

Making Ontario Open for Business Act, Bill 47

Parkdale Community Legal Services and Workers' Action Centre
Submission to the Standing Committee on Finance and Economic Affairs Review of
Bill 47.

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INTRODUCTION

The Ontario government introduced Bill 47, *Making Ontario Open for Business Act*, on October 23, 2018¹. The Bill repeals most of the updates to the *Employment Standards Act* and *Labour Relations Act* that were passed in 2017 through the *Fair Workplaces, Better Jobs Act* (Bill 148). Unlike Bill 148, the government is pushing Bill 47 through the legislative process with little substantive consultation with those most reliant on the ESA; those low-wage workers made vulnerable in Ontario's economy and changing workplaces. We strongly recommend the complete withdrawal of Bill 47.

The first phase of the two-year long Changing Workplaces Review involved 12 public consultations across Ontario with over 200 presentations and 300 written submissions. The second phase of the Review involved stakeholder meetings, academic advisory committee, 10 commissioned academic studies, and 280 written submissions leading to a 419-page Final Report with 173 recommendations. The Review involved substantial information and resources from the Ministry of Labour. The Resulting Bill 148, *Fair Workplaces, Better Jobs Act*, underwent two rounds of Standing Committee Review including 11 public committee hearings across the province after first reading and 3 days of public hearing after second reading.

The Workers' Action Centre and Parkdale Community Legal Services work every day with non-unionized, low-wage workers. We see first-hand how the increase in part-time, temporary and contract work, due to contracting out, extended supply chains and outdated labour laws, create precarious conditions for Ontario workers. The *Fair Workplaces, Better Jobs Act* took some modest steps in updating and modernizing Ontario's labour laws. The long-standing gaps in labour market regulation have left too many workers in low-waged and precarious work with little protection of wages and working conditions.

The purpose of the *Employment Standards Act* is to address the power imbalance between employers and employees and set a floor of socially acceptable standards that employers should not fall below to prevent an uneven playing field for employers. The *Act* sets out rights for employees and responsibilities of employers. In past decades, changes in labour market practices have realigned the distribution of risks, costs, benefits, and power between employers and employees. Employer goals of flexibility became paramount in shaping the employment relationship and labour laws. Bill 148 made small steps to re-balance and modernize labour laws and to address the changing nature of the workforce, workplace, and the economy.

The provisions that Bill 47 seeks to repeal are not 'job killers'. Since the ESA was updated last November, Ontario's unemployment rate has dropped to the lowest level

¹ In a highly unusual step, the Bill was brought forward by the Ministry of Economic Development, Job Creation and Trade rather than the Ministry of Labour which administers the labour laws being amended.

since 2000;² 139,000 net jobs have been created year-over-year; and, job and wage growth outstripped the rest of Canada in low-wage sectors such as food and accommodation.³ In fact, market analysts from major banking institutions note that the persistence of strong sales and profits in a tight labour market makes the current economy quite capable of absorbing the minimum wage increase.⁴

The government conducted substantial consultations with employers and employees during the Changing Workplaces Review and resulting *Fair Workplaces, Better Jobs Act*.⁵ There was nothing rushed in this multi-year review and updating of Ontario's Labour laws. Employers and employees have already dedicated substantial time and resources in presentations during 26 days of public consultations and over 580 written submissions. The Ministry of Labour has spent considerable resources in supporting the Special Advisors to the Review, revising statutes and implementing the new legislation through updating of policy interpretation manuals, public education materials and training for Employment Standards Officers.

The current government states that it is dedicated to efficient and effective government practices. However, rolling back the ESA and LRA is not efficient or effective government practice. A repeal and lowering of standards will create upheaval for employers and employees. Over the past year, employers have spent considerable time updating their human resources policies and modernizing their employment practices. Employers and employees alike have already planned for the legislated increase in the minimum wage. The changes to the personal emergency leave provisions, including reducing access to paid and unpaid sick leave, will increase the spread of disease with increased costs to Ontario's health care system and to employers. Further, by re-introducing the red tape of doctor's notes, Bill 47 will result in significant additional costs that are unnecessary and wasteful.

We recommend that the government immediately withdraw Bill 47 in its entirety.

² Source: Statistics Canada, Labour Force Survey, Table 14-10-0019-01, (seasonally adjusted data).

