

Submission in Response to Labour Program Questionnaire Concerning Modernizing Labour Standards under the Canada Labour Code

By the Workers' Action Centre and Parkdale
Community Legal Services

Workers' Action Centre

The Workers' Action Centre is a worker-based organization committed to improving the lives and working conditions of people in low-wage and unstable employment.

Parkdale Community Legal Services

Parkdale Community Legal Services is a poverty law clinic providing workers' rights assistance and legal representation.

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Introduction

We support the principle that the federal government, through the Code, should provide leadership in providing equivalent, if not a higher or better, standard on every measure than in each province. In other words, there should be no instance in which a comparable provincial standard is above that in the Code. Rather, in every province, a worker employed in the federal jurisdiction should receive at minimum the equivalent benefit, compensation and/or protection to that enjoyed by her/his counterpart employed under provincial jurisdiction. By doing so, we join in supporting this principle put forward by the Canadian Labour Congress and the Canadian Union of Public Employees.

Annual Vacation

Issue: How much annual vacation should employees get?

The Canadian Labour Code (CLC) currently requires a service period with the same employer of one year before employees are entitled to 2 weeks' paid vacation and 6 years for 3 weeks' vacation. The service requirement does not address issues of the changing labour market and precarious work (e.g., temporary, contract, part-time job growth rising faster than full-time permanent work).

In a global comparison, Canada ranked lowest, alongside China, with respect to vacation entitlements. Most major industrialized countries—Sweden, Germany, the United Kingdom, and others—all have legislation giving workers at least four weeks of paid vacation. The International Labour Organization recommends that the period of paid vacation should not be less than three weeks.

Saskatchewan provides three weeks of paid vacation after one year of service and Ontario has recently moved to 3 weeks' vacation after 5 years of service with the same employer. Consistent with the objective of providing national leadership, the federal government should exceed the Saskatchewan minimum, and provide 3 weeks of annual vacation for each year of employment, rising to 4 weeks after 3 years of employment. Vacation pay should rise accordingly with increases in paid vacation leave.

Recommendation: Increase paid vacation entitlement to three weeks per year (including in the first year of employment). After three years of service, increase vacation to four weeks of paid vacation per

year.

Issue: How long should employees have to work continuously before they get more vacation than the minimum?

Vacation and rest breaks for work are not an “extra” or “benefit”. It has long been recognized that vacations and rest breaks are essential for people to renew themselves physically and mentally. Vacations provide workers with much needed time to rest, de-stress and attend to personal affairs. Vacations also contribute to higher rates of productivity at the workplace.

A healthy work-life balance approach should be taken to vacation standards under the CLC. That requires that we re-evaluate the service based requirements for such leave entitlement. Employees begin to ‘earn’ service based entitlement from the first day of employment, but the Code standard is to allow employers to require one year of service before vacations can be taken. Many employers and collective agreements do not follow this standard. Rather employees are allowed, and in some cases encouraged, to take vacation in the first year of employment. If employees take vacation in the first year and are terminated, employees pay the employer for any “unearned” vacation entitlement taken. This is based on an accrual model of vacation entitlement.

Recommendation: Increase paid vacation entitlement to three weeks per year commencing in the first year of employment. After three years of service, increase vacation to four weeks of paid vacation per year.

Paid Leave for Personal Reasons

Issue: Should employees get paid leave for personal reasons such as illness or an urgent situation that arises? If so, how many days of paid leave should they have? For what reasons should they be able to take the leave?

The CLC only provides for job protection, after three months of employment, for leave from work for illness or injury for a period of up to 17 weeks. The leave is for the employee’s personal illness and injury not that of their family and or dependents. It is not paid leave.

Canada should catch up on this important health care and workplace public policy. Only a third of employees between the ages of 18 to 24 have any paid sick days; fewer than half of all Canadians are covered by employer paid sick leave. Low-wage workers are least likely to have paid sick leave. Canada and the US are almost alone in having no national policy requiring employers to provide paid sick days. In the US, that is changing, as seven states and 28 cities have recently adopted guaranteed paid sick days. Ontario has recently adopted 10 job protected personal emergency leave days for all workers with the first two days being paid.

