

Submission to the Standing Committee on Finance and Economic
Affairs' Review of Bill 190: *Working for Workers Five Act, 2024*,

By: Workers' Action Centre and Parkdale Community Legal Services

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Introduction

This submission is made on behalf of the Workers' Action Centre (WAC) and Parkdale Community Legal Services (PCLS). Each year, our organizations support thousands of workers in low wage and precarious employment. Through case work, law reform initiatives, and movement building, we support workers in their struggle for dignity and decent work in Ontario.

Bill 190 is this government's fifth omnibus bill including changes to labour and employment legislation. Our submission focuses on Schedule 2, which proposes changes to the *Employment Standards Act, 2000*. Like previous Working for Workers Acts, the Bill does not offer meaningful protections to Ontario's workers or help to improve their quality of life.

When Doug Ford's government took power in 2018, their first order of business was to halt proactive investigations of *Employment Standards Act* violations and reverse most aspects of Bill 148, *The Fair Workplaces, Better Jobs Act, 2017*. The measures implemented in Bill 148 were informed by a comprehensive [stakeholder consultation process](#), which took into account the voices of workers and employers. Bill 148 included the implementation of 2 paid and 8 unpaid personal emergency days and a prohibition against employer's request for doctor's notes. At the same time, the mandatory amount of penalties for contraventions of the *ESA* was increased. Premier Ford scrapped all that. This government is now reinstating the least meaningful parts of Bill 148 in a piece-meal fashion. Similarly, Premier Ford halted the implementation of the [Pay Transparency Act, 2018](#), which took a comprehensive approach to Pay Equity. In its place, the government is now re-introducing job posting requirements that alone will make no significant advances towards securing pay equity.¹

Ontario's workers are feeling the squeeze of the high cost of living. They are struggling to make rent and facing the risk of being evicted in the middle of a housing crisis. Meanwhile, this government is trying to dress up minor legislative amendments as something more substantial. Below we have outlined some of the ways the Minister of

¹ [SUBMISSIONS REGARDING JOB POSTINGS RULES IN THE EMPLOYMENT STANDARDS ACT, 2000](#).

Labour can improve this legislation and bolster it with meaningful administrative actions that will actually improve the lives of working people in this province.

Summary of Recommendations:

1. Take a comprehensive approach to fighting wage theft by:

- A. Committing to more proactive *ESA* enforcement that includes workplace inspections to normalize *ESA* compliance, particularly in low-wage industries;
- B. Using the fines and penalties that the Ministry has at its disposal to deter and punish non-compliance;
- C. Taking a more aggressive approach to collecting outstanding orders to pay, so that workers who make *ESA* complaints actually receive their unpaid wages;
- D. Increasing protections for workers so that they can speak out when their rights are violated.

2. Heed public health recommendations by giving sick workers the protections and support they need by:

- A. Instituting 10 employer-paid sick days;
- B. Creating a job-protected long-term illness leave that matches worker's Employment Insurance sick leave entitlement; and
- C. Making access to these entitlements seamless by removing unnecessary barriers and eligibility criteria.

1. Ontario needs a comprehensive approach to stop wage theft.

Labour Minister Piccini [announced](#) on May 3, 2024 that he would introduce legislation that would double the maximum fine for individuals convicted of violating the ESA from \$50,000 to \$100,000. The Minister also indicated that he would be introducing regulatory changes to increase the penalty for repeat offenders who have contravened the same provision of the ESA three or more times from \$1,000 to \$5,000 – one of the highest penalties in Canada.

It's critical that this government has finally recognized that the problem of wage theft needs to be addressed. We know through our work that there is an epidemic of wage theft in our communities. Increasing fines for ESA violations is a welcome reversal of this government's decision in 2018 when one of their first orders of business was decreasing administrative penalties for contraventions of the ESA from \$350/\$700/\$1500² to \$250/\$500/\$1000, respectively.³ **However, simply increasing fines will not address wage theft.**

A. Increasing fine amounts will have no effect if the Ministry does not use the fines and penalties it has at its disposal to punish and deter wage theft.

