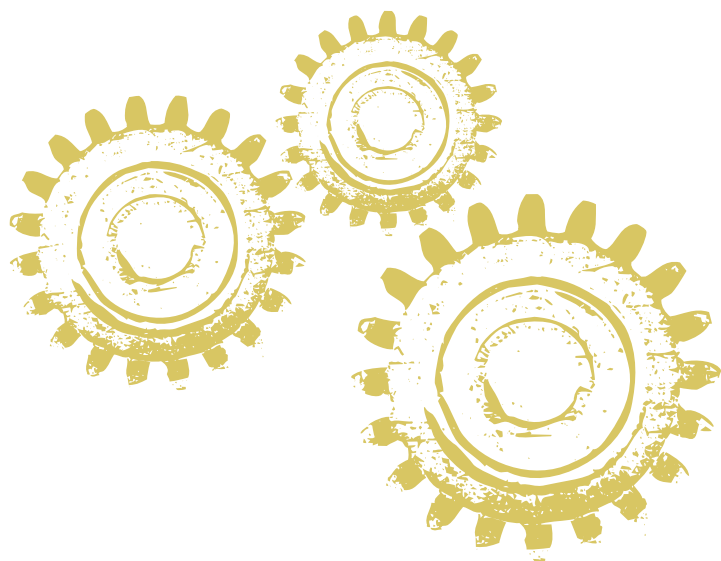


SUMMARY REPORT

STILL WORKING ON THE EDGE

**BUILDING DECENT JOBS FROM
THE GROUND UP**



SUMMARY REPORT: **Still Working on the Edge**

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The Summary Report provides an overview of Still Working on the Edge. To download the full report, go to <http://www.workersactioncentre.org/press-room/policy-papers/> or contact the Workers’ Action Centre.

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INTRODUCTION

Vashti

I have three jobs. I work two hours at a public school taking care of the students over lunch. I work for a temp agency that places me either as a health care provider in a group home or with residents in a youth shelter. We provide evening relief shifts. Then my third job is through another agency where I am placed as a personal support worker in a hospital or in the community taking care of seniors. One day I'm in uniform working in a hospital, the next day I'm in street clothes working in a shelter. So every day, it's on call.

I was working for minimum wage. Four years I worked for minimum wage. The only increase I got was when minimum wage went up. So I went back to school to upgrade myself. I spent one year upgrading myself, changing my career to become a Personal Support Worker. Finally, when I went back to work, what did I get? Minimum wage!

Vashti's experiences are becoming all too common for people working for low wages in part-time, temporary, or contract jobs without employment benefits or workplace protection. Like Vashti, many are juggling two or three jobs just to get by. But Vashti and other members of the Workers' Action Centre (WAC) believe that it does not have to be this way.

The Ontario government launched the **Changing Workplace Review** on February 17, 2015 to identify potential labour and employment law reforms. The review gives Ontarians the opportunity to address the growing precariousness of the labour market and to improve legislative protections to support decent wages and working conditions. The report, *Still Working on the Edge*, brings workers' experience, knowledge, and voice to this important public discussion on the future of work in Ontario.

We say we are *still* working on the edge, because conditions have gotten worse since WAC released its 2007 report, *Working on the Edge*, which documented workers' experiences of low-wage and precarious work.

The number of part-time jobs has risen much faster than that of full-time jobs. Many people, like Vashti, are trapped in part-time work but would rather be working fulltime. Since the last recession, many of the full-time, better-paid jobs have been permanently lost. New full-time job growth is taking place in lower-paid sectors of the economy.¹ Ontario is developing a low-wage economy. In 2014, 33 percent of workers had low wages compared to only 22 percent a decade earlier.² Ontario is developing a low-wage economy.

More flexible staffing through part-time, contract, temporary work helps employers keep labour costs down. But as WAC member Lee says, "*It's flexibility for employers; it's not flexibility for us.*"

Changes in labour market regulation and practices have realigned the distribution of risks, costs, benefits, and power between employers and employees. Employers' goals of flexibility have become paramount in shaping the employment relationship, a trend which is reinforced by current labour and employment law. Our report, *Still Working on the Edge*, seeks to bring balance to labour market regulation and provide ways to rebuild our labour laws and employment practices to support decent wages and working conditions.

Over the past year, the Workers' Action Centre has held meetings with members, workers in precarious jobs, and allies to identify key problems facing workers under the *Employment Standards Act* (ESA) and develop recommendations for improving the ESA. We focused on the ESA because, for the majority of workers, it sets the minimum terms and conditions of work, such as wages, hours, vacation, leave, and termination. Employment standards are supposed to establish a minimum floor for those who have the least ability to negotiate fair wages and working conditions. Not only is the ESA a central feature of labour-market regulation, but it is also an important social policy tool in fighting poverty.