The reasons for workers using sick leaves are changing. As more women entered the labour force, the need has grown for the ability to access leave in order to take care of dependents. The use of leaves for personal illness has shrunk (from 84% in 1976 to 54% in 2015). An aging population and social policies that rely on family to provide elder care are some of the factors in the shift to using emergency leave for personal/family responsibilities. In Ontario in 2015, men took 26% of their leave for personal/family responsibilities while women took 56% of their leave for personal/family responsibilities (i.e., not personal illness). A broader scope of sick leave along the lines of Ontario’s Personal Emergency Leave is

required. Failing to expand leave to personal emergency leave would maintain a substantial burden on women workers under federal regulation.

Not only do people need the right to take time off when they or their family are sick, but workers need to have paid leave to make time off a viable option. Fewer than half of all Canadians are covered by employer-paid sick leave. Low-wage workers are least likely to have paid sick days. Taking a sick day often means losing wages. When earning minimum wage or low wages, few can afford to lose a day's pay.

At least 145 countries provide paid sick days for short- or long-term illness. Many high income economies require employers to provide paid sick days upwards of ten days. Providing paid leave has been shown to speed up recovery, deter further illness, and, reduce health care costs. It enables workers to address health and family needs without putting their economic security at risk.

Recommendation

In addition to the CLC provision for 17 weeks of job protected unpaid personal sick leave, the CLC should follow the lead of Ontario and adopt 10 days of personal emergency leave. The first seven of those days should be paid.

As per the Personal Emergency Leave under the Ontario *Employment Standards Act* (ESA):

An employee who is entitled to personal emergency leave can take up to 10 days of leave each calendar year due to:

- personal illness, injury or medical emergency
or
- death, illness, injury, medical emergency or urgent matter relating to the following family members:
 - spouse (includes both married and unmarried couples, of the same or opposite genders)
 - parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
 - spouse of the employee's child
 - brother or sister of the employee
 - relative of the employee who is dependent on the employee for care or assistance

Entitlement

Employees are entitled to up to 10 full days of job protected personal emergency leave every calendar year, whether they are employed on a full or part-time basis.

The first 7 of the leave days will be paid at the employees regular rate of pay

There is no pro-rating of the 10-day entitlement. An employee who begins work partway through a calendar year is still entitled to 10 days of leave for the rest of that year.

Eligibility

An employee who has been employed for at least a week with an employer is entitled to be paid for the first two days of personal emergency leave taken in a calendar year.

A new employee employed for less than a week may take unpaid days of leave.

We do not support a qualifying period before an employee is entitled to paid sick leave or other limitations on access. Paid emergency leave is a public health issue and work policy that should be available to employees when they get sick, not after a qualifying period. Those who this Review strives most to protect (vulnerable workers in precarious employment) would be the least likely to qualify due to shorter job tenures.

The CLC should follow Ontario's lead and enact Personal Emergency Leave that is available to workers upon hire.

Medical evidence

Under the CLC sick leave provision, the employee must provide a medical certificate if their employer requests one—in writing—within 15 days of the return to work. Ontario has recently gone through extensive discussion under the CWR on the usefulness of medical notes for employee absences. The Ontario government concluded that allowing employers to require medical notes when taking leave create a barrier to workers taking such leave (cost of medical notes, time and transit to doctor) and undue costs to the health care system. Prohibit employers from requiring medical notes from health care practitioners.

Recommendation: prohibit employers from requiring medical evidence from health care practitioners

Meal Breaks

Issue: Should employees be able to take unpaid breaks during their shifts?

Workers should get a 30 minute meal break within every 5-hour period of work. Employers should not, whoever, be able to divide a 30 minute meal break into two – 15 minute breaks.

Meal breaks must provide sufficient time to prepare, eat and digest food. This is necessary for the health of the worker and for their ability to do their job. Breaking a meal break down into 15 minutes precludes the time necessary for a health break for workers.

Most large employers provide two paid “coffee breaks” (15 minute breaks) in addition to a 30 minute meal break. The CLC does not require employers to provide either. Most collective agreements also require such breaks. This is in recognition of the importance that short breaks provide to improve health and wellbeing, as well as increase performance, and reduce the risk of workplace accidents. It is usually those with least power, non-unionized and lower waged workers that would not have access to meal breaks and paid coffee breaks. That is why the Code should be updated to require both a 30 minute

unpaid lunch and two paid 15 minute breaks.

