantee that wages will get paid. The government failed to collect over \$59 million in workers' wages over the past three years.<sup>4</sup> But that's just the tip of the iceberg – most employers are never reported by workers who are afraid of losing their jobs.

When employers are found in violation, they only have to pay what they should have in the first place. 98% of employers found guilty face no fine or prosecution.<sup>5</sup> What's worse, the government does nothing to make the employer follow the law for all its other employees. So violations continue and employers feel even more confident that they can break the law.

Unpaid wages and legal entitlements, forced off the job by employers who break the law. There are huge costs to workers, our families and our communities.

*"Some cooks at our pizza restaurant worked 80 hours a week – no overtime pay. Some waiters earned less than minimum wage. Our pay was always late. Bounced cheques were met with empty promises.*

*I was owed over \$4,000 in wages by the time I was fired for asking for my pay. I almost lost my apartment. I found out I wasn't alone. This has been going on since the beginning of 2005. Worker after worker has gone to the Ministry of Labour to force the owner to pay hard-earned wages. But nothing happens. No pay for us and no penalty for the boss.*

*Over the past two years, the government has ordered the owner to pay over 15 workers over \$59,000 in unpaid wages – but has done nothing to make the owner pay. We are without our jobs, but the restaurant is still open, making money. This is not right." Joe*

<sup>1</sup> A government survey of federally regulated employers found that 25% of employers were in widespread violation and 50% were in partial violation of the federal labour code. Human Resource Development Canada, "Evaluation of Federal Labour Standards" (Phase I) Final Report, August 1997 p. 41. The rates of non-compliance in Ontario can only be higher due to the larger percentage of small employers, sub-contracting and precarious organization of work and lower union density in provincially regulated workplaces. .

<sup>2</sup> There are only 20 inspectors to cover 350,000 employers in Ontario and protect over 6 million workers that rely on the ESA. The Liberal government increased inspections to 2,500 per year but that is only an increase from a 0.1% to 0.6% chance that an employer will be inspected. This dismal record compares to the Health and Safety Branch that conducts 35,000 inspections per year – that's 10% of Ontario employers.

<sup>3</sup> The Provincial Auditor concluded that the Ministry of Labour focus its efforts almost entirely on individual complaints, leaving currently employed workers with inadequate protection. Office of the Provincial Auditor of Ontario, 2004 Annual Report. P 239.

<sup>4</sup> Compiled from 2002-03 to 2004-05 Fiscal Year Reports, Employment Practices Branch, Ministry of Labour

<sup>5</sup> See for instance Fiscal Year Reports, Employment Practices Branch, Ministry of Labour and Ministry of Labour Website, "Employment Standards Report Card" <http://www.labour.gov.on.ca>

# Ontario Workers Need Fairness at Work -- we need effective enforcement of employment standards in all our workplaces.

## What does effective enforcement mean?

### 1) Employers who break the law must be caught:

- We need a commitment to hire 100 employment standards officers for proactive enforcement of labour standards. Employment Standards have been under funded for years.
- Conduct employment standard inspections in at least 10% of Ontario workplaces. This is currently being done by the Ministry of Labour's other branch, Health and Safety.

The majority of government resources are currently being spent on investigating individual complaints against former employers<sup>6</sup> which is a small number of the workers who face violations on a daily basis. The majority of Ontario's 6.2 million workers rely on the Employment Standards Act. With estimates of 1 in 3 employers (over 100,000 workplaces) violating the ESA, the 15,000 average annual claims represent a minute fraction of total employees whose rights are being violated and who are owed unpaid wages.

- Improve efficiencies and effectiveness. Over 75% of claims confirm employer violations<sup>7</sup>. When a worker makes a claim, extend the investigation to cover all employees. Further, issue compliance orders to require the employer to follow the law for all employees.

### 2) There must be a cost to breaking the law.

- **Fine all employers who break the law, regardless of whether there is a settlement with the employee.** The role of the government is to enforce minimum labour standards not broker settlements. Over 80% of claims are settled without an order being issued by the Ministry against the offending employer. This is a problem for workers:
  - Workers with no legal representation<sup>8</sup> and little bargaining power may feel forced to settle
  - Settlements at the Ministry of Labour are generally for less than the law would call for – this lowers the floor of standards
  - As at least 75% of claims confirm that the boss has broken the law, settlement is a way out for employers. There are no penalties, no fines, no record of violation orders when the next employee comes forward. Employers reduce the risk of being detected as a repeat offender by settling.
- **Prosecute all repeat offenders and employers that do not comply with orders to pay unpaid wages.**
  - 99.9% of employers found in violation of the law faced no prosecution in the past 3 years. Yet there were only 41 prosecutions between 2004 and 2006. Only 2.5% of employers in violation of the law faced a ticket of just over \$340 – no real cost to breaking the law.

### 3) Workers should get their unpaid wages and entitlements

- Prosecute companies and directors of companies in all cases of unpaid wages.
- Establish an employer-paid wage protection plan to ensure workers wages are paid
  - Only 40% of employers, on average, voluntarily comply with government orders to pay unpaid wages. After that, things go from bad to worse for workers. Over \$59 million in wages the government ordered employers went unpaid between 2002/03 and 2004/05. That's a dismal collection rate of 41%.

<sup>6</sup> Most claims for violations are filed by workers after they have left the job.

<sup>7</sup> See Fiscal Year Reports, Employment Practices Branch, Ministry of Labour.

<sup>8</sup> There are no legal aid certificates for Employment Standards and labour issues. Very few legal aid clinics represent low waged workers in employment standards matters. In fact only 78 cases were represented by legal clinics in 2004/05.