Given our goal of building jobs that have decent and fair wages and working conditions, we believe that any review to employment standards must be based on the principle of fairness and decency. The International Labour Organization (ILO) sets out fundamental principles of decent work that include fair wages and equal pay for equal work without distinction to ensure a decent living for workers and their families.³

Recommendation:

- » The **Changing Workplace Review** should be guided by the principle of decency, as was the case in Harry Arthurs' review of the Federal Labour Code:

Labour standards should ensure that no matter how limited his or her bargaining power, no worker in the federal jurisdiction is offered, accepts or works under conditions that Canadians would not regard as "decent." No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is effectively denied a personal or civic life.⁴

Note: for a discussion of the methods used in developing this report, please refer to the full report which can be downloaded at <http://www.workersactioncentre.org/press-room/policy-papers/>. Further, a full list of recommendations will be found in the full report.

GAPS IN THE ESA: SHIFTING RISKS AND COSTS

Gaps in the ESA have enabled employers to develop strategies for work organization that evade core labour standards and that have pushed workers beyond the protection of the ESA. Non-standard forms of work are growing. Yet our labour laws and employment benefits are still based almost exclusively on a standard employment relationship developed last century that linked decent wages, benefits, working conditions, and job security to the full time work with a single employer.

Historic exclusions of certain types of work organization from ESA protections, such as independent contractors, have created incentives for employers to move workers into these forms of work where employers have fewer responsibilities. Contracting out of work that can be done in-house is yet another practice that is re-emerging. This was a common practice in garment manufacturing at the beginning of the last century. Externalizing employment costs to temporary help agencies is yet another fast-growing strategy for just-in-time labour sourcing.

These practices shift legal liabilities that employers have for their employees on to intermediaries, and, in the case of misclassified independent contractors, on to workers themselves. While employers may argue that these strategies are justified in an increasingly global market with intense international or local competition, this does not explain such practices in Ontario. As the Workers' Action Centre has found, many employers and industries are engaged in outsourcing, indirect hiring, and misclassification of workers in distinctly local markets—restaurants, business services such as janitorial and couriers, construction, trucking, home health care, social services, warehousing, and manufacturing of locally consumed goods.⁵

Miguel

Many weeks I only got two or three shifts. I asked for full-time work, but they offered conditions. They wanted to do a contract with me so that I would become in charge of cleaning a restaurant. They wanted me to work as an entrepreneur. It didn't sound right.

Employers are able to deprive workers of employment rights, benefits, and protections because work arrangements do not conform to the standard employment model underlying employment standards, policies, and practices. We need to seek a universal approach to coverage under the ESA, which effectively provides basic minimum standards for all workers. We also need to restore employer accountability for employment standards.

Recommendations:

- » Expand the definition of employee to ensure people are not excluded from ESA protection.⁶
- » Make employers liable for wages and all ESA entitlements, even when they use subcontractors, temporary help agencies and other intermediaries.

Temporary Agency

On the heels of the last recession, the temporary staffing industry is developing new practices that promise, as industry leader Apple One says, “Just-in-time staffing [that] enables you to produce maximum results without the overhead of a full-time employee.”⁷

Nikita The group home hires the majority of us through temp agencies. The agency says we are independent contractors.

Nikita is one of the new breed of temp agency workers. Her agency classifies her as an independent contractor and has assigned her to work at a group home. The agency deducts 7 percent from her \$11 hourly wage. Because she is misclassified as an independent contractor, she receives no employment standards entitlements from the agency. She works 48 hours in 3 days.

The temporary staffing industry generated \$11.5 billion in revenue in 2012, up from \$8.3 billion in 2009. Over 50 percent of revenues are generated in Ontario.⁸

Lee The night shift was all temp workers—making minimum wage. Some of the temps had been there 10 to 15 years—probably about 15 percent of them. And then there were a lot who were there for one to five years. These we called the perma-temps. Then there were people like me—rotating temps—that would get rotated out.

The ESA clearly states that agency workers are to be “assigned to perform work on a **temporary basis** for clients of the agency”⁹ [emphasis added]. The Act fails to limit the term of assignment, leaving the Act open to abuse.

The government sought to improve protections for temporary agency workers in 2009 through Bill 139, the *Employment Standards Amendment Act (Temporary Help Agencies)* and in 2014 through Bill 18, the *Stronger Workplaces for a Stronger Economy Act*. There is still much work to be done to protect temporary agency workers.

