



The crisis of wage theft in Ontario



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About the Workers' Action Centre

The Workers' Action Centre (WAC) is a multi-racial worker-based organization committed to improving the lives and working conditions of people in low-wage and precarious work. We work to support migrant, racialized, immigrant and undocumented workers in having a voice at work and being treated with dignity and fairness. Members meet in their local communities to organize, provide education and build power to take on injustice faced on the job. Through our workers' rights information line, workshops and Defending Our Rights sessions, we provide information and one-on-one support to workers who have workplace problems. The Centre engages with thousands of workers every year.

Acknowledgements

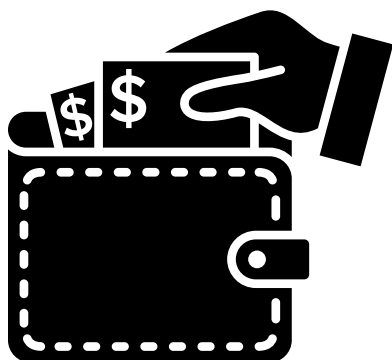
This report was a collective effort of people in precarious work, members and staff of the Workers' Action Centre (WAC) and Parkdale Community Legal Services (PCLS). Everyone contributed their knowledge, skills and insights. The report would not have been possible without the workers who participated in the survey and interviews. Members of WACs member-based Wage Theft Committee guided the development of recommendations found in the report. We would also like to acknowledge the insights provided by three former Employment Standards Officers that were interviewed for this report.

Written by Ella Bedard and Mary Gellatly.

We respectfully acknowledge that this report was prepared on the traditional lands of the Mississaugas of the Credit and Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples and is now home to many diverse First Nations, Inuit and Metis peoples.

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Executive Summary

Wage theft is the number one issue workers bring to the Workers' Action Centre. For people in low-wage and precarious work, being offered subminimum wages, not getting all their wages, or paid late, are common occurrences. While the problems giving rise to wage theft are not new, the crisis has become dire due to a combination of factors, including chronic under-enforcement of our labour laws, our current cost of living crisis, and the weakening of Canada's social safety net.

In the last 10 years, almost \$200 million dollars has been assessed as owing to workers in Ontario through the Employment Standards Act (ESA) complaint process.

Since workers face substantial barriers to filing complaints with the Ministry of Labour, Immigration, Training and Skills Development (MoL), this amount represents only a small fraction of the total wages stolen from workers.

For the workers who experience it first hand, wage theft can mean not being able to pay rent, buy groceries or medication. Understandably, it results in feelings of anger, frustration, profound disrespect and powerlessness – contributing in some cases to severe mental health issues.

Workers who do not get paid cannot spend money to support their local economies, or contribute to taxes that fund public services. Employers who do *not* commit wage theft are at a competitive disadvantage, since their costs

are higher. This incentivizes wage theft and drives wages down across the labour market, which hurts our economy overall.

Wage theft: more than just a bounced cheque

In 2024 we surveyed 513 workers in Toronto about the problems they experience at work. The survey was done in English, Spanish, Tamil, Bengali, Somali, and Chinese (Mandarin). We targeted our survey methodology to reach recent immigrants, racialized workers, non-status and low-wage workers who are often missed in standard labour force surveys. Our goal was to document the extent of employment standards' violations that people in precarious work face and the impact of violations on these workers.

The result of that survey paints a stark picture of what workers are up against in Ontario:

- 60% of workers reported that they had experienced at least one pay-related violation. While 28% of workers faced wage theft of less than \$500, over 20% of workers experienced wage theft of over \$5,000.
- Almost 28% of workers reported that at some point in the past five years they had been paid less than minimum wage. For 19% of these workers, it happened in more than one job.

- 62% of respondents who worked overtime said they *never* received overtime premium pay or time off in lieu of overtime pay.
- 51% of workers report not getting paid for all hours worked.
- 47% of survey respondents reported receiving pay later than their scheduled pay day.
- Of workers surveyed that reported being treated as an independent contractor, 76% were misclassified.
- Over 20% of survey respondents said wage theft caused them to go into debt, and over 26% said they had to borrow money after experiencing wage theft. Over 20% said they could not afford to pay rent or bills, while 17% had to use a food bank, and over 8% said they could not afford to buy essentials for their children.

All workers are at risk of wage theft. But some are at more risk than others and face more challenges when wage theft occurs.

Race and gender structured discrimination determines how and where you are hired, whether you can speak up and what happens to you when you do. Workers of colour are more likely to be in lower-waged work. Indeed, the rate of low-wage work is two times higher among workers of colour than of white workers (Scott, 2025).

Similarly, hundreds of thousands of migrants live and work in Ontario without permanent resident status. These workers, whether those on closed or restricted work permits, or those who have fallen out of status, are more vulnerable to employers who use the threat of deportation to extract labour while robbing workers of their rights. As a result, migrants with precarious status face high rates of wage theft and higher risks when trying to get their unpaid wages (Amnesty International, 2025).

As this report demonstrates, lower income people face higher economic risks when wages are late or not paid and have fewer supports to carry debt brought on by wage theft. Persistent wage theft contributes to the race gap in poverty and wealth in Ontario.

Ontario's ESA enforcement regime is failing workers

At the heart of the issues outlined in this report is a simple economic problem: employers are more likely to violate employment standards when the benefits of doing so outweigh the costs. When there is a low likelihood of detection and the penalties for noncompliance are minimal, the incentive to commit wage theft is high. Currently in Ontario, the cost-benefit analysis tips in favour of committing wage theft for many employers because even if they are caught, committing wage theft still saves them money and will not significantly threaten their business.

When Doug Ford became Premier in 2018, his government reversed course on several necessary enforcement measures that had been set in place by the outgoing government. What MoL data shows is that proactive enforcement tools and employer penalties are being under-used, even by the government's own weak enforcement standards. The message being sent to employers is that they can violate workers' rights and get away with it without penalty.

- In 2024-25, the MoL initiated only 12 Part III Prosecutions (the type of ESA penalty with the most potential to deter employers from violating the ESA, because it can result in significant fines or jail time). That is 85% fewer than the already low number of prosecutions initiated in 2017-18.
- Since the Ford government was elected, the number of low level fines, which have even less deterrent value, are also down. In 2023-24, Employment Standards Officers (ESO) issued 85% fewer Notices of Contraventions than were issued in 2017-18, under the previous government.
- The MoL conducted 77% fewer workplace inspections in 2024 than it did six years prior.
- As of 2023, there were only 115 permanent ESOs working on ESA enforcement in the entire province. Though Ontario's workforce has grown by 16% since 2014, the number of ESOs remains the same as it was at that time.
- Between 2013 and 2023, the MoL referred \$102.4 million worth of confirmed wage theft violations to the Ministry of Finance (MoF) for collections. The MoF was successful in collecting *less than* one-quarter (22%) of that amount. Meaning workers with successful wage theft claims are still owed a staggering \$79.9 million dollars in stolen wages.¹

Non-unionized workers are unprotected when they stand up for their rights

The *Employment Standards Act* (ESA) is remedial legislation, intended to address the power imbalance between employers and employees by establishing minimum standards that society (not employers or the market) believe no workplace should fall below. However, the Act does not provide employees with the power and protections necessary to enforce their rights while they are still on the

¹ Data provided by the Ministry of Finance through Freedom of Information (FOI) requests shows that \$64.8 million of the total amount of all Orders to Pay sent by the MoL to MoF for collections was deemed uncollectable. \$22.1 million was successfully collected and the remaining \$15.6 million was still in the collection process: Ministry of Finance FOI A-22-111 and A-24-024.

job. In a complaint-based system, workers have to weigh the risks of coming forward and facing potential retaliation from employers, including the loss of their jobs.

With the post-pandemic cost of living crisis, many workers are living paycheck to paycheck. Given that only 35% of unemployed workers receive Employment Insurance regular benefits during job loss, workers are reluctant to risk their (family) income. Consequently, few workers attempt to challenge wage theft violations while they are still on the job. This reality nullifies the intended remedial purpose of the ESA.

Ontario's Changing Workplaces Review (Mitchell and Murray, 2017) showed that over 90% of the complaints of ESA violations to the MoL are made by people who have quit or been fired from their job.² Of these complaints, 70% result in confirmed violations by MoL investigations (Mitchell and Murray, 2017, p. 98). This confirms that workers generally feel they cannot afford to stand up for their rights while still on the job. If they make a complaint, it is most likely after they have moved on to other employment. Because the MoL conducts very few workplace inspections, a single complaint rarely leads to an expanded investigation of that workplace, meaning conditions remain unchanged for the workers still on the job with that employer.

Legal business structures allow the corporations holding the purse strings to avoid responsibility for wage theft

Gaps in the current legal framework do not adequately address business structures that give rise to wage theft. Increasingly, companies use strategies to limit their liability for the employees who make their products or provide their services. Through multi-tiered business arrangements and organizational structures, companies at the top lower their costs through subcontracting, third party management, franchising, and misclassifying employees as independent contractors while preserving sufficient control of conditions of production to ensure brand standards are met. Ontario's outdated employment standards and enforcement mechanisms are designed for direct employer-employee relationships and fail to address the rise of multi-layered employment relationships.

² A recent study of wage theft in large Californian service sector firms found that 91% of workers had experienced at least one wage theft violation in the previous year with less than 25% of these workers reporting violations to their employer. Only 2% of these workers made a complaint to a state regulatory body (Schneider et al., 2024).