³ See Ministry of Finance, Ontario Employment Report: Second Quarter of 2018. Online: <https://www.fin.gov.on.ca/en/economy/employment/>

⁴ Krishen Rangasamy (August 10, 2018) Canada Watch: Economics and Strategy. National Bank of Canada. Online: <https://www.nbc.ca/content/dam/bnc/en/rates-and-analysis/economic-analysis/hot-charts-180810.pdf>

⁵ The first phase of the two-year long Changing Workplaces Review involved 12 public consultations across Ontario with over 200 presentations and 300 written submissions. The second phase of the Review involved stakeholder meetings, academic advisory committee, 10 commissioned academic studies, and 280 written submissions leading to a 419-page Final Report with 173 recommendations. The Review involved substantial information and resources from the Ministry of Labour. The Resulting Bill 148, *Fair Workplaces, Better Jobs Act*, underwent two rounds of Standing Committee Review including 11 public committee hearings across the province after first reading and 3 days of public hearing after second reading.

MINIMUM WAGE

Bill 47 aims to stop the minimum wage increase to \$15 that is scheduled for January 1, 2019; mere weeks away. If passed, Bill 47 would freeze the minimum wage at \$14 until October 1, 2020 (\$13.15 for students and \$12.20 for liquor servers). Bill 47 would delay annual adjustments based on the consumer price index (i.e., inflation) by one year to October 1, 2020. Bill 47 would also repeal the requirement for the Minister of Labour to review the method of adjusting the minimum wage every five years starting in 2024.

If passed, Bill 47 will impose a real dollar wage cut on the province's lowest paid workers. Even when the cost of living adjustment is restored after 33 months, minimum wage workers would have to wait until 2025 to achieve the \$15 minimum wage. For the 1.7 million workers who currently have a legislated right to the \$15 minimum wage, Bill 47 would delay the \$15 for close to 6 years. By then, a \$15 minimum wage will, once again, fall below the poverty line.

Put simply, this move is bad for workers, bad for families, bad for Ontario's health care system, and bad for Ontario's economy.

The \$15 minimum wage puts money in the pockets of low wage workers who need it most. Some employer advocates argue that that minimum wage increase will largely go to teenagers who live with their parents. While nearly all teenagers will see a rise, they are only 18% of the workers that will benefit. The majority of workers (82%) who will see their wages rise to \$15 are adult workers. As David Macdonald uncovers, it is women (27%), part-time and casual workers (57%), seasonal workers (49%), recent immigrant (35%), and recent immigrant women (42%) workers whose wages will be raised to \$15 compared to the Ontario average of 23%.⁶

Delaying the \$15 minimum wage for 6 years will undermine workers' health and promote, rather than reduce "hallway medicine". As Juha Mikkonen and Dennis Raphael explain in the Social Determinants of Health: The Canadian Facts:

Income is perhaps the most important social determinant of health. Level of income shapes overall living conditions, affects psychological functioning, and influences health-related behaviours such as quality of diet, extent of physical activity, tobacco use, and excessive alcohol use. In Canada, income determines the quality of other social determinants of health such as food security, housing, and other basic prerequisites of health...Increasing the minimum wage and boosting assistance

⁶ David Macdonald (July 2018) Ontario Needs a Raise: Who Benefits From a \$15 Minimum Wage?, Canadian Centre for Policy Alternatives. Online: https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2017/07/Ontario_Needs_a_Raise_2017.pdf

levels for those unable to work would provide immediate health benefits for the most disadvantaged Canadians.⁷

Raising the minimum wage to \$15 is not a “job-killer.” The doomsday predictions of job loss by some economists⁸ and business lobbyists⁹ have been proven to be wrong. After the minimum wage increased from \$11.60 to \$14, Ontario’s unemployment rate dropped to 5.4 percent in July, lower than the national average and the lowest jobless rate since 2000.¹⁰

Some corporate lobbyists cherry pick monthly job numbers to justify their call to cancel the \$15 minimum wage. For example Rocco Rossi of the Ontario Chamber of Commerce claims that Ontario lost 90,000 jobs since the \$14 minimum wage came into effect.¹¹ You cannot draw conclusions from monthly fluctuations in job numbers. As the Ministry of Finance reported in its Second Quarter Employment Report 2018,¹² year-over-year, Ontario’s employment grew by 2 percent; that is, 139,500 net new jobs. This was higher than the national average of 1.3 percent. There were significant employment gains in both services (+2 percent) and good-producing (+1.9 percent) sectors. Significantly, employment increased in below-average wage industries by 3.1 percent, while employment in above-average wage industries increased by only 1.4 percent.

It is also worth mentioning the dishonest use of even this particular fluctuation. The so-called losses were concentrated in industries not reliant on minimum wage employment, while those sectors dominated by minimum wage work saw an increase in both jobs and hours worked.