Recommendations :

- » Ensure that temp agency workers receive the same wages, benefits, and working conditions as workers doing comparable work that are hired directly by the client company.
- » Make client companies jointly responsible with temp agencies for all rights under the ESA, not just wages, overtime, and public holiday pay.
- » Eliminate barriers to client companies hiring temp agency workers directly during the first six months.
- » Prohibit long-term temporary assignments. Require that agency workers become directly-hired employees after working a cumulative total of six months for the client company. Limit temporary staffing to 20 percent of a company’s workforce.

Misclassification

Like Nikita, more workers are being misclassified as independent contractors. Misclassification practices dominate sectors such as cleaning, trucking, food delivery, construction, courier, and other business services. But misclassification reaches into many other sectors, such as information technology, copy editing, and nail salons.

When workers are misclassified, they get cheated out of vital benefits and protections. Workers lose out on decent wages, overtime pay, paid leave, employer-provided benefits, and pensions. Workers face problems trying to enforce their rights under the ESA when they have been misclassified, or accessing workers' compensation if injured or sick on the job.

Employers misclassify to save on payroll taxes, avoid complying with the ESA and other labour laws, and to shift liability and risks on to workers. Misclassification undercuts the competitiveness of law-abiding businesses. A recent review of the construction industry in Ontario found that, between 2007 and 2009, the annual estimated revenue losses to WSIB, the tax system, Canada Pension Plan, and the Employment Insurance system was in the order of \$1.4 billion to \$2.4 billion due to misclassification.¹⁰

Recommendations:

- » Establish a reverse onus on employee status; a worker must be presumed to be an employee unless the employer demonstrates otherwise.
- » Work with federal agencies and undertake inspections in sectors at risk for misclassification.

GAPS IN ESA: CREATING INEQUALITIES

More precarious forms of work have grown faster than full-time work. Job growth in part-time and temporary work has outstripped full-time work, with part-time jobs growing 25 percent, and temporary employment growing 40 percent, while full-time work has increased only 16 percent since 2000.¹¹

More people are unable to get full-time work. In 2013, 32 percent of all part-time workers reported they would rather be working full time. That is an increase of 43 percent in involuntary part-time workers since 2000.¹²

We are facing a labour market where 41 percent of work is outside the standard, full-time, permanent employment contract with a single employer. Part-time work makes up 19 percent of total employment, temporary work 12 percent,¹³ and own-account self-employed makes up 10 percent.¹⁴

The ESA has failed to regulate the growing predominance of part-time, temporary, and self-employed work. Without such regulation, employers have been allowed to discriminate against workers who do the same work but for fewer hours, creating huge wage gaps between full-time and other workers.

Deep rifts have grown between the wages and benefits of part-time, temporary and full-time workers. There is a 57% wage gap in median hourly wages between women in part-time jobs and women in full-time jobs. For men, that gap is 47%. The median hourly wage for part timers is \$12.38. Temporary workers don't do much better. Temporary workers have a median hourly wage just over \$15 while their full-time counterparts earn \$24 an hour.¹⁵

There is no inherent reason why employers pay precarious workers less, except, simply, that they can. The use of part-time and contract forms of work are strategies used by employers to enhance flexible labour sourcing. The low wages of part-time workers exist not only because work may be concentrated in low pay sectors, but also because there are no restrictions on paying these workers less than full-time workers who do the same or similar work.

Sung works two contracts for the same community mental health organization. One is part-time and one is casual relief.

Sung

It's crazy. My responsibilities are the same. But when I work part-time I get \$23 an hour and when I work relief I get paid \$16 an hour – for exactly the same responsibilities.

Other jurisdictions have chosen a different path, with a goal of reducing the discrimination against workers based on type or form of employment. The European Union (EU) adopted a Framework Agreement in 1997 that “sets out to eliminate unjustified discrimination against part-time workers and to improve the quality of part-time work. It also aims to facilitate the development of part-time work on a voluntary basis.”¹⁶ Most EU countries have adopted The Directive on Part-Time Work. The EU passed a Directive on Fixed-Term Work in 1999 that prevents discrimination in the pay and conditions of work between fixed-term and permanent workers. It also limits abuses arising from the use of successive fixed-term employment contracts.

The ESA has a role in establishing a framework for equality among workers doing comparable work. The government should not enable employers to impose inferior pay or conditions on part-time, contract, or casual workers simply because of the form of their employment. Equal pay and working conditions regardless of hours worked could be a key strategy in addressing Premier Wynne's mandate to reduce the gender wage gap.¹⁷ As noted above, a 57 percent wage gap exists between women's part-time and full-time median wage.

Recommendation:

- » There should be no differential treatment in pay, benefits and working conditions for workers who are doing the same work but are classified differently, such as part-time, contract, temporary, or casual.

DECENT HOURS, DECENT WORK

The ESA gives employers substantial control over hours of work and scheduling. Some people work too many hours and some workers do not get enough hours.