Recommend: 30 minute unpaid lunch and two paid 15 minute breaks.

Daily Time Off

Issue: Should employees have a minimum amount of time off work between shifts? Should employees get at least 8 hours off work between shifts?

Rest periods between shifts are essential for the health and well-being of workers and their families. Eight hours between shifts is too little time; with commuting times to and from work; an employee would not even get time for a full night's sleep much less the other non-work responsibilities that people carry. Employees should get at least 11 hours off between shifts

Should employees have a minimum amount of time off work every day?

Yes. Ontario has long provided that an employee must receive at least 11 consecutive hours off work each day. Employers cannot seek agreements to work to less than 11 consecutive hours off work each day. Therefore the maximum number of hours of work that can be scheduled in 1 day is 12 hours of work because of two 30 minute meal breaks.

Ontario's hard cap on the 11 hour minimum time off from work has been in place since 2001. The Changing Workplace Review Advisors recommended maintaining the 11 hour rest period requirement on the basis that employers have operated quite fine in Ontario under this provision for over 15 years and that a minimum rest period supports healthy and safe workplaces.

Recommendation:

There must be a minimum of 11 hours per day of rest period as is the case in Ontario.

Wait Periods for Leaves

Issue: How long should employees have to work continuously before they can take leave? Should time worked for a previous employer be counted for the wait period?

How many months should employees have to work continuously before they can take their annual vacation?

None. Vacation and rest breaks for work are not an "extra" or "benefit". It has long been recognized that vacations and rest breaks are essential for people to renew themselves physically and mentally. Vacations provide workers with much needed time to rest, de-stress and attend to personal affairs. Vacations also contribute to higher rates of productivity at the workplace.

A healthy work-life balance approach should be taken to vacation standards under the CLC. That requires that we re-evaluate "completed the year of service" based requirements for such leave entitlement. Employees begin to 'earn' service based entitlement from the first day of employment, but the Code standard is to allow employers to require one year of service before vacations can be taken. Many employers and collective agreements do not follow this standard. Rather employees are allowed,

and in some cases encouraged, to take vacation in the first year of employment. If employees take vacation in the first year and are terminated, employees pay the employer for any “unearned” vacation entitlement taken. This is based on an accrual model of vacation entitlement.

How many months should employees have to work continuously before being able to take sick leave?

We do not support a qualifying period before an employee is entitled to paid sick leave or other limitations on access. Paid sick leave is a public health issue and work policy that should be available to employees when they get sick, not after a qualifying period. Those who this Review strives most to protect (vulnerable workers in precarious employment) would be the least likely to qualify due to shorter job tenures.

The CLC should follow Ontario’s lead and enact Personal Emergency Leave that is available to workers upon hire.

How many months should employees have to work continuously before being able to take maternity or parental leave?

The Code allows job-protected maternity leave after six months of continuous employment with an employer. The Budget Implementation Act No. 1, 2017, extended pre-birth access to EI maternity leave benefits, to as early as 13 weeks prior to the expected week of birth. However, this will still only be available to employees who have completed the eligibility period. Job-protected maternity and parental leave should be available to all workers. Employees who work in British Columbia, New Brunswick or Quebec have no wait period to take maternity or parental leave; the federal government should eliminate this requirement as well.

How many months should employees have to work continuously before being able to take leave for tragic circumstances, such as caring for a critically ill family member, or the death or disappearance of a child?

None – as discussed above, there should be no service requirement for leaves provided for sick leave, personal emergency leave, maternity and parental leave or in the event of a tragic circumstance such as a critically ill family member or the death or disappearance of a child. One of the purposes of the federal Labour Code is to provide national leadership on socially accepted minimum standards and ensure compliance with Canada’s international obligations. That requires that leaves enshrined in the code be available to all workers. The purposes of the leaves of for socially accepted job protected time off for illness, pregnancy and parental leave and other tragic circumstances. There should be no exception to these leaves on the basis of time served with an employer.

When employees begin a job with a new employer, should they be able to count previous time worked with another employer in the wait period for leave?

This issue is best resolved by removing service requirements on leave provisions.