The Ministry of Labour does not use the enforcement tools it *already* has at its disposal to collect unpaid wages for workers and punish and deter employers from violating the *Employment Standards Act*. Technically, any violation of the ESA is an offense that could be subject to a fine,⁴ but the Ministry of Labour rarely uses its punitive powers. Nearly 90% of all employers found in violation of employment standards receive no penalty. The number of fines levied by the Ministry of Labour against employers who violated the law has fallen dramatically in the last five years:⁵

² <https://www.canlii.org/en/on/laws/regu/o-reg-289-01/133019/o-reg-289-01.html>

³ Notices of contravention is another enforcement tool which the Ministry may deploy without having to prosecute under the Provincial Offences Act. The fine amounts related to first contraventions (\$250); second contraventions (\$500); and third contraventions (\$1000).

⁴ ESA sect 132.

⁵ Data from 2022 Freedom of Information Request.

Calendar year	# of proactive inspections	# of contravention notices / fines on claims	# of Part 1 prosecutions tickets (\$360) on inspections	# of Part III prosecutions
2014	1,500	90	229	
2015	2,306	78	373	
2016	2,128	325	486	
2017	2,932	1,487	194	
2018	2,693	2,575	35	79
2019	1,419	1,143	3	50
2020	1,196	297	5	37
2021	170	166	27	2
2022 - June 30	224	157	6	12

The Ministry has many different deterrent tools at its disposal. It can levy fines against employers in at least three different ways:

- 1) Through a notice of contravention, which comes with a penalty cost of \$250 for first offenders (ESA O.Reg 289/01);
- 2) Through a “Part I” prosecution under the Provincial Offences Act, where again each offence is subject to a set fine of \$295; or
- 3) Through a “Part III” prosecution under the Provincial Offences Act, which theoretically can lead to higher fines and jail time.

In the fiscal year 2023-2024 only 5 Part III prosecutions were initiated. Though a \$50,000 fine is currently the maximum that can be levied against an employer for a single offense, high fines are rarely used. From [publicly available data](#) on convictions for ESA infractions in the fiscal year 2023-2024, the maximum fine was levied in only [one high profile case](#) against three corporations and their directors. The next highest fines were for \$25,000 and \$12,500 respectively, including the victim surcharge. Of the remaining 106 convictions made (many of which were made against the same companies or directors for multiple offenses), 1 was for \$9,375, 3 were for between \$5,000 - \$6,250, and the rest were for \$2,500 or less.

It is currently the Ministry of Labour's policy to only consider levying fines against employers who have prior related contraventions, or where the impact of the contravention has a particularly negative impact on the worker (for example, where employees are owed a significant amount of unpaid wages). Yet in our work, we rarely, if ever see these fines levied, even in egregious cases. Moreover, this approach does not take into consideration that for low-wage workers, even relatively small acts of wage theft force workers to make impossible choices, like whether that month they pay rent or send money home to their families. Increasing fine amounts will have no effect if the Ministry does not use the fines and penalties it has at its disposal to deter and punish non-compliance.

B. The Ministry needs to take a rigorous, data-driven and stakeholder-informed approach to ESA enforcement that includes more proactive workplace investigations

When Premier Ford took office in 2018, the Ministry of Labour instructed staff not to initiate any new proactive Employment Standards inspections. All inspection and prosecution training for new staff were put on hold.⁶ The use of proactive inspections and expanded investigations has declined precipitously since then and remains 50 percent lower than they were six years ago:

⁶ Sara Mojtehdzadeh, Toronto Star, October 25, 2018 "Ministry of Labour puts hold on proactive workplace inspections, internal memo says"

Fiscal Year (April 1 - March 31)	Inspections completed
2023-2024	1,025
2022-2023	788
2021-2022	215
2020-2021	252
2019-2020	2490
2018-2019	2345
2017-2018	2856

What we have observed time and again is that in low-wage industries, such as the service industry, building services, and construction, employers know that they can get away with violating their employees' rights. Discriminatory practices and substandard employment conditions become the norm in these industries because employers know they will not be penalized for things like employee misclassification, illegal deductions, or wage theft.