Miguel My boss owned my time. He said when we started and when we finished; sometimes from 10 pm to 10 am. I couldn't get a schedule. It was only when he wanted that I got work.

Violations of overtime and hours of work standards cut a wide swath across many industries. Over one million Ontario workers worked overtime in 2014 and 59 percent of these workers did so without overtime pay.¹⁸ Ontario's hours of work standards allow for longer work days and work weeks than many other jurisdictions and need to be updated to support job development. There is also a confusing myriad of industry and occupational exemptions and special rules for hours of work and overtime – there is no real ceiling on maximum work hours.

Recommendations:

- » The ESA should provide for an eight-hour day and a 40-hour workweek. Employees should have the right to refuse work beyond 40 hours. Overtime at time and a half should be paid (or taken as paid time off in lieu) after 40 hours. No overtime exemptions or special rules.
- » Repeal overtime averaging provisions in the ESA.
- » Permits for overtime in excess of 48 hours per week must be reviewed. Permits should only be given in exceptional circumstances and be conditional on demonstrated efforts to recall employees on layoff, offer hours to temporary, part-time, and contract employees, and/or hire new employees.
- » Require employers to offer available hours of work to those working less than full time before new workers performing similar work are hired.

Similarly, there is no real floor on work hours either. There are no minimum hours per day. Employers can, and do, schedule workers for one or two hour shifts. Nor does the ESA require employers to guarantee minimum hours of work in a week either. As Sung asks, “Whose responsibility is it” to provide decent hours? In the absence of regulation, this has been left to the discretion of employers and the growth of low-wage, part-time, insecure work is the consequence.

Samuel They only schedule you for three days, but they still want a four- to five-day commitment from you. It makes it hard on workers who get other jobs in retail, trying to juggle changing schedules. There's no protection when problems come up in scheduling.

For many service workers, the employer expects workers to be available for 5 days but will only schedule them for 2 or 3 days. There is no ESA requirement to provide schedules. The expectation that workers will be available for erratic shifts creates underemployment as workers are prevented from taking on other work due to scheduling conflicts. Workers bear the costs of unpredictable hours of work through underemployment, having to finance employers' “just-in-time” scheduling by carrying debt through weeks of insufficient hours or relying on friends and family for financial support.

Recommendations:

- » Require two weeks' advance posting of work schedules (including when work begins, ends, shifts, meal breaks).¹⁹
- » Require that employees receive the equivalent of one hour's pay if the schedule is changed with less than a week's notice, and four hours' pay for schedule changes made with less than 24 hours' notice.²⁰
- » Workers must be able to ask employers to change schedules without penalty (i.e., protection from reprisals).

WHERE'S THE FLOOR? EXEMPTIONS CREATE GAPS IN THE FLOOR OF RIGHTS

Exemptions and special rules have eroded the floor of minimum standards. Some workers are exempted because of age—students under 18 are paid a lower minimum wage than all other workers. Some workers are exempted because of occupation. For example, farm workers are exempt from minimum wage, hours of work, daily rest periods, time off between shifts, weekly/bi-weekly rest periods, eating periods, overtime, public holidays, and vacation with pay. Another type of exemption is based on a worker's status in their workplace (for example, managers who are not covered by hours of work and overtime provisions). Exemptions are also based on how long you work for a company. Workers employed for less than five years are not able to get severance pay. A final type of exemption is based on the size of employer. Workers are only entitled to ten days of personal emergency leave (sick leave) if the company has 50 or more employees.

In an analysis of ESA exemptions and special rules, Vosko et al. conclude that “the ESA’s capacity to provide a floor of rights is eroding... Some provisions, such as those related to public holidays, overtime and severance pay, have become inaccessible to such a large proportion of employees that they can no longer be reasonably conceptualized as universal minimum protections.”²¹ Low-income employees are much less likely to be covered by most ESA provisions, including those related to minimum wage, overtime public holidays, personal emergency leave, and severance pay. Recent immigrants are less likely to be fully covered by the ESA for minimum wage, overtime, public holidays, and severance pay. Young, racialized, and recent immigrant women are much less likely to be fully covered for minimum wage than their male counterparts. Similarly, in relation to personal emergency leave (sick leave), racialized women and recent immigrant women are less likely to have full coverage than their male counterparts.²²

Recommendation:

- » No exemptions or special rules

RIGHTS WITHOUT REMEDIES²³

Closing the gaps and raising the floor of minimum standards will do little if these rights are not enforced. But Ontario's current system of enforcement relies on workers to enforce rights once violations occur. Without active enforcement of minimum standards in workplaces, workers have little protection when their employers violate employment standards. Increasingly workers are being conditioned to accept substandard working conditions.