Right to Disconnect

Issue: Should employees have a right to refuse to respond to work-related emails, phone calls or messages outside of working hours?

Yes. There should be a legislative job protected right to refuse the use of work-related technology outside of working hours.

Equal Pay for Equal Work

Issue: Should part-time and temporary (term, casual and seasonal) employees be paid the same hourly wage as permanent full-time employees who do the same work for the same employer?

Yes there should be a mandatory requirement for employers to provide equal pay for substantially similar work. Employers must be prohibited from treating employees less favourably in pay and benefits on the basis of gender, employment status (part time, temporary, contract, casual, seasonal or temporary agency assignment), or race.

More precarious forms of work have grown faster than full-time work. Data from the 2016 census shows that only half of Canadian workers (aged 25 to 54) have full-time, full-year employment.

The CLC has failed to regulate the growing predominance of part-time, temporary and contract work. In the absence of such regulation, employer practices have developed that pay employees in this work less in wages and benefits than full-time employees. Deep rifts have grown between the wages of part-time, seasonal and contract workers and full-time employees. Huge gaps also exist between temporary agency workers and their counterparts directly hired by the client company. There is no inherent reason why employers should pay precarious workers less, except, simply, that they can. Similarly, the gender and race income gap with comparable male non-racialized workers has also gone unchecked by the federal CLC.

Other jurisdictions have chosen a different path, with the goal of reducing discrimination against workers on the type or form of employment. Most European countries have adopted measures to eliminate discrimination against part-time, fixed term and temporary agency workers and their full-time, regular counterparts. Similarly, Ontario's Fair Workplaces Better Jobs Act recently updated the equal pay protection on the basis of sex protections and extended equal pay requirements to prohibits employers from paying workers doing substantially the same job less because of their employment status or temporary assignment status.

The CLC has a role in establishing a framework for equality among workers doing comparable work. To update the CLC to address precarious work, employers must be prohibited from imposing inferior pay or conditions of work on racialized workers, women workers, and part-time, contract, seasonal or casual workers because of the status of their employment.

Recommendation

Update the CLC by requiring equal pay and benefits for workers who do substantially similar work. Employers must be prohibited from treating women, racialized and part-time, contract, seasonal, casual

and temporary assignment employees less when they are doing substantially similar work. The CLC must require that no worker be paid less on the basis of their employment status, temporary assignment status, gender or race.

We support the framework for equal pay for equal work outlined in the Equal Pay Coalition [submission](#) to amend Bill 148, Better Workplaces, Better Jobs Act, 2017 (www.equalpaycoalition.org).

Changing Nature of Work

Issue: How is the changing nature of work affecting employers and employees?

What are the most important features of a good quality job?

The federal labour code has an important role to play in establishing national standards for decent work. Key among the priorities for decent work is a \$15 minimum wage, paid sick leave/personal emergency leave, equal pay for equal work, and scheduling. However there are many other changes needed to provide national standards for decent work. We discuss these critical scheduling, temporary agency, migrant worker and job security measures below.

Employers have substantial control over hours of work and scheduling, leaving workers with little predictability in their working lives and security of income. Some people are working very long hours, while other people do not have enough hours of work to support themselves and their families at a decent standard of living. That means we have to examine changes to hours of work, overtime, part-time and temporary work, and leaves, in order to address economic inequalities and work-life imbalance, and to support the development of decent jobs.

Scheduling

Without a predictable and stable schedule, workers have difficulty budgeting, attending school, arranging child care, and retaining second or even third jobs. Workers experience last minute call-ins to work or cancellation of shifts. As such, it is employees who bear a significant cost through lost wages and scheduling demands from unstable scheduling and cancelled shifts. Some employers expect that workers will remain available for work as required by the employer. But there is no reciprocal requirement to provide a guarantee for minimum hours of work per day or per week. Ontario's Changing Workplace Review Advisors acknowledged that uncertainty in scheduling practices may contribute to making work precarious.

The CLCs scheduling and hours of work provisions are based on the outmoded model of full-time, permanent employment. While the CLC establishes a regular work day of 8 hours and work week of 40 hours, there is no requirement for employers to provide work schedules for the standard work week or for those that work part time or irregular hours of work. The Code only requires employers to post schedules and seek approval for schedules of work that are *greater* than the standard work week or work day.