The \$15 minimum wage is a much-needed boost to the economy. Proceeding with the scheduled \$15 minimum wage on January 1, 2019 would put money into the economy faster through consumer spending. Household spending makes up 54 percent of gross domestic product. Almost half of Canadians report living pay cheque to pay cheque

⁷ Juha Mikkonen and Dennis Raphael, (2010) Social Determinants of Health: The Canadian Facts. Online: http://thecanadianfacts.org/the_canadian_facts.pdf

⁸ See for example, the Financial Accountability Office of Ontario (2017) Assessing the Economic Impact of Ontario’s Proposed Minimum Wage Increase. Online: [https://www.fao-on.org/en/Blog/Publications/minimum_wage](https://www.fao.on.org/en/Blog/Publications/minimum_wage) and Bank of Canada (2017) The Impacts of Minimum Wage Increases on the Canadian Economy. Online: <https://www.bankofcanada.ca/2017/12/staff-analytical-note-2017-26/>

⁹ See for example, Ontario Chamber of Commerce (2017) 185,000 Ontario Jobs at Risk. Online: <http://www.occ.ca/mediareleases/185000-ontario-jobs-at-risk-from-bill-148-independent-economic-impact-analysis/>

¹⁰ Source: Statistics Canada, Labour Force Survey, Table 14-10-0019-01, (seasonally adjusted data).

¹¹ Rocco Rossi (October 3, 2018) <https://twitter.com/roccorossiTO/status/1047497692002373644>

¹² Third quarter is not yet available. See Ministry of Finance, Ontario Employment Report: Second Quarter of 2018. Online: <https://www.fin.gov.on.ca/en/economy/employment/>

(47%).¹³ This slows down the economy. Low income households spend their minimum wage increase on essentials, especially for their children. This is money that goes into local economies which is unlike tax breaks or wage increases to the wealthiest, who save more and spend a smaller percentage of their income.¹⁴

The Ontario government has suggested that it may establish a provincial refundable tax credit for minimum wage workers. First, it must be said that most workers earning minimum wage have such low incomes that they already qualify for a full refund of Ontario tax. But for those who do pay some tax, a worker earning the minimum wage that would be frozen at \$14 would receive about \$800 in tax breaks. But when you do the math, allowing the scheduled increase to \$15 would put twice that amount of money in workers' pockets – a net income of \$1,553 per year.¹⁵

Research has also documented gains for business following minimum wage increases through reduced employee turnover, reduced absenteeism, higher productivity, greater efficiency, better quality service, and increased sales. Such impacts raise business revenue and/or reduce costs, often by enough to offset the higher minimum wage.¹⁶

Contrary to claims made by corporate lobby organizations, 62% of small business owners support a minimum wage of at least \$15.¹⁷ This makes sense, because as the Julie Kwiecinski, Director of the Canadian Federation for Independent Business, admits, "... an overwhelming 86.4% of Ontario's small business employees were earning above the minimum wage."¹⁸ While there is a tiny minority of small businesses that rely on a sub-poverty wage business model, even these anecdotal stories do not tell the whole story. Many businesses are struggling with dramatic commercial rent increases, utilities, and rising purchasing and transportation costs. Such factors are rarely cited by the lobby groups purporting to represent small businesses.

¹³ Canadian Payroll Association, NPW 2017 Employee Research Survey, online:

http://www.payroll.ca/cpadocs/npw/2017/CPA_2017_NPW_NATIONAL_MEDIA_DECK_FINAL_EN.pdf

¹⁴ Statistics Canada, *The Daily*, Average spending on goods and services and shares of spending of major categories by income quintile, Canada, 2016. Table 2.

¹⁵ Mike Crawley (April 18, 2018) How Doug Ford's pledge of 'zero income tax' leaves minimum wage earners worse off. CBC News. Online: <https://www.cbc.ca/news/canada/toronto/ontario-election-doug-ford-minimum-wage-income-tax-1.4623450>

¹⁶ Peter Brownell (2016) Documented Impacts of Minimum Wage Increases on Job Growth, Business, Health, Consumer Prices, and Family Spending, Centre on Policy Initiatives. Online: https://www.cpisandiego.org/wp-content/uploads/2017/01/Economic_Impacts_of_MW_Increases_6-3-16.pdf

¹⁷ Campaign Research Poll (June 13, 2017) p. 11. Online: <https://drive.google.com/file/d/0B-tT1iavtYChVDRISGdOeTZtOUU/view>

¹⁸ Julie Kwiecinski (October 13, 2018) "Kwiecinski: Buyer Beware of Bill 148", Toronto Sun. Online: <https://torontosun.com/opinion/columnists/kwiecinski-buyer-beware-of-bill-148>

In reality, opposition to minimum wage increases comes from Big Business. That's because forty-nine percent of minimum wage workers are employed in companies with 500 or more employees; 79 percent of employees work in firms other than small business (less than 20 employees).¹⁹

Lobbyists from high minimum wage sectors have called for a minimum wage freeze.²⁰