Recommendations

1. The government must enforce the ESA through proactive and strategic enforcement.

- Impose meaningful penalties on employers that will actually deter wage theft
- Make employers, not workers, bear the cost of wage theft. Workers must receive interest on unpaid wages and triple damage awards to compensate for the damage of wage theft on workers.
- Increase the capacity for enforcement by increasing the number of Employment Standards Officers for claims and proactive inspections.
- Improve recovery of workers' unpaid wages. Require bonds for repeat offenders, actually use the collection tools available and adopt new tools such as removing licenses pending payment of workers' wages, and adding time penalties for unpaid wages.

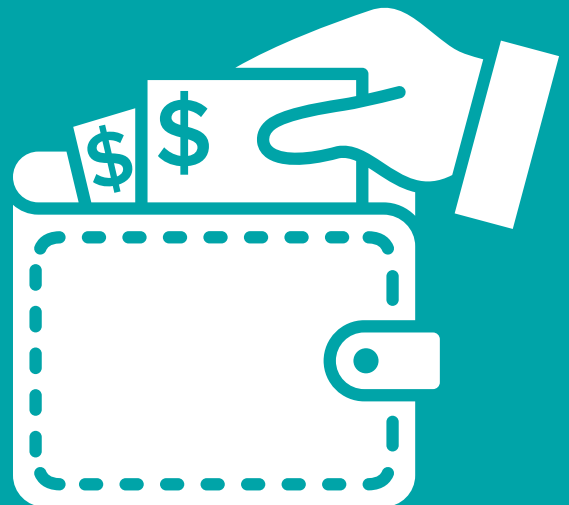
2. Workers need the power and protection to enforce their rights while they are on the job.

- Amend the ESA to provide protection from unjust dismissal.
- Employees should have the right to participate in concerted activities without employer interference. Employees who have been disciplined because they have exercised their rights should be protected against such reprisals.
- Reprisal, concerted activity, and unjust dismissal claims should be investigated on an expedited basis, and workers should be granted interim reinstatement, where appropriate, pending a final outcome in their case.
- Create a system for making—and investigating—anonymous or third-party complaints.
- Provide free legal assistance to workers in complex cases.

3. **Close the gaps in the ESA that allow company practices that result in wage theft**

- Make parties at the top of the supply chain jointly and severally liable for wages and statutory entitlements owed under the ESA down the subcontracting chain.
- Modernise the legal test for employee misclassification by establishing a presumption of employee status and a simple, cumulative test for employee status.
- Prioritize doing strategic inspections of new business models that seek to shift employer liabilities onto other entities, and in the case of misclassification, onto workers themselves.

Introduction



Taofeek

When Taofeek came to Canada in 2023, he was looking for a better life. He accepted the first job offered to him as a cook at Sunrise Caribbean, a chain of fast food restaurants. What he did not know is that Sunrise, which currently has 19 locations still operating in the Greater Toronto Area, had already been subject to numerous ESA complaints and was not paying its workers. For 11 weeks, Taofeek worked 6 to 7 days a week, 10 hours a day and was only ever paid a fraction of what he earned. He is one of 12 workers who came to the Workers' Action Centre for support. In February, the Ministry of Labour found that those 12 workers are collectively owed over \$100,000 in unpaid wages, and over \$125,000 in reprisal damages. We know of at least a dozen more workers who are owed wages by Sunrise but were too afraid to file ESA complaints. While Sunrise Caribbean continues to operate, it has not paid a cent to any of these workers, and has not been subject to a single fine or penalty by the Ministry of Labour.

Victoria

Victoria worked for a cleaning company called Excellent Solutions. As part of their assignment, Victoria and her boyfriend cleaned a Walmart store, which had subcontracted cleaning services to Excellent. They worked for \$12.50 per hour and did not receive overtime, public holiday or vacation pay. After Excellent lost the contract with Walmart, Victoria's employer stopped paying her and tried to disappear. When Victoria called her former supervisor Sarah to ask for her unpaid wages, Sarah threatened to have Victoria deported. Several other former Excellent employees also came to the Workers' Action Centre for support. Most of them were unwilling to file ESA complaints because they were afraid Sarah would retaliate against them.³

³ All names of workers, employers, and businesses have been changed to protect the workers from retaliation by their former employers. The only exception is Taofeek, whose story has already been publicly reported in the Toronto Star (Mojtehdzadeh, (2024)).

Ontario workers ARE OWED ALMOST \$200 million dollars



As shocking as Taofeek and Victoria's stories' may seem, these are the types of stories we hear from workers everyday at the Workers' Action Centre. This is wage theft. It is rampant in Ontario, and it costs all of us.

Wage theft occurs when employers do not pay workers their full legal entitlements. It happens when workers are not paid for all the hours they work; are paid less than the minimum wage; or are not paid other statutory entitlements like overtime premium pay, vacation pay, public holiday pay, and termination pay. Employers also commit wage theft when they misclassify employees as independent contractors to shed employer liability for mandatory deductions and contributions to public pensions, employment insurance, workers compensation, and basic employment standards requirements.

In the last 10 years, almost \$200 million dollars has been assessed as owing to workers in Ontario through the *Employment Standards Act, 2000* (ESA) complaint process.⁴

This amount represents only a small fraction of the total wages stolen from workers, as Taofeek and Victoria's stories show, for every worker who files a complaint, there are many more who felt they could not come forward.

When the MoL can only recover about half of the wages it finds are owed,⁵ the ESA complaint process is rendered functionally useless to most workers.

⁴ \$199.6 million was assessed as owing between 2014 and 2023. Data provided by the Ontario Ministry of Labour (FOI Request 2023-00315).

⁵ A Toronto Star analysis of internal data provided by the Ministry of Labour found that the MoL was able to recover approximately 36% of wages assessed as owing to workers between 2020 and 2022 through voluntary compliance and/or MoF collection efforts. MoF data discussed in more detail later in this report suggests that collection efforts have successfully recovered less than 22% of workers' unpaid wages (Mojtehdzadeh, 2023).

Many of the workers we speak to express feelings of shame and embarrassment, that this is something they could “let happen to them.” But wage theft is not a private concern between an employer and an employee, it is a serious social and economic problem that not only harms individual workers and their families, but also fosters a process of erosion of basic socially established minimum standards (Vosko et al., 2017).

Minimum standards laws set the floor for working conditions and wages for Ontario’s 8.9 million workers. Minimum standards enforcement is particularly important to the 73.7% of those workers who do not have a union. When workers are not paid for what they have earned, they cannot spend that money in their local economy or contribute the taxes that fund public services. Employers who follow the law face unfair competition when up against companies committing wage theft. This drives down wages and working conditions more generally which has a negative impact on the economy.

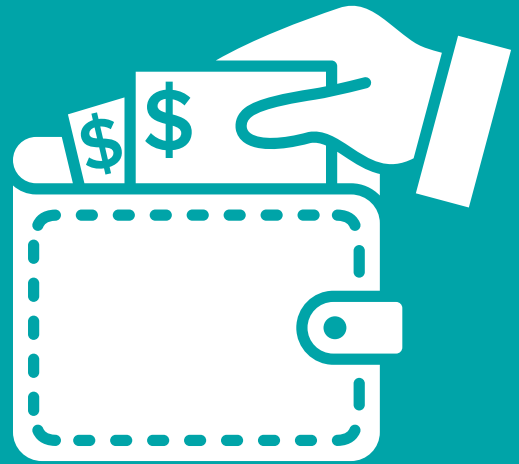
Taofeek and Victoria’s stories showcase the structural sources of Ontario’s wage theft epidemic: employers have learned that they can get away with it and the government that fails to take any proactive steps to investigate, punish, or even collect unpaid wages from the most egregious violators. The Employment Standards enforcement system that is, presumably, intended to help workers is designed to fail. Not only is the enforcement system based on an incorrect understanding of how and why wage theft happens, it is also under-funded, under-enforced, and puts the onus on workers themselves to seek justice, while offering no protection for them to do so.

Very few studies have been done to document the rate of employment standards violations faced by people in precarious work and workers’ response to violations. This report presents new research to begin to fill that gap. In 2024 we surveyed 513 workers in Toronto about the problems they experience at

work. The survey was done in English, Spanish, Tamil, Bengali, Somali, and Chinese (Mandarin). We targeted our survey methodology to reach recent immigrants, racialized workers, non-status and low-wage workers who are often missed in standard labour force surveys. Our goal was to document the extent of employment standards' violations that people in precarious work face and the impact of violations on these workers. Our study focuses on provincially-regulated workers, whose minimum wage rate and employment standards are determined by the ESA.

The report outlines the scope and causes of what we are calling an epidemic of wage theft in Ontario and proposes meaningful solutions. Section One of the report puts this study's findings in context showing that wage theft, though difficult to quantify due to underreporting, has been a pervasive ongoing problem in North America, costing us hundreds of millions of dollars. Section Two outlines the findings of our worker survey, showing both the prevalence of several different types of wage theft among low-wage workers, and the hardship it causes for workers and their families. Section Three explains how Ontario's enforcement system is failing workers and has only gotten worse under the current Conservative government and recommends measures that the government should take to address the epidemic of wage theft. A complete list of our recommendations are then summarized at the end of this report.

1



Wage Theft in Canada: A Persistent Problem

While wage theft has been well documented in the U.S.,⁶ there is less data available on wage theft in Ontario. The few Canadian studies that are available highlight wage theft as a persistent and ongoing problem. The federal government's 1997 Labour Standards Evaluation survey found that 25% of federally-regulated employers were in widespread violation of the Canada Labour Code and that 59% were in partial violation (Human Resource Development Canada, 1997, p. 41). These results were confirmed a decade later by Statistics Canada (Arthurs, 2006, p. 192). In 2011, the Workers' Action Centre surveyed people in low-wage and precarious work and found substantial violations of core standards: 22% of workers earned less than minimum wage; 33% were owed unpaid wages; 39% did not receive overtime pay; and, 36% lost their jobs without receiving termination pay or notice (Gellatly, 2011). The updated survey and freedom of information data in this report show the problem persists, and low-wage workers are still experiencing comparable rates of wage theft.