Recommendations

- Require all employers to provide advance notice when setting and changing work schedules

- Require employers to post employee schedules two weeks in advance;
- Require employers to pay employees more for last-minute changes to employees' schedules (e.g., Ontario now requires 3 hours of pay if the scheduled shift is cancelled with less than 48 hours notice);
- Require employers to provide part-timers and full-timers equal access to scheduling and time-off requests;
- Require employers to get consent from workers in order to add hours or shifts after the initial schedule is posted;
- If an employee is required to be "on-call," but is not called in to work, the employer must pay the employee a three hours of pay at the employee's regular hourly rate
- Increase the minimum reporting pay to four hours of regular pay or length of the cancelled shift.

Temporary Agency Workers

Temporary work, a large part of which occurs through temporary help agencies (THAs) has grown over the past 10 years. With the growth of temporary agency employment, the CLC has had difficulty addressing the triangular employment relationship. The Code is vague on whether the assignment worker is an employee of the client company and hence entitled to protections under the federal labour code or an employee of the Temp agency and protected under provincial employment standards. This is made more confusing in Ontario where client companies and temporary help agencies are jointly liable for wages and reprisals. An assignment employee trying to recover unpaid wages from the client company under such joint liability runs into jurisdictional barriers when the company is federally regulated and not under joint liability. In the case of triangular (or multi-employer) relationships, the CLC takes the approach of assessing who the "true employer" is and assigning liability. This leaves workers seeking unpaid wages in an untenable position. Beyond determining who the "true employer" is, the CLC is silent on the precarious conditions of temp agency work.

Temporary agency workers are more likely to receive lower pay, increased risk of injury on the job-site, job instability, unpredictability of hours and income security, barriers to permanent employment and deterioration of health. As the CWR Advisors state in their final report, the "triangular nature of the relationship between the employee, the agency and the client, and the temporary nature of the employment, results in some temporary help agency employees being among the most vulnerable and precariously employed of all workers. To address this particular vulnerable group of workers, the CLC must be updated to regulated temporary agency employment.

We recommend the following:

As discussed under question 21 on equal pay for equal work, we recommend that temporary agencies and their clients be jointly required to provide equal pay to assignment employees doing substantially

similar work to client company employees.

While the proposed equal pay provision will reduce some of the cost incentive for perma-temps, there are other monetary and non-monetary drivers that have enabled “temporary assignments” to become long term that need to be addressed. Other monetary incentives for long term assignments are client company savings in health, dental and retirement benefits paid to directly-hired employees but not agency workers. Client companies are not required to pay the WSIB costs for agency workers or other statutory employer contributions (e.g., EI, CPP). Non-monetary advantages include the opportunity to use assignment workers for night shifts or to do the worst jobs in the company. The use of temporary assignment workers can also serve to discipline permanent employees who fear replacement by assignment workers. We propose the following amendments to address long-term assignments.

New amendments:

Assignment workers will be converted to permanent employees of the client company after a total of three months of assignment at the company.

The client company and temporary help agency would have to provide just cause if, at the end of the assignment period, another worker is hired to do the work previously done by the assignment worker.

There shall be a cap of 20 percent of the proportion of a client’s workforce that can be temporary agency workers.

Migrant Workers

Canadian employers have increasingly sought a flexible workforce of migrant workers. Between 2002 and 2012, the number of foreign workers in Canada increased more than three-fold from just over 100,000 to 338,000, with a pause only in 2009 during the recession. Many of these workers come through the Temporary Foreign Worker Program (TFWP). Workers with temporary immigration status or temporary work authorization also include students, refugee claimants, and members of the International Mobility Program. There are key elements in the migrant worker program that structure and constrain working lives, creating conditions ripe for the abuse of minimum employment standards. Workers under the TFWP are tied to one employer and are restricted from moving from one job to the next when violations occur. That is because workers are required to get a new work permit tied to another employer who has been approved under the TFWP. Recruiters target migrant workers and charge exorbitant fees, creating huge debt bondage for many workers, which acts as a further disincentive to workers asserting their rights.