Yet the gloom and doom scenarios have not panned out in these low-wage sectors. In Ontario the hourly wages in the Food Service and Accommodation sector (the lowest wage sector of the economy) rose from \$14.60 to \$16.41 over the past 12 months (a 14 percent increase). That is double the national average hourly wage growth in this sector. Similarly, the total hours worked in this sector increased by 4.6 percent, outpacing the national increase in Food Service and Accommodation.²¹ This is contrary to lobbyists' claims that employers would reduce hours worked. Employment in Ontario's food and accommodation sector also outpaced the national job growth in that sector. One of Canada's biggest restaurant groups, Cara Operations, posted a 14.7 percent increase in sales in the first quarter of 2018²² with CEO Bill Gregson reporting that sales were stronger in Ontario than other parts of the country.²³ Similarly, fast food giant, RBI International (Tim Hortons, Burger King and Popeye's) reported 7.5 percent net restaurant growth during the second quarter of 2018.²⁴

Market analysts believe the minimum wage hike comes at a time when the economy is capable of absorbing the increase. "Demand for labour is so strong and labour market conditions are quite tight," said Josh Nye, senior economist at Royal Bank of Canada.²⁵ The National Bank of Canada's senior economist, Krishen Rangasamy, noted that the

¹⁹ Ricardo Tranjan (October 5, 2018) "New job numbers in, still no credible evidence against minimum wage raise." Behind the Numbers, Canadian Centre for Policy Alternatives. Online: <https://behindthenumbers.ca/2018/10/05/new-job-numbers-in-still-no-credible-evidence-against-minimum-wage-raise/>

²⁰ See Ontario Restaurant Hotel & Motel Association, <http://www.orhma.com/>, Restaurants Canada www.restaurantscanada.org, Retail Council of Canada <https://www.retailcouncil.org/>, Ontario Chamber of Commerce, www.occ.ca

²¹ David Bush (October 5, 2018) "Job numbers burst big business claims about \$15". Rank and File. Online: <https://rankandfile.ca/job-numbers-burst-big-business-claims-about-15/>

²² Cara Operations Ltd (May 10, 2018) Cara Reports Q1 2018 Results Led by Solid Same Store Sales Growth. Online: <https://www.newswire.ca/news-releases/cara-reports-q1-2018-results-led-by-solid-same-store-sales-growth-682335861.html>

²³ David Paddon (March 12, 2018) Cara: Ontario's minimum wage hike has been manageable for restaurant operator. CTV News. Online: <https://www.ctvnews.ca/business/cara-ontario-s-minimum-wage-hike-has-been-manageable-for-restaurant-operator-1.3839245>

²⁴ Restaurant Brands International Inc. Reports Second Quarter 2018 Results. Company Release, August 1, 2018.

²⁵ Rachel Ranosa, (August 14, 2018) Ontario jobless rate hits 18-year low despite wage hike. Human Resources Director. Online: <https://www.hrmonline.ca/hr-general-news/ontario-jobless-rate-hits-18year-low-despite-wage-hike-246496.aspx>

advertised negative impact on employment from the minimum wage increase is not evident. “Employers seem reluctant to part with their now more expensive workers due to reported labour shortages, although the persistence of strong sales and profits could also explain the resilience in employment.”²⁶

Maintaining the legislated \$15 minimum wage and annual indexation to the CPI is Ontario’s best strategy to reduce poverty and boost the economy with no cost to taxpayers or the government.

PERSONAL EMERGENCY LEAVE (PEL)

The ESA provides that most employees are entitled to take up to 10 days of job-protected leave for illness, injury, death and certain emergencies or urgent family matters. The first two days of this leave are paid.

Bill 47 would completely change and reduce the benefits of Personal Emergency Leave (PEL) by reducing the total number of leave days from 10 to 8 days. It would remove any rights to paid leave days for workers. Bill 47 would also restrict the usage of PEL days. Instead of 10 PEL days that could be used for personal or family injury illness, death or urgent matters, workers would be limited to the following:

- Sick leave - three unpaid days for personal illness, injury or medical emergency.
- Family Responsibility Leave - three unpaid days to deal with illness, injury medical emergency or urgent matters concerning the employee’s family.
- Bereavement Leave - two unpaid days due to the death of a family member.

Bill 47 would greatly reduce the current flexibility that employees have under the PEL provision. Workers who are fortunate not to lose a family member would lose the benefit of the two-day bereavement leave and could not use them if, for example, a fourth sick day is required. This will impact women workers in particular who are more likely to require job protected days off to care for family emergencies and illness of their children or elderly parents.