In the last ten years, the Ministry assessed almost \$200 million dollars owed to workers in Ontario through ESA complaints. But this is just the tip of the iceberg. Due to underreporting, the number of complaints is not representative of the prevalence of employment standards violations that occur (Arthurs, 2006). U.S. based research indicates that as few as 2% of workers experiencing wage theft made a complaint to a state regulatory body (Schneider et al., 2004, p. 9). The Canadian statistics are likely comparable.

⁶ A ground-breaking American study done by Bernhardt and colleagues in 2009 did a representative survey of workers and found that two-thirds (68%) of workers experienced at least one pay violation in their previous week of work. The study also found that 26% of surveyed workers were paid below the minimum wage; 76% of those that worked overtime were not paid premium pay; 70% did not get paid for work done outside their regular shift ("off-the-clock" work); and 43% of workers who made complaints about wage theft experienced employer retaliation. In a study of minimum wage violations, Cooper and Kroeger found that 2.4 million workers in the 10 most populous U.S. states lost \$8 billion annually to wage theft – that is an average of \$3,300 per worker per year of lost wages. They estimate that more than \$15 billion is lost to minimum wage violations alone each year in the U.S as a whole (Bernhardt et al., 2009). See also, Cooper and Kroeger (2017).

For most workers, fear of reprisal and the challenges and risks associated with pursuing a claim against their employer pose significant barriers, especially for low-wage and precarious workers, racialized workers, and workers with precarious immigration status (Banks, 2016, p. 13-16). Many workers do not file complaints because they do not know about the complaint process, or cannot access it because of linguistic, cultural, or literacy barriers (Banks, 2016, p. 24). Due to under-investment in the ESA enforcement system, ESA complaints are taking longer to resolve, and the MoL has low rates of success in collecting wages that are assessed as owing. This causes workers to lose faith in the enforcement system, making it less likely that they will report future violations, further contributing to the underreporting.

Where proactive MoL inspections have taken place, we get a clearer picture of the prevalence of wage theft. The Ontario Changing Workplaces Review reported that proactive inspections of workplaces commonly found ESA violations 75% to 77% of the time (Mitchell and Murray, 2017, p. 261). This confirms that in sectors targeted for inspections wage theft violations are pervasive. Similarly, expanded workplace investigations, which target workplaces with prior confirmed violations, found violations 82% of the time (Vosko et al., 2016, p. 41).

Private litigation of wage theft violations has played an increasingly large role in employment standards enforcement because public enforcement has been so ineffective. In recent years, there have been a growing number of class action lawsuits in Ontario related to unpaid overtime and employee misclassification - two common forms of wage theft. In the six years between 2018 and 2024, Ontario-based class actions alleging ESA-related wage violations yielded settlements totalling over \$16 million. Canada-wide and multi-jurisdictional class actions resulted in a further \$198.5 million paid out to workers during this same period, mostly related to unpaid

Between 2018 to 2024

Ontario class actions

FOR WAGE THEFT

settled for over

**\$16
million**

overtime and unpaid hours of work.⁷ This illustrates the MoL failure to fulfill its responsibilities to enforce labour laws and the way current policies and practices further download risk and responsibility for enforcement onto workers.⁸

As this data shows, wage theft has been a persistent problem in Ontario, and in other jurisdictions. As we discuss later in this report, it is a byproduct, not only of the broken enforcement system, but of modern business practices, which make it harder for workers to hold the parties who control their work responsible for their working conditions. Lawmakers have periodically made efforts to modernize labour laws and improve enforcement to curb wage theft. Most recently, in February 2015, the Minister of Labour initiated the Changing Workplaces Review (CWR), appointing two special advisors to conduct an independent review of the ESA and the *Labour Relations Act, 1995*. Their mandate was to recommend changes necessary to modernize Ontario's labour and employment minimum standards in light of the changing nature of the workforce, the workplace, and the economy itself (Mitchell and Murray, 2017, p. 18).

After two years of public and expert consultations, the Special Advisors released a thorough report, which identified one of their key policy goals as creating a culture of minimum standards compliance (Mitchell and Murray, 2017, p. 55). Drawing on recommendations in that report, the provincial government introduced Bill 148, *The Fair Workplaces, Better Jobs Act, 2017*,

⁷ Though the class action settlements tallied here were resolved between 2018 and 2024, the underlying claims may be for wages which became owing in years prior to that. A sizable portion of the multijurisdictional class action settlements would have gone to Ontario-based class members, but it is not possible to determine exactly what portion of the global settlement amount went to Ontario class members. The quantum does not necessarily represent the total amount of wages owing, but like all settlements, are a percentage of that total. Class Action settlements require court approval and must be deemed fair, reasonable and in the best interest of the class members. They are therefore grounded in fact and fall within a reasonable range of outcomes from the litigation (on file with authors).

⁸ Although low-wage workers are disproportionately impacted by wage theft, unpaid overtime, misclassification, and off-the-clock violations (requiring workers to work unpaid time before or after their shifts) are increasingly prevalent for higher income earners. For example, a significant number of wage theft class action lawsuits relate to unpaid ESA entitlements of employees at large financial institutions.

and made several key policy decisions aimed at improving ESA enforcement including, among other things:

- Prohibiting employers from misclassifying employees as independent contractors;
- Making it easier for related employers to be found jointly liable for violating workers' ESA rights;
- Empowering the Director of Employment Standards to set interest rates to be applied to wages owing;
- Improving strategic ESA enforcement by targeting employers and sectors with high rates of ESA violations;
- Hiring up to 175 more employment standards officers;
- Committing to resolve all ESA claims within 90 days;
- Committing to inspect one in ten workplaces;
- Increasing the maximum administrative monetary penalties for non-compliant employers from \$250, \$500, and \$1000 to \$350, \$700, and \$1500, respectively; and
- Empowering the Director of Employment Standards to publish (including online) the names of individuals who have been issued a penalty for being in contravention of the ESA, including a description of the contravention, the date of the contravention and the amount of the penalty (Ontario Ministry of Labour [OMoL], 2017a).

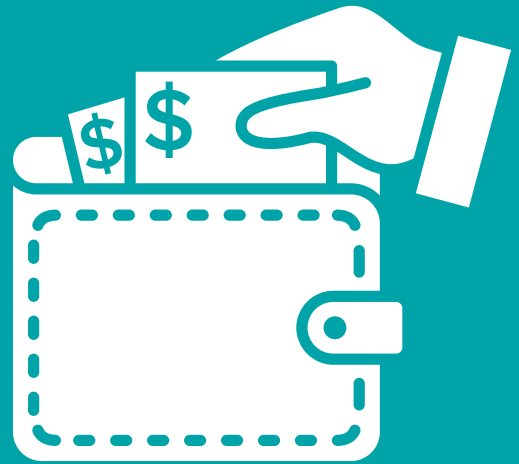
When the current government came into power in 2018, however, it reversed course on most of the necessary enforcement measures that had been set in place by the outgoing government. The Ministry of Labour froze hiring of Employment Standards Officers, instructed officers to stop any new proactive Employment Standards inspections, and all inspection and prosecution training for new staff was put on hold. The increased fine amounts for contraventions of the ESA were cancelled and the lower fine rates were reimposed.⁹ As discussed in Part Three

of this Report, the number of workplace inspections, employer prosecutions and fines significantly declined when Doug Ford became Premier. This trend was exacerbated by the COVID-19 pandemic - when the number of prosecutions conducted each year entered the single digits - and have never recovered to their pre-Ford enforcement levels.

Several studies were produced for the purpose of the Changing Workplace Review, analyzing the ESA enforcement system. However, in the last 10 years, those studies have not been updated to account for the significant changes made under Premier Ford. This Report hopes to provide an updated snapshot of the ESA enforcement system: what works, what does not work, and how it impacts workers and their families.

⁹ In July 2024, a new licensing regime for temporary help agencies came into force. O. Reg 289/01 now prescribes fines of \$15,000/\$25,000/\$50,000 for first, second and third time offenders respectively, but only for Temporary Help Agencies and their Client Employees who violate certain aspects of the licensing regime, such as operating without a license (74.1.1(1)), or who provide false or misleading information in their application (74.1.3(3)). Penalties and Reciprocal Enforcement, O. Reg. 100/23, s 1.

2



Wage Theft: More Than Just a Bounced Check

Persistent wage theft contributes to the race gap in poverty and wealth in Ontario



In 2024, the Workers' Action Centre conducted a survey of 513 low-wage workers in the Greater Toronto Area. The survey was done in English, Spanish, Tamil, Bengali, Somali, and Chinese (Mandarin). We targeted our survey methodology to reach recent immigrants, racialized workers, non-status and low-wage workers who are often missed in standard labour force surveys. This methodology was necessary to get a fuller picture of the extent and impact of wage theft in Ontario.

Race and gender structured discrimination determines how and where you are hired, whether you can speak up and what happens to you when you do. Workers of colour are more likely to be in lower-waged work. Indeed, the rate of low-wage work is two times higher among workers of colour than of white workers. In 2024, the median hourly wage of racialized workers was \$29.63 compared to \$35.02 for white men – a wage gap of 85%. Women of colour earned, on average, 74 cents for every dollar a white male earned – a difference of almost \$10 per hour (\$27.88 vs \$37.63) (Scott, 2025).