Migrant workers in the Temporary Foreign Worker program are hired under authorization of Employment and Social Development Canada, their stay in Canada is managed by Immigration, Refugee and Citizenship Canada while their labour rights are mediated by provincial labour authorities - except for migrant worker in shipping who fall under the federal labour code. Lack of coordination between the three results in a legal quagmire for migrant workers trying to assert their rights. For example, if a migrant worker leaves a bad job, they will lose their ability to work and support themselves due to employer specific work permits while trying to access justice. Similarly while federal law bars employers of Caregivers from making deductions for room and board, provincial labour laws, like in Ontario allow it.

Recommendation

As migrant workers live and work in Canada under federal jurisdiction, it is imperative federal labour laws are alive to their well-being and help create a unified and accessible framework of basic protections that migrant workers can access. ESDC should work closely with migrant worker groups like the Migrant Workers Alliance for Change to develop such a framework. As an immediate step, federal labour laws should be amended to bar the charging of recruitment fees, license recruiters and make employers and recruiters jointly financially liable for recruitment fees.

Job Security and work-life balance

Work life balance and zero hour contracts

Some workers may work too many hours and some may not get enough hours to make ends meet. According to the Canada Labour Force survey, 20% of federally regulated employees work over 40 hours per week and 14% work less than 35 to 40 hours per week. These figures may not capture those employees misclassified as provincial employees who would typically be at the lower end of the labour market.

There are no minimum hours of work requirements under the CLC. That is, employers may enter into zero hour contracts with employees. For non-unionized workers with precarious employment such as in transport, airline services, or banking, there is no protection from insecure hours of work, last minute changes to schedules, on-call workers, or cancelled shifts. Shifts of less than three hours place burdens on workers, who must travel to and from work, arrange child or elder care, or juggle multiple part-time jobs.

Recommendations

- Provide new employees with a good faith written estimate of the employee's expected minimum number of scheduled shifts per month and the days and hours of those shifts;
- Require employers to offer additional hours of work to existing part-time employees before hiring new employees or using staffing agencies or contractors to perform additional work;
- The minimum allowable shift per day should be three hours.
- Enact a job-protected right to refuse overtime as is the case in Ontario.

Overtime Averaging

Overtime averaging allows employers to seek written agreements with workers to average overtime over two or more weeks. Non-unionized workers have no power when it comes to negotiating overtime averaging agreements. In effect, it is a large loophole that employers can use under the CLC to require employees to work longer hours with less pay (i.e., overtime premium pay after 40 hours per week).

Averaging overtime over an extended period enables employers to not only schedule workers for excessive overtime, but to do so without paying them time and a half after working 40 hours in a week.

Unless this provision is revoked, erratic work schedules and excessive overtime will continue. They will persist without the employer paying the overtime that people deserve, without any public policy commitment to examine how work could be more equitably distributed, and without any concern for balancing family and work life commitments. This problem requires a legislative response because non-unionized workers do not have effective protections allowing them to refuse to sign agreements without penalty or job loss.

Recommendation: Repeal overtime averaging provisions in the CLC.

Protection from Unjust Dismissal

The federal Labour Code has long ensured protection from unjust dismissal in which those wrongfully dismissed can receive effective remedies, including reinstatement. Unfortunately, this protection is limited to those employees who have worked continuously with the same employer for 12 months or more.

This leaves shorter term workers with no protection from being unjustly dismissed. Workers, especially those in low-wage and precarious work, have little real ability to sue employers in court for unjust or wrongful dismissal, due to the cost of legal representation and the risk of costs associated with civil proceedings.

Having a clear process for progressive discipline and protection from wrongful dismissal is necessary to support job and income security and strengthen the voice of workers in the workplace. The CLC must be amended to include all workers.

We recommend the CLC be amended to include protection from wrongful dismissal after 3 months of employment.

What are the biggest challenges facing Canadian workers today?

Scope and Coverage of the Canadian Labour Code

For a worker to be protected under the Canada Labour Code Part III (CLC) there must be an “employer/employee relationship”. Employers have adopted strategies for work organization that evade the CLC by pushing workers beyond the scope of the Act and by creating legal distance between employers and workers who produce their goods or services.