Personal Emergency Leave is a part of Ontario’s public health policy. Ontario’s Ministry of Health and Long-Term Care advises people to stay home if they are sick, especially when it comes to infectious diseases like influenza.²⁷ A job-protected right to take time off when an employee or their family are sick or face emergencies is important, but

²⁶ Krishen Rangasamy (August 10, 2018) Canada Watch: Economics and Strategy. National Bank of Canada. Online: <https://www.nbc.ca/content/dam/bnc/en/rates-and-analysis/economic-analysis/hot-charts-180810.pdf>

²⁷ Ministry of Health and Long-term Care (2009) The H1N1 Flu in Ontario: A Report by Ontario’s Chief Medical Officer of Health online: http://www.health.gov.on.ca/en/ccom/flu/h1n1/pro/docs/oh9100_report.pdf

employees, particularly those that are low-waged, need to have paid leave to make time off a viable option.

Bill 47 would remove paid leave days turning the clock back on provincial standards. At least 145 countries provide paid sick days. Many high-income economies require employers to provide upwards of ten paid sick days. The US is ahead of Ontario with paid sick days' laws in 10 states, the District of Columbia and 33 other jurisdictions.²⁸ Ontario needs paid sick leave. Canada's federally regulated employees have up to 5 personal leave days, three of which are paid.

Some employer advocates are opposed to paid sick days on the basis of cost and concerns that workers abuse paid sick leave. Any 'abuse' of sick leave is a matter of internal employer human resource expertise, not a matter of employment standards.

Experience in the US demonstrates that employers' concerns about increased costs and abuse of the provision are at best overstated, if not unfounded. After Connecticut implemented paid sick time, researchers found that the law had either no or small financial effects on business; most employers said their employees did not abuse their sick time; and three-quarters of employers supported the law.²⁹ San Francisco has required employers to provide paid sick days for over a decade. A survey of 700 employers found that the average employee used only three days, despite having access to up to nine paid sick days every year.³⁰ Moreover, a new cross-jurisdictional study has found no evidence of declining wages or employment rates in US states and cities with paid sick time laws.³¹ This experience is mirrored in Ontario where unemployment has declined and wages and hours worked has increased since ten PEL days, including two paid days, was amended in 2017.

Without job-protected and paid sick leave, employees face significant pressure to work when they are sick or facing personal emergencies. A growing body of research on the problem of presenteeism, or working when ill or under distress, demonstrate that the costs are potentially greater than those associated with absenteeism.³² When

²⁸ **Current Sick Days Laws** Online: <http://www.paid sick days.org/research-resources/current-sick-days-laws.html#>

²⁹ Appelbaum, Eileen and Ruth Milkman, Luke Elliott, and Teresa Kroeger, *Good for Business? Connecticut's Paid Sick Leave Law*, Centre for Economic and Policy Research. Online: http://www.enforcingsickdays.org/wp-content/uploads/2015/10/Center-for-Economic-and-Policy-Research-Report-on-Connecticut-Sick-Leave-Law_201406111404437839.pdf

³⁰ Robert Drago and Vicky Lovell (2011) San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees. Institute for Women's Policy Research. Online: https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/A138_edited.pdf

³¹ Pichler, Stefan, and Nicolas R. Ziebarth (2016), *Labor Market Effects of US Sick Pay Mandates*, Institute for the Study of Labor. Online: <http://ftp.iza.org/dp9867.pdf>

³² John Gary (2015) Presenteeism. In D.E. Guest and D.J. Needle (eds) *Wiley Encyclopedia of Management: Human Resource Management*. London: Wiley, p 233.

employees go to work sick, individual recovery is delayed, productivity suffers, and co-workers' and the broader public health is put at risk.³³ Research demonstrates that employee's decisions to go to work sick are shaped by both their job and income insecurity and the existence of strict employer absence policies.³⁴

Reducing the number of PEL days available and restricting the use of leave to 3 unpaid sick days, 3 unpaid family emergency days and 2 bereavement days is bad public policy. The reasons workers use personal emergency leaves are changing. As more women enter 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 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). Removing flexibility under PEL creates a substantial burden on women workers. More, rather than less, flexibility is required in PEL to accommodate labour market, demographic and social policy changes.³⁵

Bill 47 would also remove the employer prohibition of requiring medical certificates from doctors, nurses and other medical professionals when PEL days are taken by employees. This was removed from the ESA because health professionals and the Ministry of Health agreed that requiring employees who are sick to obtain medical notes is bad for employees and public health. The prohibition of medical reports must be retained as it reduces the barriers employees face taking sick days and reduces costs to the Ontario health care system.

We recommend that Ontario maintain the flexible 10 days of personal emergency leave but increase the number of paid sick days to seven paid days of leave.

SCHEDULING

The ESA was amended in 2017 to provide modest scheduling rules for on-call pay, shift cancellation pay and the right to refuse shifts without penalty due to insufficient notice. Through committee review of the *Fair Workplaces, Better Jobs Act*, employer concerns

³³ Rand Carpenter et al (2013) "Food Worker Experiences with and beliefs about working while ill" *Journal of Food Protection* 76(12).