Hundreds of thousands of migrants live and work in Ontario without permanent resident status. Those on closed work permits are only allowed to work for the single employer listed on their permit. Migrants on study permits or other work permits have restrictions on where and for how many hours they can work. Those that have fallen out of status are vulnerable to employers who use the threat of deportation to extract labour at less than minimum wage. Migrants with precarious status face high rates of wage theft and higher risks when trying to get their unpaid wages.

Employers are more likely to practice wage theft in low-wage sectors where labour market inequalities due to race, gender and immigration status prevail. Prior to 2018, the Ministry of Labour used to conduct proactive inspections of employers and sectors that were at higher risk of wage theft. A province-wide enforcement blitz of construction, transportation and warehousing, building services and retail stores found that 42% of companies inspected

were violating hours of work and overtime pay. A blitz of sectors where young and migrant workers prevail (food services, construction and retail) found that 53% of companies inspected violated employment standards (OMoL, 2018).

The impacts of wage theft are also shaped by migration and racism. Poverty is much higher among racialized communities. While white residents had a poverty rate of 6.1 in 2020, it rose to 13.4 for West Asian and Korean communities, 12.2 for Chinese and 10.4 for Black communities. Notably, higher poverty rates persisted from the first to third generations for West Asian, Black and Latinx communities (Schimmele et al., 2023). As the findings of this survey demonstrate, lower income people face higher economic risks when wages are late or not paid and have fewer supports to carry debt brought on by wage theft. Persistent wage theft contributes to the race gap in poverty and wealth in Ontario.

Taking into consideration how race, gender and immigration status intersect with other labour market forces, our survey targets the low-wage workers who are disproportionately impacted by wage theft. For a description of the Methodology, see [Appendix A](#). Survey results are as follows.

Minimum wage violations

The minimum wage established under the ESA sets the basic minimum standard of pay for employees. It is intended to stop employers from taking unfair advantage of workers with little power in the workplace. The hourly minimum wage applies to workers regardless of the form of work (e.g., part-time, temporary or full-time), form of wage payment (cash or piece rate) and immigration status (documented or undocumented work).

Nevertheless, of the workers we surveyed, 11% earned less than minimum wage in their current job. Almost 28% of workers reported that at some point in the past five years they had been

“

Working in home construction I would get \$120 a day for a 12-hour day.

”

“

When I worked in the nail salon, there were different types of wages. If I worked on reception, I would get \$14 per hour. But if I did nail work, I would only get paid per customer – that was 40% of the customer’s payment.¹⁰

”

¹⁰ Excerpts are from anonymized worker survey responses.

“

I worked at a painting company and there was never a set quit time. It could be 8 or 9 p.m., or it could be 1 a.m. if needed. Weekend work wasn't optional, and if you didn't show up, you were punished or fired altogether. On more than one occasion, we only made one stop for lunch.

”

“

At one of my jobs I was pressured to accept cash payments for extra hours I worked (no overtime premium pay)

”

paid less than minimum wage – and for 19% of these workers, it happened in more than one job.

The majority of workers (62%) who experienced substandard wages had precarious immigration status. 31% of people earning less than minimum wage did not have permits to work in Canada. 21% worked under the Temporary Foreign Worker Program with work permits tied to their employer and 10% had open TFW work permits. Still, almost 40% of those who reported not being paid minimum wage in one or more jobs in the past five years did have permanent residency or Canadian citizenship.

Nearly 12% of Ontario's workforce earns minimum wage - having an effectively enforced minimum wage floor is critical. When employers pay less than minimum wage, it not only hurts the worker but it also hurts local economies. Substandard wages give companies unfair advantage and drive down wages generally and by sector.

Hours of work and overtime

The ESA has long set limits on hours of work and overtime. These laws are crucial for health and safety, job creation, and work-life balance. To compensate employees for working excess hours of work, overtime premium pay (1.5 times regular rate of pay) is required after 44 hours of work, or paid time off in lieu.

Unpaid overtime is one of the most common forms of wage theft. It is among the top three forms of employment standards violations found during government inspections in 2023-24 (OMoL, 2025a). Statistics Canada (2025) found that 8.5% of Ontario employees worked unpaid overtime of an average 8.3 hours per week in 2023. For a full-time worker earning \$20 per hour, that works out to approximately 430 hours of unpaid labour – or \$8,632 per year (not accounting for overtime premium pay).

The rate of overtime and unpaid overtime is much higher among respondents in our survey. **Just under a quarter of the workers we surveyed reported regularly working more than 44 hours**

“

There is a loophole in employment standards that says care workers who live in their workplace do not need to be paid for on-call work. The group homes I work in rely on live-in workers, who almost never have pr [permanent residency], to work 45 unpaid hours of overnight on-call work each week on top of their 40 hours waged work in the day. It's extremely exploitative! There are also many women working 40 hours who are considered 'relief' and do not have any sick days, vacation pay or benefits and could be given 0 hours tomorrow.

”

per week in their current job, while two-thirds (62%) of these workers said they never received overtime pay or paid time off in lieu.

Only 15% of respondents reported that they always were paid overtime premium pay when they worked more than 44 hours in a week.

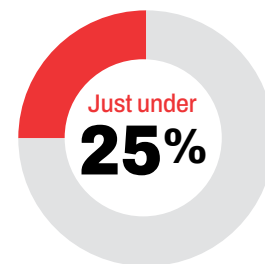
Meal breaks

Uninterrupted meal breaks are important for workers' mental and physical health. According to the ESA, employers must provide a 30 minute, unpaid meal break (free from work) if an employee is working five or more hours. If an employee works during the break then they must be compensated.

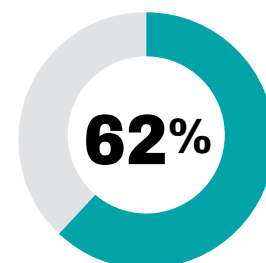
While the majority of workers we surveyed reported that they never or rarely had problems (58%) getting their meal breaks, one in five workers (22%) always or often had problems receiving their meal breaks.

Vacation

Vacations are part of a package of employment standards that recognize the importance of providing workers with time away



**of surveyed workers
work more
than 44 hours
per week**



**of surveyed workers
never received
overtime pay
or paid time off**

“

Overtime and holidays weren't paid for 28 months, only the last 5 months I got my tips and holidays.

”

from work for health and well-being. Employers are required to provide two weeks paid vacation after one year of work or 4% vacation pay for each dollar earned. After five years of work, employers are required to provide three weeks or 6% vacation pay.

Yet, one in three (32%) of the workers we surveyed reported problems getting their vacation pay.

Public holidays

Similar to vacations, the ESA sets out statutory public holidays to provide respite for workers and time to spend with families and friends. In 2023-24, the top violation uncovered through the government's proactive inspections was failure to provide public holidays off with pay, or when an employee is required to work on a public holiday, to provide additional premium pay or an alternative day off with public holiday pay. This is a significant form of wage theft as there are 9 paid public holidays per year which amounts to nearly two weeks of wages.

Of the workers we surveyed, 46% reported that they did not get public holidays off with pay.

Employers can require employees to work on public holidays; however, employees must be paid premium pay and public holiday pay for doing so. A majority of workers surveyed reported having worked on public holidays (60%). Of those, 46% did not receive public holiday premium pay. Loss of premium pay (1.5 times the regular hourly rate of pay) for up to 9 public holidays can add up to a substantial amount of unpaid wages in a year and represents a significant form of wage theft.

Termination pay

Employers are required to provide a week of notice, or pay in lieu of notice, for each year worked up to a maximum of 8 weeks to employees that are fired or whose work is terminated.

34% of workers reported being terminated without receiving termination notice or pay—leaving them with no cushion against the adverse impacts of losing a job and searching for a new job.

Documentation, deductions, and late payments

Pay stub violations

Employers are required to provide documentation of an employee's hours of work, pay and deductions. However, 36% of workers surveyed did not receive this mandatory information. This information is important for workers so that they can confirm that their pay is correct.

Illegal deductions

Employers must not withhold or deduct a worker's wages beyond statutory deductions such as taxes, Canada Pension Plan (CPP), Employment Insurance (EI) and other authorized deductions, such as union dues. Nonetheless, some employers make illegal deductions for things like "dine and dash", damages, and lost items which effectively puts the cost of doing business on employees. One in five workers (19%) reported that their employer made illegal deductions.

Pay that is late

Employers are required to pay employees on a regularly established pay day to provide certainty and continuity for workers. In a September 2023 poll by Leger, nearly half of Canadians (47%) are living paycheck to paycheck, making late payment of wages particularly difficult for workers (Leger, 2023).

47% of survey respondents reported receiving pay later than scheduled. 10% of workers surveyed reported getting paycheques that bounced. In addition to late or no pay, bounced cheques may result in bank penalties and other financial difficulties.

Paid less than owed

10% of workers reported that they had been paid less than they were owed on one occasion. However, almost one-third (34%) of those workers reported they were short-changed multiple times.

“

They paid us through e-transfer but there were never any paystubs. The pay was for varying amounts that didn't reflect the agreed upon pay rate.

”

“

They deducted \$50 from my salary because I didn't prepare the dough properly.

”

“

Their pay schedule was always so late. For example, if I worked from January 1st to 15th, I would not get my pay for work until the second week of February.

”

“

I was working as a waitress and they didn't pay me my full tips, they never let us see how much tips were generated and they didn't give clear accounts.

”

Tipped workers

Except in limited circumstances, employers are not allowed to take any portion of tips for themselves that are provided by customers in workplaces where tips are customary, such as bars and restaurants.¹¹ Over one in three tipped workers (36%) reported that management had taken employee tips for themselves.