Alberto

During the seven years that I have worked in construction, I have met lots of people in the sector. Less than two percent received a fair payment; the other 98 percent do not receive overtime pay, vacation, public holiday, any insurance, nothing... the problem has become so big that violations look normal.

The ESA is enforced through a compliance model. This is where employers are asked to voluntarily comply with the ESA. The model relies largely on workers to detect violations and make individual claims for their unpaid wages. Only when the employer does not voluntarily pay during a claims investigation, does the Ministry of Labour order the employer to comply with the law. Workers do not receive interest on their unpaid wages, or damages for debt servicing to cover unpaid wages. The employer, on the other hand, only has to pay some or all of what they should have paid in the first place.

Under this system, there is little risk of detecting violations, relatively no cost to violation and, as a consequence, little real incentive for employers to comply.

Saunders and Dutil note that the “practice of dealing with compliance one case at a time is expensive and risks overloading the available capacity.”²⁴ While the Ministry of Labour has attempted to shift resources to more proactive enforcement measures, an increase in individual claims has restricted its ability to do so. In 2014, the number of Employment Standards officers doing proactive inspections was halved from 30 to 15, as officers dealt with a backlog in claims.

This reactive compliance model is not able to address the structural features of the labour market that produce ESA violations. This is particularly the case with respect to new forms of work organization, in which responsibility for employment is being shifted to contractors, temporary agencies, and workers, in highly competitive environments where pressure to cut regulatory corners is high.²⁵ As the Law Commission of Ontario concludes, “There is a general consensus that proactive enforcement is a much more effective mechanism for ensuring the protections of the ESA than the reactive system of responding to individual complaints.”²⁶

Recommendations:

- » Increase the risk of detection of ESA violations – the report includes recommendations to improve proactive enforcement by moving enforcement up the chain of subcontracting and enforce liability among multiple employers that are responsible for violations. Chief among these recommendations is to bring enforcement into workplaces to protect workers while they are still on the job and raise the level of compliance with the ESA
- » Increase the cost of violation – the report includes recommendations to establish set costs for violations of the Act
- » Support workers to enforce their rights. The report includes recommendations to support workers to enforce their rights through individual claims and to remedy victims of violations. Currently workers bear the costs of unpaid wages without any compensation. Being compensated for unpaid wages and violations will not only make filing a claim worthwhile but will also act as a deterrent for employers.

GAPS IN OUR LABOUR LAWS PREVENT WORKERS FROM STANDING UP FOR THEIR RIGHTS

When the system of enforcing minimum employment standards breaks down, basic socially accepted minimum standards erode; gaps open up in regulation which destabilizes the labour market harming workers, their families, and employers who do comply with the ESA.

The system of enforcement largely relies on the most vulnerable workers to detect violations and enforce unpaid wages through individual claims. Yet most workers cannot make claims while they are on the job. Some workers are forced to put up with substandard conditions for years, further entrenching illegal practices. Fraying social programs, such as employment insurance, create barriers to leaving substandard jobs.

Employees do have a role in helping the system to detect violations. But we need to adopt new measures of protection to enable them to do so.

Recommendations:

- » Develop an anonymous and third party complaint program that has as a central goal the remedy of unpaid wages and other entitlements to employees while they are still in the workplace.
- » Anti-reprisals protections need to be strengthened to support workers who try to enforce their rights.
- » Protect workers from unjust dismissal to give workers the ability to enforce their ESA rights by assuring them that they cannot be unjustly fired for doing so. An effective program for protecting workers from wrongful dismissal will have a general deterrence value for employers.
- » Adopt Quebec's legislative approach to anti-psychological harassment as it requires the employer to take action to address and prevent workplace bullying and provides remedies for psychological harassment.
- » To address the power imbalance in the workplace and labour market, workers, especially those in more precarious employment, need real access to unionization. Sectoral bargaining is one strategy that could contribute to improving conditions in precarious sectors in Ontario.

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.²⁷

There are key elements in the Temporary Foreign Worker Program (TFWP) 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 act as a further disincentive to workers asserting their rights. When workers under the TFWP lose their jobs, they lose their residency status in Ontario and can be subject to deportation.

Migrant workers seek permanent residency upon arrival as the key strategy to addressing their vulnerability at work. The Ontario government should advocate for this change in the federal immigration system. But there is still much that can be done to improve protections for migrant workers under the ESA.