³⁴ Mariella Miraglia and Gary Johns (2016) "Going to Work III: A Meta Analysis of the Correlates of Presenteeism and a Dual-Path Model." *Journal of Occupational Health Psychology*. 2016 21(3).

³⁵ For data and a fuller analysis of these issues, please see "Personal Emergency Leave: A Response to Options Identified in the Mid-Term Report of Changing Workplaces" by Researchers from Closing the Employment Standards Enforcement Gap: Improving Protections for People in Precarious Jobs, August 26, 2016. Online: <http://closeesgap.ca/>

about the proposed scheduling rules resulted in substantial exceptions to the rules. The following scheduling provisions come into effect January 1, 2019.

- Where an employee is on call (i.e., required to be available for work), but is not called in to work, or is called in for less than 3 hours, the employer must pay three hours of regular pay. This does not apply if the on-call work is for the purposes of ensuring continued delivery of essential public services (regardless of who delivers those services). An employee who refuses an employer's request or demand to work shall notify the employer as soon as possible.
- Employees have a right to refuse a shift without repercussion if offered a shift on less than 4 days' notice. This does not apply if the employer's request or demand to work is to deal with an emergency; deal with a threat to public safety; ensure continued delivery of essential public services or for any other reasons that may be prescribed.
- Employers must pay 3 hours' wages when they cancel a scheduled shift with less than 48 hours' notice. The employer is exempted from this requirement if they are unable to provide work due to fire, lightning, power failure, storms or similar causes beyond the employer's control and other reasons that may be prescribed; or the nature of the work is weather dependent and work is unavailable for weather-related reasons.

Bill 47 would remove all of these rights from workers.

These small steps in scheduling that were made in 2017 began to address the gaps in the ESA on scheduling; gaps that leave employees bearing the cost of doing business. Requiring minimum pay for being on call and shift cancellation recognizes the costs employees bear when their shift is cancelled or shortened (e.g., travel costs, commuting time, childcare costs etc.). Similarly, job protection to refuse shifts scheduled without sufficient notice recognizes the substantial stress caused by unpredictable scheduling. Bill 47 would rollback these essential steps forward in scheduling.

Employers have long sought flexibility to respond to consumer demand and "just in time" scheduling practices that have shrunk core full-time workforces, promoted the growth of part-time and temporary work and relied on short-notice overtime and scheduling. Recent research demonstrates that stable scheduling increases sales and labour productivity and is cost effective.³⁶ Considerable research also demonstrates that scheduling uncertainty and irregular hours create precarious work.

³⁶ Joan Williams et al. Stable Scheduling Increases Productivity and Sales. Online: <http://worklifelaw.org/publications/Stable-Scheduling-Study-Report.pdf>

Canadian³⁷ and American³⁸ research show that low wage workers with insecure jobs are more likely to have irregular and unpredictable work schedule and hours. In Ontario 42 percent of low-wage workers are subject to fluctuating hours from week to week.³⁹ Workers with precarious and less secure jobs are over four times more likely to report that their work schedule often changes unexpectedly and nearly half report they often do not know their work schedule in advance.⁴⁰

The lack of predictable and stable work schedules can result in damaging socio-economic and health impacts on workers and their families. A Canadian study of workers found that unpredictable schedules and weekend work results in significantly higher emotional exhaustion and health problems.⁴¹ Unpredictable work schedules and work-life conflict compound risk factors in the long run to cause serious chronic health impacts including heart diseases, diabetes and cancers.⁴²

Without predictable and stable schedules, workers have difficulty budgeting, attending school, arranging child care, and retaining second, or even third, jobs. Lower-wage workers in particular need fair scheduling policies to have economic security. Ontario should follow the growing number of jurisdictions in the US that are requiring advance notice of schedules and improved scheduling predictability.

Ontario should move forward on work scheduling, not backward as Bill 47 seeks to do.

EQUAL PAY FOR EQUAL WORK

Under the ESA an employer cannot pay an employee a lower rate of pay than another employee on the basis of sex or employment status when they do substantially the same kind of work using the same skill, effort and responsibility. The Ontario Human

³⁷ Poverty and Precarious Employment in Southern Ontario (PEPSO) Group (2014) The Precarity Penalty. Impact of precarious employment on individuals, household and community – and what to do about it. 2014. <http://www.unitedwaytyr.com/document.doc?id=307>

³⁸ Economic Policy Institute (2015) Irregular Work Scheduling and its Consequences. EPI Briefing Paper # 394. 2015. <http://www.epi.org/publication/irregular-work-scheduling-and-its-consequences/>