Misclassification

Misclassification occurs when employers treat employees as independent contractors to avoid liabilities and shift costs onto workers. This is not good for workers because independent contractors do not have protections under the *Employment Standards Act* for minimum wage, overtime, termination pay, vacation and public holiday pay, and more. Employers misclassify workers to reduce their costs for WSIB premiums, as well as Canada Pension Plan (CPP) and Employment Insurance (EI) contributions, or any other employer-paid benefit costs.

Of the workers surveyed who reported being treated as an independent contractor, 76% were misclassified.¹² These misclassified persons worked in sectors where misclassification is common: construction, cleaning, landscaping, transportation and deliveries, and hospitality.

Misclassification turns decent work into precarious work by stripping workers of their legal protections and social benefits. For example, “self-employed” persons or “independent contractors” cannot access social benefits like workers compensation when they are hurt on the job. Nor can they access EI regular benefits if they lose their job, or access EI income support during illnesses or parental leaves. Under

¹¹ Employers can receive part of the tip pool if they regularly perform the work of employees that usually get tips in their workplace.

¹² According to survey question responses relating to the four fold test on employee status.

Ontario's ESA, workers earning the minimum wage receive annual cost of living adjustments, but this income protection is not extended to those misclassified.

Not only does misclassification harm workers while it is happening, it harms workers well into the future. Lost CPP contributions means lower pensionable income for these workers when they retire.

Illegal retaliation by employers

The *Employment Standards Act* prohibits employers from punishing employees who seek their ESA rights at work. Threatening or actually firing a worker, cutting hours or pay, giving workers a worse work assignment or harassing a worker are all illegal forms of employer retaliation if they occur as a direct result of an employee attempting to exercise rights or asking the employer to comply with the ESA. The stated intention of the Section 74 anti-reprisals provisions is to “ensure that employees can pursue their rights” under the ESA (OMoL, n.d.).

Disappointingly, the anti-reprisals provision is reactive, not proactive. First, it is up to the victim of reprisals to file a complaint to the MoL about the illegal retaliation by their employer. This process takes months to resolve, and when the reprisals are visible to all workers, such as a worker being threatened, fired or having hours of work cut, the impact on other workers is chilling. Workers conclude it is too risky to confront the employer over an ESA violation, lest they too become subject to reprisals.

Second, when retaliation takes place, it is up to the reprised worker to make a strong case that the employer knew the worker had engaged in *protected activities* and the employer took reprisal action because of that activity and not for some other reason. Because there is currently no protection from unjust

“

Once I complained to the federal government of immigration about the bad working conditions. The employer found out and they fired me immediately. They threw me out of the house I was living in; threw all my stuff on the driveway. I had no place to go, no place to sleep, no friends or family in this country.

”

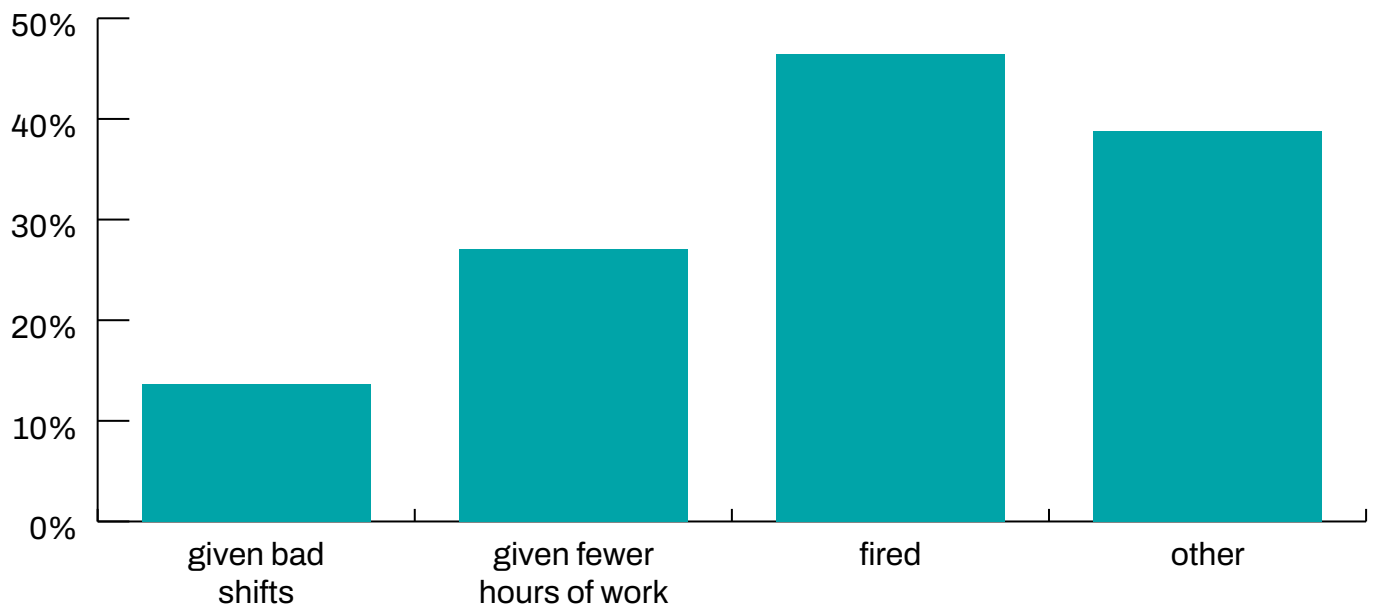
dismissal in the ESA, employers can fire workers without just cause. Therefore employers only have to prove that they fired the employee for some other reason than a protected activity.

When asked how they responded to wage theft in their job, some workers report talking to coworkers (28%) and family and friends (23%). 17% of workers reported that they did not take any action in response to wage theft. 18% (nearly one in five) reported that they quit their job in response to wage theft.

Some workers did take action to address the wage theft that they experienced. Just under one-third (31%) of workers experiencing wage theft said that they directly asked their employer to pay them what was owed and 10% filed a complaint for unpaid wages at the MoL. Of those, only 22% of workers were successful in receiving the unpaid wages that were owing.

Almost one-third (32%) of workers reported illegal retaliation from their employer and the most common form of reprisal was being fired (47%). Workers reported other reprisals such as being physically assaulted, threatened with legal action, and threatened with deportation.

FIGURE 1: Types of reprisal experienced by workers



Economic and health impacts of wage theft

Alberto

Near the end of his employment, Alberto's boss started to pay him less than he was owed each pay period. Then his payments were late. Alberto desperately needed the money he was owed: he was relying on his wages to help pay for his mother's cancer treatment and support his family back home and in Toronto. The stress was keeping him up at night.

When Alberto came to the Workers' Action Centre he learned more about his rights and realized that he was also owed unpaid overtime, public holiday and vacation pay. Ultimately, the Ministry of Labour found that Alberto was owed over \$28,000 in unpaid wages. More than two years after the initial decision was issued, and more than four years after the wages became due, Alberto is still owed the same amount of unpaid wages. Despite the large amount outstanding, the Ministry of Labour has issued no fines, tickets, or further penalties against the employer.

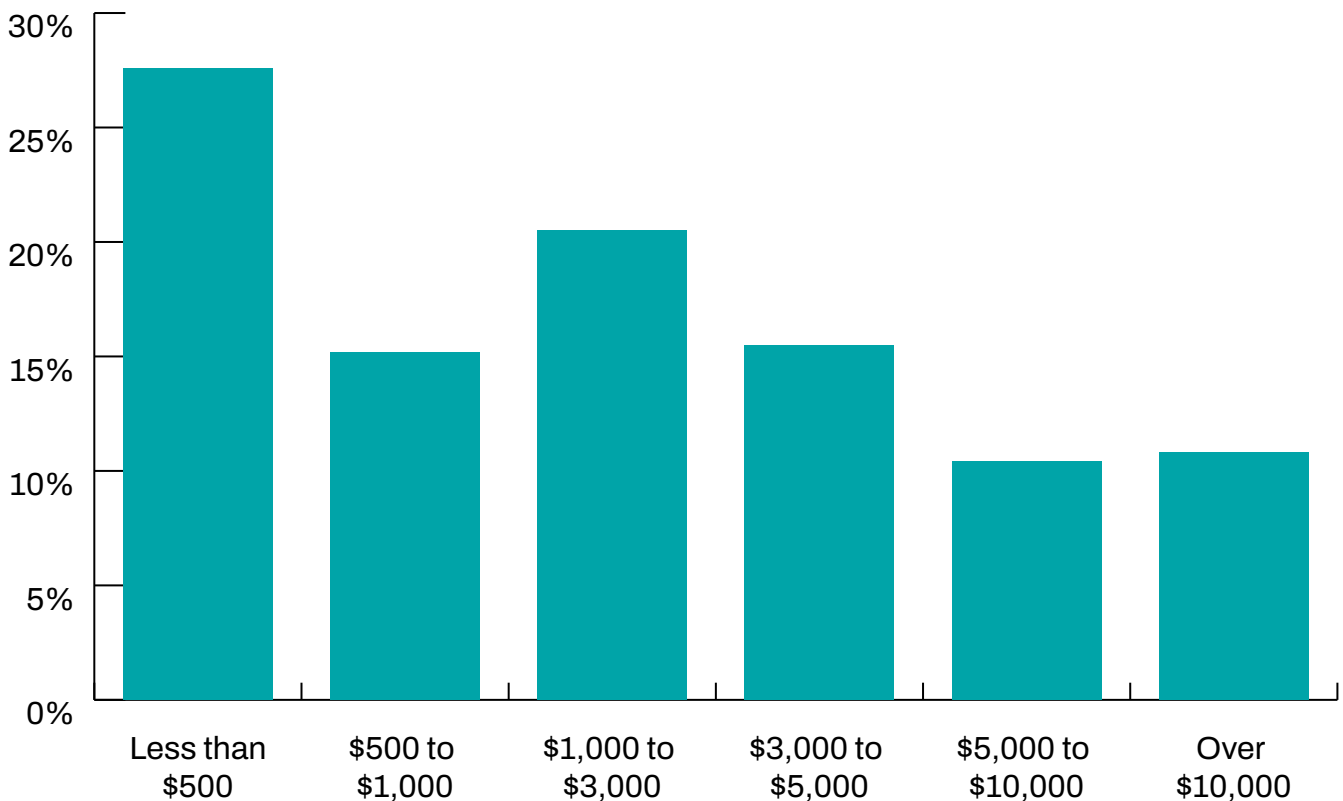
If Alberto ever even receives his unpaid wages, he will not get any compensation for the trouble he had to go through when his employer was not paying him, and he won't get any interest on the wages he's been waiting years for. Meanwhile, the employer was able to benefit from the savings he made by withholding Alberto's wages.