The Ministry of Labour has the power to conduct proactive inspections of employers, but they are not regularly taking this approach. Under the current model, inspections are geared toward educating employers and bringing them into compliance. Employers are given advance notice of inspection and are required to do a self-audit of their payroll to expose violations. Similarly, where individual claims confirm violations, the Ministry has the power to expand investigations to detect violations of other employees' rights.

Without proactive enforcement workers can only access justice by making an individual complaint. Each worker must learn about the law, overcome whatever language or literacy barriers exist, deal with bureaucratic hurdles in the claims process, and withstand threats of retaliation from employers in order to file a claim themselves.

Given the significant barriers that workers face, a complaints-based approach to minimum standards compliance cannot effectively address the systemic mistreatment and wage theft that we know workers face.

The Ministry of Labour, Immigration, Training and Skills Development takes a proactive approach when enforcing health and safety legislation, specifically the *Ontario Health and Safety Act (OHSA)*. Each year the Ministry, in consultation with stakeholders, devises compliance initiatives and campaigns targeting specific sectors, hazards, and other targets. Through OHSA initiatives and campaigns, inspectors conduct both proactive inspections and reactive investigations. A "proactive inspection" is an unannounced field visit to a workplace to ensure compliance with the Act and its regulations. These are often surprise visits, which ensure that investigators are finding the workplace as it actually operates. In contrast, the last time an Employment Standards Act compliance campaign was initiated was from September 1, 2019 to February 14, 2020. Moreover, in 2023-2024, the Ministry of Labour conducted over 59,000 proactive OHSA inspections, but only 1,025 proactive ESA inspections.

Why does the Ministry believe that OHSA requires such scrupulous enforcement but the ESA does not? Both are important minimum standards of protection that all employees in Ontario are entitled to, and require adequate enforcement to ensure employers take them seriously. The Ministry needs to take a rigorous, data-driven and stakeholder-informed approach to all minimum standards enforcement, including the ESA.

C. The Ministry of Labour and the Ministry of Finance need to take a more effective approach to the collection of outstanding orders to pay. This will ensure workers actually receive their stolen wages and employers face the financial consequences of breaking the law.

We know from our experience helping workers file *ESA* complaints that even when workers receive a positive decision and their employer is issued an order to pay, that

order often goes unpaid. The worker gets a letter saying that the Ministry of Finance is working on collections, but they rarely get their money because the Ministry of Finance does not use all the powers it has at its disposal to collect those wages.

A [Star analysis](#) found that between 2020 and 2022, Ontario workers filed more than 8,400 successful claims for workplace violations and were owed more than \$36 million in total. By the end of 2022, government collection efforts had recovered less than 40 percent of that money (\$13 million of \$36 million).⁷

If this government wants to curb wage theft and ESA violations, it needs to change its policy to actually start using the collections and penalty powers it has to deter and punish wage theft.

D. Workers need adequate protections before they can stand up for their rights:

Workers often know that they are not being paid their full legal entitlements, but they cannot push back due to a legitimate fear of reprisals, including termination. These risks have only increased in recent years, due to the high cost of living in this province, and because for many of the workers we support, they are also contending with precarious immigration status. That is why the current complaint-based enforcement system does not work.

By and large, the government relies on employers voluntarily complying with the ESA or, when violations occur, for employees to try and enforce their ESA rights. Here lies a major contradiction in the ESA. On the one hand, the ESA was created to address the power imbalance between employers and employees and enact a floor of standards. But on the other hand, the enforcement process does not give workers the power to actually enforce their rights while they are on the job. Without real protection from wrongful dismissal and an established job-protected right to seek employer compliance

⁷ The Ministry of Labour claims that it actually recovered more than that and that the data the Star was working off of was incomplete.

with the law, workers will not be able to seek to enforce their rights at work. Such a job-protected right must have an effective and rapid process to keep, or return employees to their job when they have been penalized or fired for trying to enforce their rights.

What do workers need?