³⁹ Sheila Block (2015) A Higher Standard: The case for holding low-wage employers in Ontario to a higher standard, Canadian Centre for Policy Alternatives. Online: https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2015/06/Higher_Standard.pdf

⁴⁰ Poverty and Precarious Employment in Southern Ontario (PEPSO) Group (2014)

⁴¹ For example, a Canadian study of workers found that unpredictable schedules and weekend work results in significantly higher emotional exhaustion and health problems. Jamal, M. Burnout (2004) Stress and Health of Employees on Non-standard Work Schedules: A study of Canadian workers. *Stress and Health*, 20(3):113 – 119

⁴² J. Sirgrist et al. (2015) Employment arrangements, work conditions and health inequalities. Report on new evidence on health inequality reduction. Produced by Task group 2 for the Strategic review of health inequalities. Marmot Review, London, UK.; Economic Policy Institute.

Rights Code also protects workers from discrimination in pay on other basis including race, ancestry, place of origin, colour, ethnic origin, sexual orientation, disability, family status etc. The foundation for these employment standards are equality of treatment. Bill 47 proposes to remove equal pay for equal work for those in part-time, temporary, contract, seasonal and other forms of non-permanent, full time employment.

Over the past year, most employers have brought their pay systems into compliance with the requirement for equal pay for equal work on the basis of employment status. Removing equal pay for equal work is contrary to the principle of equality underlying these standards and would create adverse economic impacts.

As the Changing Workplaces Review Advisors concluded, no part-time, casual, contract, temporary agency, or seasonal employee should be treated less favourable than comparable full-time workers, unless justified on objective grounds. Differential pay on the basis of employment status is an arbitrary and unjustified distinction affecting more than one in five employees in Ontario.⁴³

Differential treatment in pay affects some groups more than others. A disproportionate number of women, recent immigrants, young and older workers, and racialized workers are in part-time, temporary agency, contract and seasonal work. Equal pay rules require employers to address the adverse impact of discrimination in pay among such groups of workers. Similarly, differential treatment in pay is more likely to impact workers made vulnerable in precarious work. Part-time workers are more highly concentrated in sectors with high levels of precarious work. In 2015, median hourly pay rates was \$12.34 for part-timers; \$15.19 for temporary workers; and, \$24.00 for full-time workers.⁴⁴

Equal pay for equal work encourages greater workforce participation in part-time, contract and seasonal work. Such provisions thereby encourages labour force participation in line with the needs of the economy.⁴⁵

Removing equal pay for equal work provisions would create an unequal playing field for employers. Most law-abiding employers have already implemented equal pay as required by the ESA. Removing equal pay requirements would create chaos for employers. It would benefit only non-compliant employers. Law-abiding employers would have great difficulty cutting employee's wages that have been adjusted upwards to comply with equal pay in order to compete with those non-compliant employers.

⁴³ Michael Mitchell and John Murray (2017) Changing Workplaces Review: Agenda for Workplace Rights, Final Report. Online: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf p. 177

⁴⁴ Sources: Statistics Canada, CANSIM tables [282-0069](#) and [282-0073](#).

⁴⁵ Michael Mitchell and John Murray (2017) p. 179

We recommend maintaining equal pay for equal work standards and that the government work to enforce these provisions to create a level playing field for employers and employees.

TEMPORARY HELP AGENCIES

As the Special Advisors conclude in the CWR Final Report, the triangular relationship between the employee, agency, and client, and the temporary nature of employment results in agency employees being among the most vulnerable and precariously employed of all workers.⁴⁶ There are now two million temporary workers in Canada, or about 13.6% of the workforce;⁴⁷ the majority of temporary agency workers are in Ontario. The triangular employment relationship and job and income insecurity of temporary agency work require specific employment standards regulation of this sector to ensure basic minimum standards are attainable.

The ESA equal pay for equal work is a small step forward in addressing the legislative gaps governing the triangular employment relationship. The ESA requires temp agencies to pay employees the same pay rate as the client's employee when they do substantially the same kind of work. Equal Pay for Equal Work shifts the cost of agency assignments from the worker (usually paid by the employee through lower wage rates) to the agency (who must recoup their service costs from the client, not lower pay to employees). While enforcement of equal pay for temp agency workers is difficult due to their precarious work arrangement, this provision is a step in the right direction. Bill 47 would, however, remove equal pay for equal work for temp agency workers.

Temporary Agencies are at high risk for violations of employment standards. A Ministry of Labour proactive inspection blitz of the industry found monetary violations in 78 percent of agencies inspected in 2013. The industry has done little to respond to such widespread violations as evidenced by 72 percent rate of violations found by the Ministry of Labour in a proactive inspection blitz of agencies conducted in 2015.⁴⁸

The temporary staffing industry creates an uneven playing field for law-abiding employers through widespread violation of minimum employment standards. Further the legislative architecture enables this industry to flourish through lower wage rates, lack of benefits, and gaps that enable employers to dispense with employees with no liability or replace directly-hired employees with long-term indirectly-hired agency employees.