The numbers are clear: wage theft is rampant. It is also a major social problem. The toll wage theft takes on individual workers and their families is enormous. Because it puts downward pressure on wages and income, wage theft also has a negative impact on workers who are not directly impacted (Cooper and Kroeger, 2017, p. 2).

Financial impact on workers and their families

60% of workers' surveyed reported that they had experienced at least one pay-related violation. While 28% of workers faced wage theft of less than \$500, **over 20% of workers experienced wage theft of over \$5,000.**

FIGURE 2: Amount of wages owing



Most people, especially low-wage workers, are living paycheck to paycheck. Even one or two unpaid pay cheques can send a worker into a financial crisis. It can be particularly challenging for newcomers to Canada, who face difficulties accessing credit and non-predatory loans to weather the effects of wage theft. Misclassified employees and workers with precarious immigration status generally cannot access Employment Insurance, which inhibits their ability to leave a bad job or achieve stability after experiencing wage theft. Undocumented workers are in a particularly precarious financial position and generally cannot access loans and may face challenges accessing food banks or other services because of ID requirements.

Over 20% of survey respondents said wage theft caused them to go into debt, and over 26% said they had to borrow money after experiencing wage theft. Similarly, over 20% said they could not afford to pay rent or bills, while 17% had to use a food bank, and over 8% said they could not afford to buy essentials for their children.

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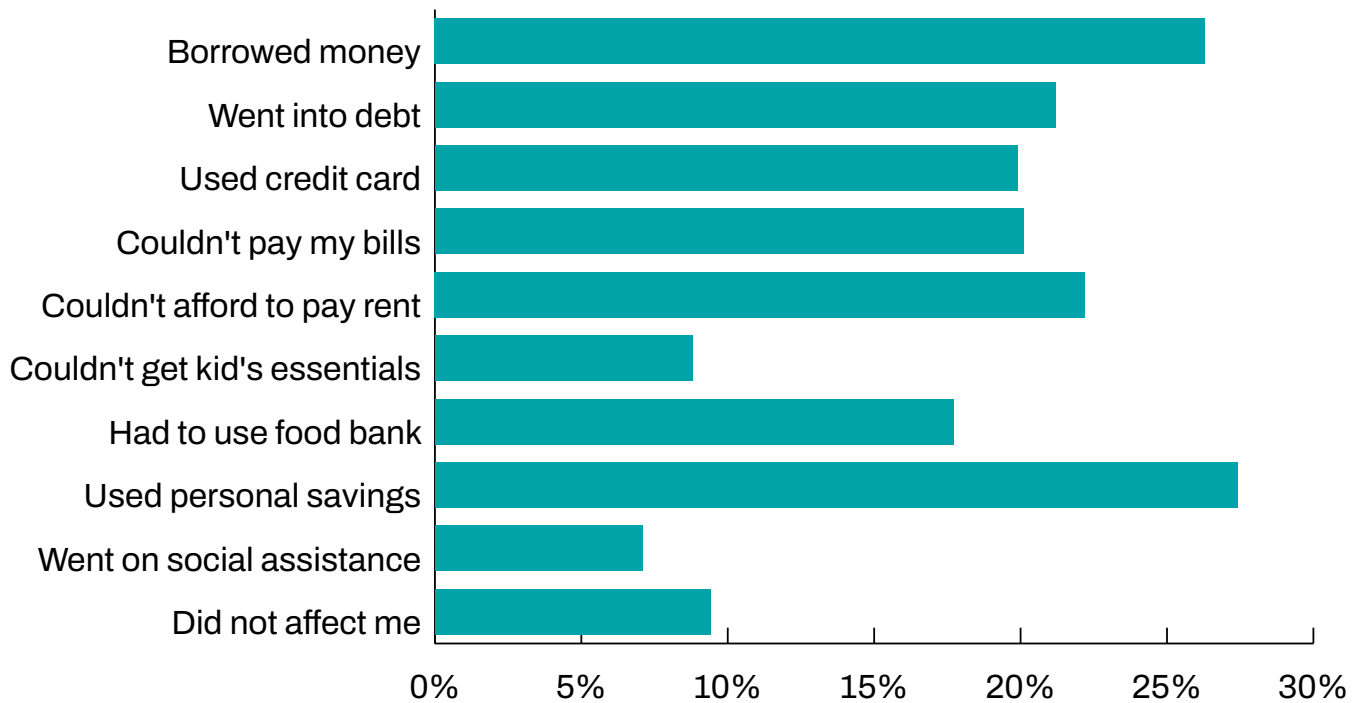
I could not receive support due to my status. I was not allowed to go on social assistance because I'm an immigrant. I could not go to the food bank as well.

”

“

I'm an international student. I lost my apartment because I didn't get paid. Then I had to drop out of school.

”

FIGURE 3: How workers dealt with financial burden of unpaid wages

“

I was diagnosed with depression and anxiety. I had trouble paying for psychological therapy.

”

Health impacts of wage theft on workers and their families

Because of the significant toll it can take on workers' health and well being, wage theft has been called an occupational health hazard (Shahidi et al., 2024), and should be addressed as such.

Income is one of the strongest predictors of health and disease (Human Impact Partners, 2014). Low income earners also experience some of the poorest health care coverage; according to Statistics Canada, fewer than one-third of low income earners received employer-provided health benefits (Barnes, 2015, p. 9). Just over 22% of workers who responded to our survey had access to paid sick days or employer provided health benefits.

Wage theft drives low-wage workers deeper into poverty, increasing stress and making it even more difficult to access adequate housing, healthy food, and healthcare. When workers

have barely enough money to get by, it makes it more difficult for them to take the time to find a better job. They are more likely to stay in jobs with dangerous or substandard working conditions, because it is better than having no income at all (Shahidi et al., 2024, p. 742). These unhealthy living and working conditions put workers at risk for chronic illnesses, such as diabetes, hypertension and mental health issues (Human Impact Partners, 2014, p. 24). A recent Canadian study found that working unpaid overtime was associated with high levels of stress and burnout and presented a significant challenge to the mental health of workers (Shahidi et al, 2024). One U.S. study shows that efforts to prevent wage theft may actually improve life expectancy inequities for low-wage workers (Eisenberg-Guyot et al., 2022).

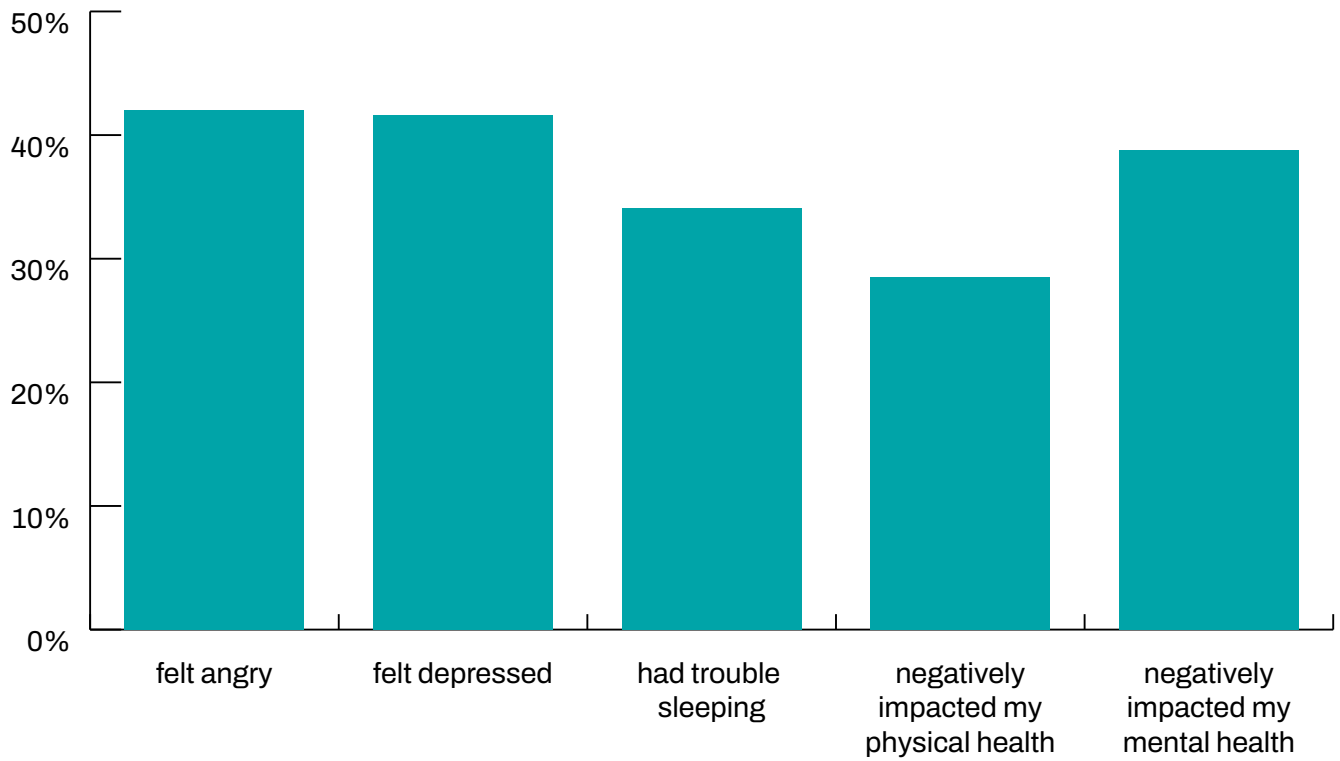
Wage theft exacerbates other negative social determinants of health, such as precarious immigration status. Many migrants cannot access the Ontario Health Insurance Plan (OHIP) and therefore do not have access to primary care. For these workers, unpaid wages may prohibit them from accessing badly needed healthcare.