The binary employment relationship framework is woefully inadequate. With the growth of temporary agency employment, the CLC has had difficulty addressing the triangular employment relationship. The Code is vague on whether the assignment worker is an employee of the client company and hence entitled to protections under the federal labour code or an employee of the Temp agency and protected under provincial employment standards. This is made more confusing in Ontario where client companies and temporary help agencies are jointly liable for wages and reprisals. An assignment employee trying to recover unpaid wages from the client company under such joint liability runs into jurisdictional barriers when the company is federally regulated and not under joint liability. In the case of triangular (or multi-employer) relationships, the CLC takes the approach of assessing who the “true employer” is and assigning liability. This leaves workers seeking unpaid wages in an untenable position.

Employer practices push workers beyond the generally accepted definition of employee in the CLC’s employer-employee relationship. While misclassification of employees as independent contractors is

one of the more commonly understood practices, there are other practices that push workers beyond the scope of the CLC. Some employers shift the costs of doing business on to employees and pay for work on the basis of a good or service completed rather than the hours of work worked to complete the good or service. For example, we've worked with truckers who are paid on a kilometer basis which does not account for hours worked during mechanical breakdowns, traffic jams, waiting for other parties to unload products. These same truckers are required to pay the cost of parking tickets, automobile accidents or other property damage. It is not simply a misclassification of workers as independent contractors but a shifting of the costs and liability of employers to employees that move workers outside of the narrow definition of employee and employer. Without modernization of the scope of the CLC, employment will continue to grow outside of the outdated CLC definition of employee and employer (e.g., Uber and other platform based work).

Employer contracting and outsourcing realign the distribution of risks, costs, benefits, power, and liability between employers and employees, such that the current CLC regulation is less effective. As the Changing Workplaces Review Advisors acknowledge, the "fissuring" of employment relationships has resulted in many companies moving away from direct employment through a variety of organizational strategies such as subcontracting, outsourcing, franchising, indirect hiring through temporary help agencies and other methods. This is also happening with federally regulated work. Government practices of contracting out, privatization and public private partnerships also contribute to fissured employment practices. To address such fissured employment relationships, the CLC must be updated to assign liability to companies that control, directly or indirectly, the work of employees (whether that control is exercised or not) to address the realities of people in precarious work.

We recommend that the scope of the Labour Code be expanded to include precarious work. In doing so, we must start from the principle of universality; that is, that our basic minimum standards should provide a floor for all employers and employees. This is essential to provide a minimum floor of standards for workers and a level playing field for employers.

Expand Scope of CLC Recommendations:

- 1) Expand the scope of coverage under the CLC to include all workers dependent on their capacity to sell their labour power. The Ontario *Occupational Health and Safety Act*, provides a good definition of employee as "a person who is paid to perform work or supply services."
- 2) Establish a presumption of employee status (an employee must be presumed to be an employee unless it can be demonstrated otherwise).
- 3) Prohibit misclassification of employees as independent contractors (or not employees for the purposes of the CLC). This prohibition was recently enacted in Ontario's *Employment Standards Act* (ESA).
- 4) Employers who enter into contracts with contractors, subcontractors or other intermediaries, either directly or indirectly, shall be jointly and severally liable for monetary and non-monetary entitlements under the CLC, Part III, and its regulations.

Contracting and outsourcing through supply chains

A century ago, labour subcontracting was known as the “sweating system.” Today, employers are once again using contracting as a key strategy to reduce labour costs and shift employer liabilities down the chain of the “sweating system” of production. This has realigned the distribution of risks, costs, benefits, power, and liability between employers and employees, such that the current CLC regulation is less effective.

As the Changing Workplaces Review Advisors acknowledge, the “fissuring” of employment relationships has resulted in many companies moving away from direct employment through a variety of organizational strategies such as subcontracting, outsourcing, franchising, indirect hiring through temporary help agencies and other methods. This is also happening with federally regulated work. Government practices of contracting out, privatization and public private partnerships also contribute to fissured employment practices.

We have worked with many workers that face barriers to holding the federally regulated lead company liable for labour code violations. One example typifies the barriers faced by workers. For example, a large telecommunication company controlled much of the work done for route salespeople selling cable subscription packages (e.g., provided training, provided specific geographic areas for sales, provided corporate identification for salespeople who were required to identify themselves as representing the telecommunications company, and provided the pay structure; that is, pay was only forthcoming when the subscription was confirmed and pay was withheld if customers cancelled their subscription). When wages went unpaid, these workers were unable to recover wages under the CLC because the telecommunications company used a contractor and was deemed to be not liable.