Recommendations:

- » Ontario should adopt a proactive system of employer registration, recruiter licensing (including the mandatory provision of an irrevocable letter of credit or deposit), mandatory filing of information about recruitment and employment contracts, and proactive government inspection and investigation in line with the best practices model adopted in Manitoba's *Worker Recruitment and Protection Act* and the enhancements developed in Saskatchewan and Nova Scotia.
- » Amend the ESA to include a process for expediting complaints of reprisals and, in the case of migrant workers, ensure that such complaints are heard before repatriation. Where there is a finding of reprisal, provision would be made for transfer to another employer or, where appropriate, reinstatement. The ESA should explicitly prohibit an employer from forcing "repatriation" on an employee who has filed an ESA complaint. Migrant workers should be able to make claims under the ESA when conditions of the employment contract have been reduced or not complied with.
- » Change the Canada-Ontario Immigration Agreement (COIA) to create an open work permit program for migrant workers who have filed complaints against recruiters, under the *Employment Protection for Foreign National Act*, and ESA.²⁸

RAISE THE FLOOR

Fair Wages

Many Ontario workers are struggling to get by. More and more decent jobs are being replaced by low-wage work. The fastest growing jobs in Ontario are in the service sector, where wages are the lowest. Even before the recession, our economy was shifting to lower-wage work. In 2014, 33 percent of workers had low wages, compared to only 22 percent in 2004.²⁹

Mei When the minimum wage goes up, that is the only time I get a raise. Actually almost all my co-workers are paid the minimum wage.

Low wages cut across all dimensions of precarious work. A comprehensive approach to addressing precarious work must include improvements to minimum wage.

Working families spend wages on necessities at local businesses, putting money back into local economies. Consumer spending is the engine that powers our domestic economy. Household spending drives 54 percent of our gross domestic product.³⁰ Raising wages for low- and moderate-income workers is an effective strategy for boosting demand and helping Ontario's economic recovery.

The minimum wage lays the wage floor to stop employers from taking unfair advantage of workers with little bargaining power.³¹ Workers should not be paid so little that, after working full-time, they still find themselves with less money than is needed to live above the poverty line.³² The current \$11 minimum wage is almost 17 percent (\$4,225) below the poverty line.³³ The minimum wage should bring workers out of poverty. That is why the minimum wage should be at least ten percent above the poverty line (Low Income Measure).

Recommendation:

- » Raise the minimum wage to \$15 per hour in 2015.

Not all workers get minimum wage. Eleven percent of employees in Ontario are not fully covered by minimum wage. Employees who are low-income, women, youth, and recent immigrant workers are most likely to be fully or partially exempt from the minimum wage protections, compared to those with higher incomes.³⁴

Recommendations:

- » Repeal occupational exemptions to minimum wage.
- » Repeal liquor servers minimum wage.
- » Repeal student minimum wage.

Vacation

In a global comparison, Canada ranked lowest, alongside China, with respect to vacation entitlements.³⁵ 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. Some Canadian provinces and territories have started moving in the right direction. Only Ontario and Yukon limit vacation to two weeks of paid vacation, while all other jurisdictions have access to three weeks of vacation. Saskatchewan provides three weeks of paid vacation after one year of service, and four weeks of vacation after nine years.

Recommendation:

- » Increase paid vacation entitlement to three weeks per year. After five years of service, increase vacation to four weeks of paid vacation per year.

Sick leave

For public health concerns, the Ontario Ministry of Health tells people to stay at home when sick. Yet for 1.6 million Ontario workers, that may not be possible. Small businesses (less than 50 employees) are not required to provide job-protected, unpaid sick leave (personal emergency leave). The ESA only requires employers with 50 or more employees to provide up to ten days of unpaid leave for employees who are sick, injured, have an emergency, or need to take care of family members.

Those sectors where workers are most in contact with the public are also the sectors with the highest number of workers excluded from sick leave protection. Women are at the greatest disadvantage because they generally take care of sick family members. Racialized women are over-represented in health care, social services, accommodation, and food services.³⁶

Not only do workers need the right to take time off when sick, but workers need to have paid sick leave to make time off a viable option. For all the workers participating in this report, taking a sick day means losing wages. When earning minimum wage or low wages, few can afford to lose a day's pay.

Angelina If I am sick I won't get paid. I force myself to go to work because I won't get paid. I know it's not good for other people in the workplace because you can spread something. But I can't afford not to be paid.

Providing paid sick leave speeds up recovery, deters further illness, and reduces health care costs. 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. Canada and the US are almost alone in having no national policy requiring employers to provide paid sick days.³⁷ In the US, that is changing, as three states and 15 cities have recently adopted guaranteed paid sick days. President Obama called for paid sick leave in his recent State of the Union address. "Send me a bill that gives every worker in America the opportunity to earn seven days of paid sick leave," Obama said. "It's the right thing to do."³⁸ Canada should catch up on this important health care and workplace public policy.