- Protection from wrongful dismissal under the ESA;
- Job protection when workers collaborate and take action to enforce their ESA rights at work (“concerted activity protection”);
- More proactive inspections of workplaces;
- Meaningful fines when employers violate the ESA; and
- Full compensation for workers for the costs of ESA violations.

2. Heed public health recommendations and bring in protections to ensure workers can stay home when they are sick, including 10 employer-paid sick days

Minister Picinni [announced proposed changes](#) that would prohibit employers from requiring sick notes from a qualified health practitioner in order for employees to take their entitled sick leave. Employers maintain the ability to require reasonable evidence from an employee that they were sick, such as an attestation or declaration. In 2018 this same government reversed legislation that prohibited employers from asking for sick notes for short-term absences.⁸ Bill 190 is only now bringing us closer to where we were

⁸ In 2017, then-Premier Kathleen Wynne enacted Bill 148, the [Fair Workplaces, Better Jobs Act, 2017](#), which gave most employees access to 2 paid and 3 unpaid days of Personal Emergency Leave (PEL). PEL entitled workers to job-protected leave due to 1) injury or illness; 2) the death, illness, injury or personal emergency of a close family member; and 3) any urgent matter that concerned the individual. The Bill also prohibited employers from asking for a medical certificate to verify entitled to the leave (section 50(0.1)). As one of his first orders of business as Premier in 2018, Ford enacted Bill 47, the [Making Ontario Open for Business Act, 2018](#), which revoked the Personal Emergency Leave provisions, including the prohibition against sick notes, replacing it

then. However, workers are still without paid sick leave. In 2018, Premier Ford scrapped the 2 paid personal emergency leave workers had just gained in 2017. This left workers more precarious and vulnerable entering into the COVID-19 pandemic, one of the worst public health crises we have ever seen. In 2021, this government brought in a limited temporary program that provided some workers with 3 paid sick days, but it has since also been cut. If this government wants to heed the advice of health providers, it needs to implement 10 employer-paid sick days - something which the Ford government has voted against dozens of times.

By banning employers from asking for sick notes, Ontario is catching up to other Canadian jurisdictions. Federally regulated employers and employers in Manitoba, Prince Edward Island, New Brunswick, Nova Scotia, Newfoundland and Labrador, Quebec, and the Northwest Territories are already prohibited from seeking sick notes for short-term absences. Ontario still falls far behind on job-protected sick leave, including paid leave. Currently Ontario offers fewer job-protected sick leave days than any other Canadian jurisdiction, except Nova Scotia and Nunavut.⁹

For workers in low-wage and precarious jobs, illness - including both mental and physical illness - too often leads to financial hardship. Through the experiences of our members and the workers we support, we see how the lives of workers can come crashing down around them when they experience long-term sickness or injury. We also know that many workers are forced to go to work sick because they do not have access to short-term job-protected paid sick leave, which in addition to undermining public health, can lead to worsening health conditions as workers forgo medical care.

In [our submissions](#) to the Employment, Labour and Corporate Policy Branch on Personal Long-Term Illness Leave, we outlined the measures needed to create adequate sick leave coverage for Ontario workers:

with 3 unpaid sick leave days. The Sick Leave is much more narrow than PEL, as it can only be taken when the employee is ill, injured or has a medical emergency.

⁹ Manitoba has up to 17 weeks of job-protected leave for serious injury or illness, whereas most other jurisdictions do not specify that the illness must be “serious” (The Employment Standards Code, CCSM c E110 at section 59.10).

- Require employers to provide at least 10 employer-paid emergency leave days per year plus an additional 14 paid days during public health outbreaks. In addition to preventing the spread of infectious disease, paid sick days support workers and their dependents' ability to access preventive and primary care that avoids worsening health conditions that may force workers to access longer-term sick leave.
- Provide workers with a job-protected sick leave entitlement that parallels the eligibility criteria and length of Employment Insurance (EI) Sickness Benefits to ensure that workers do not lose their jobs when contending with mid to long term illness or injury.

Please review our submissions on Personal Long-term Illness Leave for further information.