Workers responding to our survey who experienced wage theft reported significant mental and physical health effects. Over 41% reported feeling depressed, while 34% reported having trouble sleeping. Over 38% said their mental health was negatively impacted, and 28% said their physical health was negatively impacted.

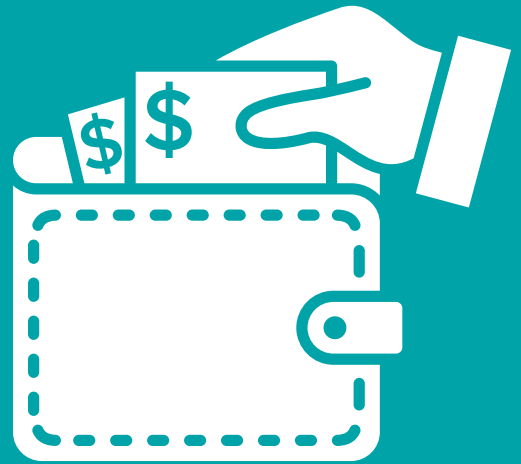
“

I was thinking about that money all the time. I had many trips to the hospital for anxiety attacks. All due to the stress of not getting paid properly.

”

FIGURE 4: Impacts of wage theft on workers' health

3



Causes of the Wage Theft Epidemic

Dutchies Fresh Market

Ever since grocery store owner, Michael Renkema, opened his two locations in Kitchener-Waterloo in 2010, he has engaged in wage theft. More than 80 claims for unpaid wages, overtime and public holiday pay have been filed at the MoL since 2010. Since 2018, Dutchies Fresh Market is known to owe workers \$657,000 (potentially only a fraction of the wages actually owed, since there are likely more workers who did not file claims) (Senoran, 2025a).

It was not until March, 2024, when four former Dutchies employees went public, telling CTV News that their employer owed them \$16,000 collectively that the MoL began to take action. CTV did an investigation which ultimately revealed that Dutchie's had been subject to a total of 72 claims since 2018. Claims included unpaid wages, unpaid overtime, illegal deductions, termination pay, electronic monitoring and reprisals. It was only after it went public that the MoL took action against Dutchies - and did so only on a fraction of the wage theft cases. In December 2024, Renkema and Dutchies pled guilty to 13 charges of violating the Employment Standards Act 2000 (failure to comply with an order to pay wages) (Pickel and Knox, 2024). Even while pleading guilty to wage theft, Dutchies continued to hire workers, largely international students and refugees, and not pay wages. Three more workers filed ESA claims in April, 2025 (Senoran, 2025a).

When Renkema and Dutchies were finally sentenced on June 20, 2025, the fines were minor. Renkema was fined \$7,500 and the Dutchie's corporation was fined \$25,000. Justice Cuthbertson has given them 20 months to pay off the fines. While Renkema paid the 13 former employees in the 13 counts of wage theft that he pled guilty to, many other victims of wage theft still have not received their wages – including the 4 workers who broke open the wage theft case to the public in March 2024 (Senoran, 2025b).

The Dutchies case showcases many of the causes contributing to the current wage theft epidemic in Ontario: an employer who takes advantage of workers and has learned that he can get away with it; a government that fails to take any proactive steps to investigate, punish, or even collect unpaid wages from the most egregious violators. As shocking as this case may seem, it is not an isolated incident, it is evidence that Ontario's current ESA enforcement strategy is failing workers.

The Ministry of Labour's failed approach to wage theft

The MoL takes a "compliance approach" to enforcing the Employment Standards Act. This model assumes that most employers are law abiding and that violations are by and large a product of employer ignorance and incompetence rather than intentional behaviour (Vosko, et al., 2017). As such, the government prioritizes education efforts and assumes most employers who are in violation of the law will voluntarily correct their behaviour (OMoL, 2022).

The problem with this approach is that it misdiagnoses the underlying causes of wage theft. At the heart of the issues outlined in this report is a simple economic problem: employers are more likely to violate employment standards when the benefits of doing so outweigh the costs. Therefore, when there is a low likelihood of detection and the penalties for noncompliance are low, the incentive to commit wage theft is high.¹³

¹³ Incentives to violate the law are also higher when there is a divergence between the prevailing wage rates and standards in an industry and the legislated minimum standards; this is how subminimum standards get enshrined as the norm in certain industries. Disenfranchised workers with little labour mobility cannot push back against subminimum wages, which become the market rate, which employers feel they can offer, or must offer in order to remain competitive. See Galvin, 2016, p. 328.

Between 2019 to 2022



of violations
**attracted
penalties**

Currently in Ontario, for the reasons explained below, the cost-benefit analysis tips in favour of committing wage theft for many employers because even if they are caught, committing wage theft still saves them money and will not significantly threaten their business.

Violators go unpunished: Ministry of Labour does not use the tools it already has at its disposal

One reason Ontario has failed to create a culture of ESA compliance is because the MoL does not effectively use the fines and penalties *it already has at its disposal*.¹⁴ This may be due in part to a lack of allocated resources, but it also reflects explicit policy decisions made by the current Ontario government.

In 2020–21, just 7.3% of ESA violations led to penalties — down from over one-third in 2017 (+34%) and 2018 (+38%), under the previous government. Put another way, 92% of all violations found through ESA claims investigations went unpunished during 2021–22.¹⁵ From 2019 to 2022 (the three complete years following the election of Ontario Premier Doug Ford for which we have data), the rate improved only slightly, with **just under 12% of violations attracting penalties**.¹⁶

¹⁴ In their study of enforcement data from 2012–2015, Tucker et al. found evidence of a deterrence gap, even by the standards of a Responsive Regulation approach. In a 2015 inspection blitz targeting repeat ESA offenders, officers conducted 104 inspections and found that 75 employers were still not fully ESA compliant. Only 55 % of those repeat offenders were issued low level penalties. The lesson for almost half those employers is that repeatedly violating the ESA comes at no additional cost, and may in fact be an advantageous business strategy. See Tucker et al, 2019 p 27.

¹⁵ ESA investigations and complaints data from 2012 to 2015 showed that more than 96% of violations detected did not attract any penalty. Low-level deterrence measures (NOCs and/or Part I Tickets) were applied in about 3.3% of all violations. See Tucker et al, 2019, p. 23.

¹⁶ Data provided by the Ministry of Labour, Immigration, Training and Skills Development, FOI Request 2022-821.

There are three deterrent tools that the MoL can use against employers who have been confirmed to be in violation of the ESA:

1. **Notice of Contravention (NOC):** The fine amounts related to first contraventions (\$250); second contraventions (\$500); and third contraventions (\$1000) (O Reg 289/01);
2. **Part I “Tickets” under the Provincial Offences Act:** each offence notice (commonly known as a “ticket”) is subject to a set fine of \$295 plus a victim surcharge fee of \$60;¹⁷
3. **Part III Prosecution under the Provincial Offences Act:** Part III penalties, unlike Part I tickets, can lead to a hefty fine, or even jail time. Once convicted, the name of the corporation or individual is listed on a MoL employment standards statistics website.

The MoL provides ESOs with direction on what penalties or actions are appropriate to take in a given case. ESOs are instructed to educate employers and give them the opportunity to correct contraventions. Penalties are reserved for employers with a history of prior contraventions, where the employer is uncooperative or unwilling to comply, or where the noncompliance is particularly egregious or widespread.¹⁸

What MoL data outlined in the sections below shows is that all three types of penalties are being under-used, even by the government’s own weak enforcement standards. The message being sent to employers is that they can violate workers’ rights and get away with it.