Recommendations:

- » Repeal the exemption for employers of 49 or less workers from providing personal emergency leave
- » All employees shall accrue a minimum of one hour of paid sick time for every 35 hours worked. Employees will not accrue more than 52 hours of paid sick time in a calendar year, unless the employer selects a higher limit. For a full-time 35-hour per week employee, this works out to approximately seven paid sick days per year.
- » Repeal Section 50(7) and amend the ESA to prohibit employers from requiring evidence to entitle workers to personal emergency leave or paid sick days.

CONCLUSION

Employment and income instability do not just affect workers, but are also hard on families and communities.

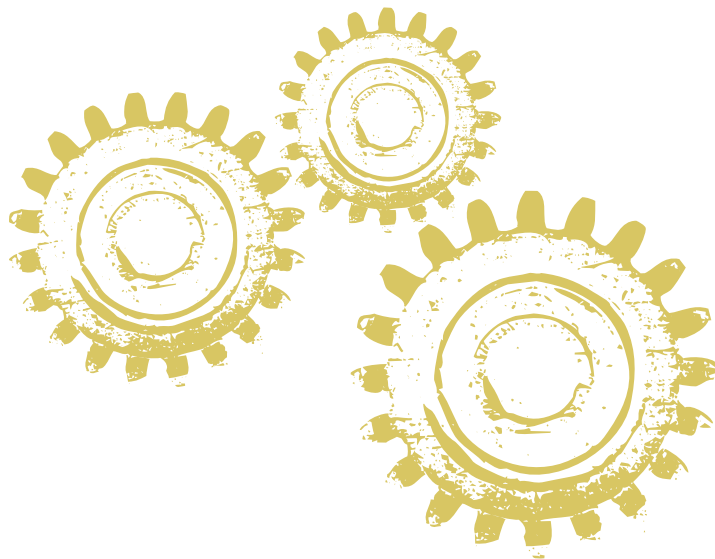
Angelina It's bad for the economy too. If people don't have a good permanent job they can't make plans.

Ontario has reached a critical moment. The government's **Changing Workplace Review** gives us the opportunity to open up labour laws, identify the gaps, and develop a new legislative architecture that can support decency in Ontario workplaces.

The employment practices such as flexible staffing, low wages, and abandonment of basic minimum standards exposed in this report are not permanent features of our economy. Rather, they are symptoms of labour regulations that have failed to keep pace with changing workplaces.

Members of the Workers' Action Centre have developed comprehensive strategies outlined in the report that offer a pathway to decent work, guided by the ILO principles of decency at work. But as the title of this report says, people are working on the edge. It is crucial that real change begins now.

It's time.