⁴⁶ Mitchell and Murray (2017) p 198

⁴⁷ ACSESS, The Staffing and Recruiting Industry. Online: <https://acsess.org/data-resources/resource-materials/industry-statistics>

⁴⁸ Ontario Ministry of Labour (2018) Proactive Employment Standards Inspections. Online: <https://www.labour.gov.on.ca/english/es/topics/proactiveinspections.php>

Much more is needed to address this growing sector of precarious work. The ESA currently enables client companies to assign work for agency employees on a **temporary basis**. However, the Act fails to limit the duration of assignment, thereby leaving the Act open to abuse. Companies can hire agency workers for long periods of time, often for years, so that they become perma-temps. We recommend that the equal pay for equal work for temporary assignment workers be maintained and further protections for temp workers be adopted.⁴⁹ For example, assignment employees should be converted to directly hired employees at the company after three months of assignment.

MISCLASSIFICATION

The ESA was updated in 2017 to prohibit employers from misclassifying an employee as an independent contractor (specifically, to be treated as ‘not an employee’ and therefore outside of the protections of the ESA). This was done because an increasing number of employers have attempted to avoid their legal obligations under the ESA by pretending that their employees are independent contractors.

The onus of proof is on the employer to prove that the person is not an employee. Bill 47 maintains the prohibition on misclassification but removes the requirement for the onus of proof to be on the employer. That is, employers would not be required to prove that an individual is not an employee. If Bill 47 is passed, then employees will be required to prove to the courts, labour board or employment standards officer that they are an employee and therefore entitled to minimum wage and basic entitlements under the ESA. Such a move would make it easier for employers to misclassify workers and lower the floor of wages and working conditions in Ontario. This would also contribute to an uneven playing field between law-abiding employers and those less scrupulous. The reverse onus should not be repealed.

ENFORCEMENT

The CWR Final Report concluded, after public consultations, commissioned studies, and discussion with Ministry of Labour staff, that “there are too many people in too many workplaces who do not receive their basic rights.”⁵⁰ Such non-compliance with the ESA lowers the floor of basic standards on which all employers and employees rely. Effective proactive enforcement is necessary to prevent employers from competing unfairly by breaking the law.

⁴⁹ Assignment employees should be converted to permanent employees of the company after a total of three months of assignment at that company. The company and agency must provide just cause if, at the end of the assignment period, another worker is hired to do the work previously done by the assignment employee. There should also be a cap of 20 percent of the proportion of the company’s workforce that can be employed indirectly through an agency.

⁵⁰ Michael Mitchell and John Murray (2017) p. 58

Prior to the election, the Ministry of Labour's plan was to hire up to 175 employment standards officers by 2020-21 to improve strategic enforcement. Once completed, the Ministry committed to resolving ESA claims filed within 90 days and to inspect 10 percent of workplaces.

The current government, however, has halted this enforcement plan and has stopped the hiring of 100 employment standards officers. It has also stopped doing proactive inspections of employers at high risk for violations of the ESA. These steps by the current government are contrary to its stated goals of efficient and effective government programs. Proactive inspections are the most cost effective and efficient strategy to enforce employment standards. We recommend that the full complement of officers be hired and trained and that proactive inspections be increased to meet the 10 percent target.

The government has proposed regulatory changes to enforcement that would reduce the amount of penalties that employers could pay for violating the ESA from \$350/\$700/\$1500 to \$250/\$500/\$1000, respectively. Quite simply, lowering the penalty for employers found in violation of minimum standards is unconscionable. Effective deterrence requires that there be a reasonable cost associated with violations of the law. We recommend that the government not proceed with regulatory changes to lower penalties for employment standards violations.

LABOUR RELATIONS ACT

One of the best ways to help workers made vulnerable in precarious jobs is to expand collective representation and bargaining. However, there still stand many barriers to unionization in workplaces and sectors where precarious work dominates. The *Labour Relations Act* must comply with the constitutional right to collective association and bargain.

Small steps were made in 2017 to modernize the *Labour Relations Act* to address some of the barriers to unionization. These changes included new rules to improve the process of organizing workplaces, enable effective collective bargaining, and protect workers from reprisals during organizing efforts and strikes. Bill 47, however, would systematically dismantle many of these important protections and create barriers to workers' constitutional right to freedom of association through unionization and collective bargaining. We support the Ontario Federation of Labour's submission to the Standing Committee on Finance and Economic Affairs to withdraw Bill 47.