The current CLC enables the Minister to declare two or more employers having common control or direction as an employer for the purposes of the Code and to be jointly and severally liable for overtime pay, vacation pay, holiday pay and other wages or amounts to which the employees are entitled. We recommend that the Code be amended to establish joint and several liability for multiple or related employers. Such a provision should not require a determination that two or more employees are deemed a single employer for the purposes of the Code.

Until recently, the US Department of Labour Joint Employment Interpretation guide provided an excellent definition of joint and several liabilities among multiple employers based on the economic realities of the relationship and on the direct or indirect control of employees, regardless if that control is exercised. Ontario’s *Employment Standards Act* enables related employers to be held liable under s. 4 of the Act and the policy of the Ministry of Labour is to interpret joint and several liabilities among unrelated employers.

Joint and Several Liability Recommendations:

- 1) Employers who enter into contracts with contractors, subcontractors or other intermediaries, either directly or indirectly, shall be jointly and severally liable for monetary and non-monetary entitlements under the CLC, Part III, and its regulations.
- 2) Two or more employers will be jointly or severally liable for compliance with the CLC if they directly or indirectly exercise control of an employee, regardless of that control being exercised.

Contracting out and continuity of Service

The CLC has failed to recognize that in many federally regulated sectors highly competitive contracting and subcontracting of services is driving down wages and working conditions because there is no protection of employees' wages and working conditions when contracts are flipped. Employment security must be protected when the service provider or contractor changes.

Contract flipping, as it has come to be known, has developed into a strategy for business owners and providers to suppress wages. Workers must re-apply for their jobs, often losing any wage increases and benefits earned under their previous contractor. Companies can use the re-hiring process to purge elderly, injured, or pro-union workers. To close the gaps in the labour code that allow such precarious work to grow, continuity of employment must be ensured for all provisions of the labour code when contracts for service are changed.

Recommendation:

The new contract provider shall be deemed to have been the employee's employer for the purpose of all entitlements under the CLC and its regulations.

Minimum Wage

Issue: Should the federal government set a common minimum wage for employees who work in the federally regulated private sector?

The Canadian economy has grown yet the rewards and costs of that growth are unequally distributed. Median wages have stagnated while wages among top earners have increased. In 2015, one out of four Canadian workers earned less than \$15 an hour.

The federal government's CLC relies on provincial minimum wages for federally regulated workers. It is time to change that. The federal government has an important role to play in setting a national minimum wage standard that will raise the floor of minimum wages for workers who have little bargaining power and reduce inequality and poverty among low-wage workers.

Establishing a \$15 minimum wage will bring federally regulated workers in line with provinces such as Alberta, Ontario and British Columbia that are moving to \$15. Re-instating the federal minimum wage at \$15 an hour and increasing it annually to keep up with rising prices (as measured through the Consumer Price Index), would create a national standard that raises low income workers' wages to the poverty line, as measured by the pre-tax Low Income Measure. Because there is no single, decent standard for a Canadian minimum wage, workers doing the same job in one province can earn lower wages than others doing the same job elsewhere. Such wage differentials also mean that low income workers have variable access to income support through the federal Employment Insurance program, which already suffers from the problem of regional fragmentation and unfairness.

Recommendation: Implement a \$15 federal minimum wage. Annual adjustment by rate of inflation.

Portable Benefits

Issue: Should employees be able to keep their leaves and benefits when they move to a new job with a different employer?

Yes.

Should employees be able to keep their leaves and benefits when they move to a new job with a different employer?

Yes.

Most Important Issues

Which of the issues in the survey would you most like us to address? (Please select top 3)

The federal labour code has an important role to play in establishing national standards for decent work. Key among the priorities for decent work is a \$15 minimum wage (see question 27), paid sick leave/personal emergency leave (see question 3), equal pay for equal work (question 22), and scheduling (see discussion #24) and, expanding the scope of coverage for employees covered under the act and joint and several liability of employers (see discussion 25). However there are many other changes needed to provide national standards for decent work that we have addressed through this survey response.