Endnotes

- 1 Benjamin Tal, Employment Quality – Trending Down, *Canadian Employment Quality Index* CIBC, March 5, 2015 http://research.cibcwm.com/economic_public/download/eqi_20150305.pdf
- 2 Low income is defined as 1.5 times the minimum wage. Leah Vosko, as quoted by Sara Mojtehdzadeh, “Ontario sees hike in underemployment, low-wage workers.” *Toronto Star* Tuesday February 17, 2015. <http://www.thestar.com/news/gta/2015/02/17/ontario-sees-hike-in-underemployment-low-wage-workers.html>
- 3 International Labour Organization, International Covenant on Economic, Social and Cultural Rights Articles 6 and 7. The Covenant came into force January 3, 1976 and Canada ratified the covenant that same year.
- 4 Harry Arthurs (2006) *Fairness at Work*. (Gatineau: Human Resources Skills Development) x
- 5 WAC (2007) *Working on the Edge*. Toronto: WAC.
- 6 Broaden the definition of employee along the lines of Ontario’s *Occupational Health and Safety Act*, which defines a worker as “a person who is paid to perform work or supply services for monetary compensation.”
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- 8 Statistics Canada, Table 1 Summary statistics for employment services industry, by province and territory, 2010 to 2012. <http://www.statcan.gc.ca/pub/63-252-x/2014001/t001-eng.htm>.
- 9 S 74.1(1) Employment Standards Act, 2000 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm#BK128
- 10 Ontario Construction Secretariat, “Underground Economy in Construction - It Costs Us All” July 2010, http://www.iciconstruction.com/admin/contentEngine/contentDocuments/2010_OCS_Underground_Economy_Report_FULL_BOOK_for_web.pdf
- 11 Kaylie Tiessen (2014) *Seismic Shift*. Canadian Centre for Policy Alternatives. <https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2014/03/Seismic%20ShiftFINAL.pdf> 20-21
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- 13 Kaylie Tiessen (2014) *Seismic Shift*. 20
- 14 Andrea Noack & Leah Vosko (2011) “Precarious Jobs in Ontario: Mapping Dimensions of Labour Market Insecurity by Workers’ Social Location and Context Commissioned”. Paper for the Law Commission of Ontario. <http://www.lco-cdo.org/vulnerable-workers-call-for-papers-noack-vosko.pdf> 8
- 15 Author’s calculations with data from Statistics Canada, CANSIM tables [282-0069](#) and [282-0073](#).
- 16 Europa: Summaries of EU legislation. Part-time Work http://europa.eu/legislation_summaries/employment_and_social_policy/employment_rights_and_work_organisation/c10416_en.htm,
- 17 Premier’s instructions to the Minister of Labour on priorities for the year 2014. <http://www.ontario.ca/government/2014-mandate-letter-labour>
- 18 Statistics Canada. *Table 282-0084 - Labour force survey estimates (LFS), employees working overtime (weekly) by North American Industry Classification System (NAICS), sex and age group, annual*, CANSIM (database). (<http://www5.statcan.gc.ca/cansim/a47> accessed: 2015-02-16)
- 19 Saskatchewan’s Employment Act requires employers to provide one week advance notice of scheduling. See s. 2-11. *The Saskatchewan Employment Act*. <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S15-1.pdf>
- 20 The *Retail Workers Bill of Rights* came into effect January 5, 2015 in San Francisco; Fair Scheduling and Treatment of Formula Retail Employees. <https://sfgov.legistar.com/View.ashx?M=F&ID=3380419&GUID=B48FC740-2942-4D2C-B639-DE687653413C>
- 21 Leah F. Vosko, Andrea Noack, John Grundy, Azar Masoumi & Jennifer Mussell, “Who’s Covered by Ontario’s Employment Standards Act? Assessing the Relationships between Workers’ Characteristics and Levels of Protection”. Paper presented at Canadian Association for Work and Labour Studies, May 29, 2014. https://www.zotero.org/groups/crimt_conference_2014/items/itemKey/N8S6CTFG
- 22 See Vosko 2014 et al., for a fuller discussion of exemptions.
- 23 As Honourable Chris Bentley, former Ontario Minister of Labour, said, “Rights without remedies will not be rights for long. Remedies that are not used are not remedies at all ... a more effective approach to ESA enforcement is long overdue.” Bentley, Chris, Statement to the Legislature Regarding 60-Hour Work Week in Ontario. Legislative Assembly. *Legislative Debates (Hansard)*. 38th Parl, 1st Session (April 26, 2004). <http://hansardindex.ontla.on.ca/hansardeissue/38-1/1037.htm>.
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- 26 Law Commission of Ontario (2012) *Vulnerable Workers and Precarious Work* 56
- 27 Tracy Lemieux and Jean-François Nadeau (2015) *Temporary Foreign Workers in Canada: A look at regions and occupational skill*. Office of the Parliamentary Budget Officer http://www.pbo-dpb.gc.ca/files/files/TFW_EN.pdf 8. Many of these workers come through the Temporary Foreign Worker Program (TFWP), which is divided in to four sections: the Temporary Foreign Workers Program (low-wage and high-wage); the Live-in Caregiver Program, recently changed to the Caregiver Program; and the Seasonal Agricultural Workers Program. Workers with temporary immigration status or temporary work authorization also include students, refugee claimants, and members of the International Mobility Program.
- 28 The *Alberta Open Work Permit Pilot* is a model of one such pathway. However, workers are reliant on the Alberta TFW Advisory Office to make recommendations for the issuing of open work permits which creates an additional barrier to access for workers at risk of reprisals.
- 29 Low income is defined as 1.5 times the minimum wage. Leah Vosko, as quoted by Sara Mojtehdzadeh, "Ontario sees hike in underemployment, low-wage workers." *Toronto Star*
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- 31 Carswell, *Employment Standards Act 2000: Policy & Interpretation Manual* 13-2
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- 33 Before taxes. Updated StatsCan LIM tables: <http://www12.statcan.gc.ca/nhs-enm/2011/ref/dict/table-tableau/t-3-2-eng.cfm>. Based on StatsCan Ontario CPI tables: <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/cpis01a-eng.htm>
- 34 Vosko et al., (2014) "Who's Covered by Ontario's Employment Standards Act? Assessing the Relationship between Workers' Characteristics and levels of Protection"
- 35 Mercer (nd) "Holiday entitlements- global comparison." http://www.totallyexpat.memberlodge.com/resources/Documents/Mercer_Holidayentitlements_Globalcomparisonable.pdf
- 36 Sheila Block and Grace-Edward Galabuzzi (2011) *Canada's Colour Coded Labour Market: The gap for racialized workers*. Canadian Centre for Policy Alternatives and the Wellesley Institute. <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20office/2011/03/Colour%20Coded%20Labour%20Market.pdf>
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