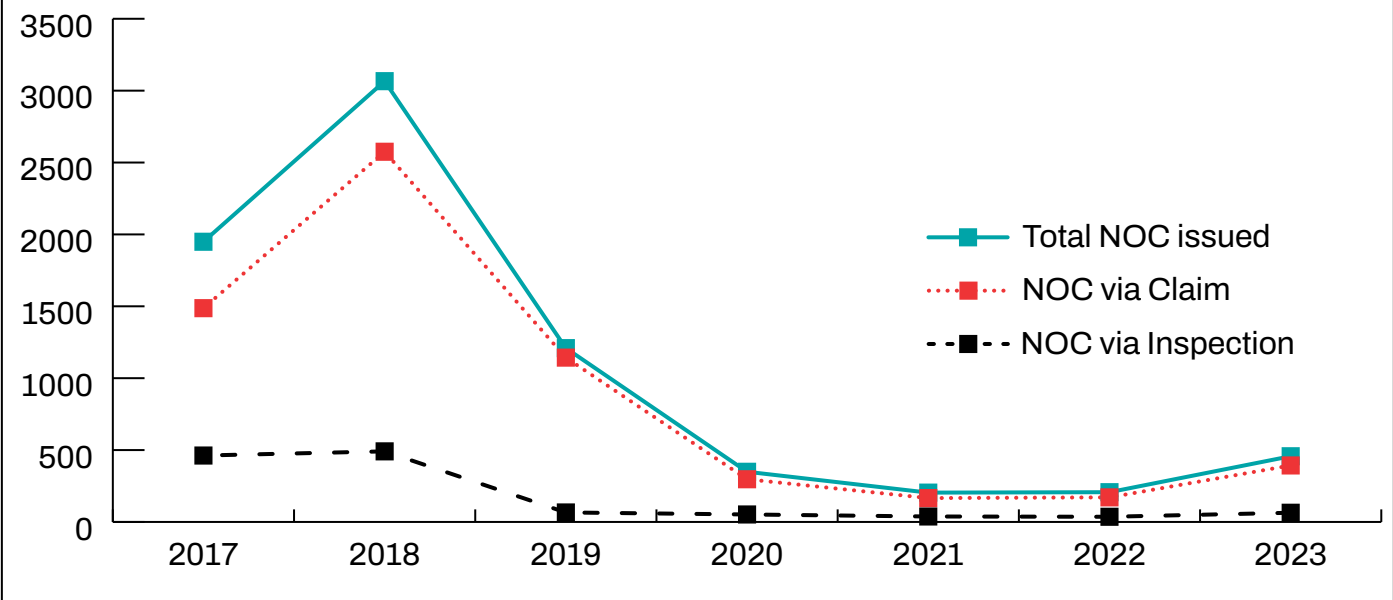
¹⁷ Ontario Court of Justice, Set Fines Part I: <https://www.ontariocourts.ca/ocj/provincial-offences/set-fines/set-fines-i/>; Proceedings Commenced by Certificate of Offence, RRO 1990, Reg 950, Schedules 4.2 - 4.4: <https://canlii.ca/t/56l8h>; Victim Fine Surcharges, O Reg 161/00, s. 1, <https://canlii.ca/t/52pcm>.

¹⁸ In theory, the Compliance Continuum reflects the Modern Regulator principles which are articulated in the Regulator’s Code of Practice, a guide for all Ontario Government ministries responsible for front-line regulatory delivery: Ontario Ministry of Economic Development, Job Creation and Trade. (2021). Ontario Ministry of Labour, ES Compliance Continuum, obtained through FOI Request G- 2023- 00466.

Notices of contravention

Notices of Contravention (NOCs) are the most common type of penalty levied against employers.¹⁹ They are also the easiest procedurally for an ESO to initiate. In recent years, the total number of NOCs issued by ESOs has decreased significantly. In 2023-24, NOCs were issued in just 3% of all ESA claims investigated. In total, ESOs issued only 457 NOCs that year, which is 85% less than were issued in 2018.

FIGURE 5: Notice of Contravention fines issued per year



Sources: compiled from data received by FOI request from the Ministry of Labour, Immigration, Training and Skills Development, file 2024-00189 and file 2022-1074

The penalties prescribed for contraventions are set out in regulations accompanying the ESA. In 2018, under the former Liberal government, penalty amounts were increased for the first time in more than 15 years (O Reg 289/01, s1). As one of his first orders of business as Premier in 2018, Doug Ford

¹⁹ They can be issued by Employment Standards Officers in an individual claim, or after a broader workplace inspection where the officer believes that an employer has contravened a provision of the Employment Standards Act, 2000, SO 2000, c 41, s 113.

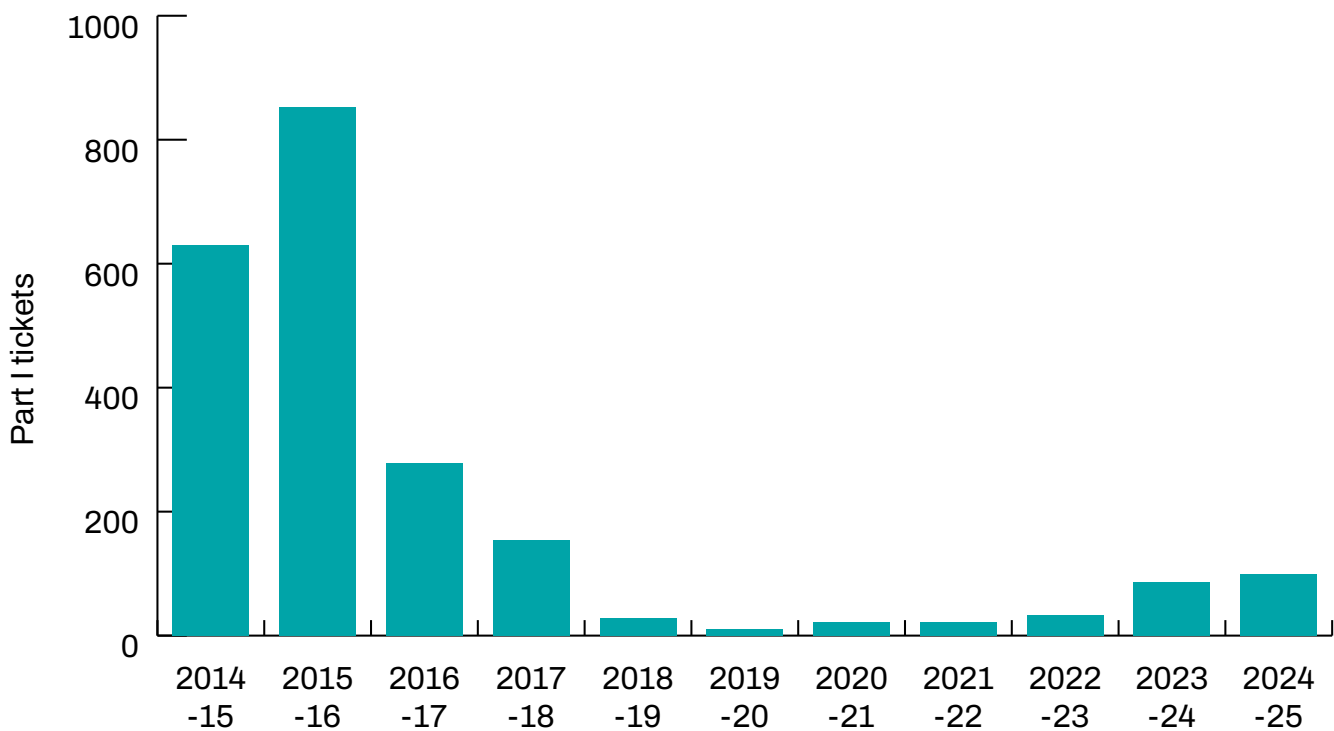
reduced administrative penalties for contraventions of the ESA from \$350, \$700, and \$1,500 for first, second, and third contraventions respectively, to just \$250, \$500, and \$1,000 an almost 33% *decrease* in every category.²⁰

Ontario Provincial Offences Act Part I tickets

In the last ten years, the number of Part I tickets issued by ESOs has dropped dramatically. **There has been a decline of almost 90% in the number of tickets issued in 2024-25, when compared with 2015-16.**

Section 113(6.2) authorizes the Director of Employment Standards to publish the names of employers who are issued Notices of Contravention *but this law has never been put into practice.*

FIGURE 6: Ontario Provincial Offences Act Part I Tickets issued per year



Source: compiled from data received by FOI request from the Ministry of Labour, Immigration, Training and Skills Development, file 2024-00189 and file 2022-1074 and publicly available enforcement data

²⁰ In July 2024, a new licensing regime for temporary help agencies came into force. O. Reg 289/01 now prescribes fines of \$15,000/\$25,000/\$50,000 for first, second and third time offenders respectively, but only for Temporary Help Agencies and their Client Employees who violate certain aspects of the licensing regime, such as operating without a license (ESA 2000, 74.1.1(1)), or who provide false or misleading information in their application (ESA 2000, 74.1.3(3)): O Reg 289/01.

“

*One former Employment Standards Officer (ESO) said that while they only issue NOCs in egregious cases, they also think that they are “totally useless” in discouraging employers from committing wage theft.*²⁴

”

Whereas some of the decline in Employment Standards enforcement may have been exacerbated by the pandemic, **the number of prosecutions actually plummeted to single digits first in 2019. In 2024 the number of Part I tickets issued had crept back to just about 10% of the nearly 800 tickets issued in 2016, which represents the high water mark for Part 1 prosecutions in the past 10 years.**

Low-level penalties not effective

Although there are slight differences in the procedures for issuing, enforcing, and challenging NOCs and Part 1 tickets, they are both low-level deterrence measures with low penalty amounts.²¹ Both of these low-level penalties are treated as a deterrent measure to be used only against repeat offenders or employers who have committed more egregious offences of the ESA.²² **For such employers who are in flagrant violation of the law and may owe thousands of dollars to their workers, the persuasive effect of an additional \$250 or \$350 dollars in fines will be minimal.**²³

This is all the more true when you consider the compounding effect of our broken enforcement system: employers are less likely to care about low-level penalties when they know that the MoF is unlikely to be able to collect money to pay those penalties and the underlying Orders to Pay associated with those penalties.

²¹ NOCs were used more frequently from 2017 to 2019. Anecdotally we are told that this was a policy direction set by then-Premier Kathleen Wynne. Prior to that, ESOs were more encouraged to use Part I tickets, and were told only to use NOCs where the contravention was not a ticketable offence. Interview with former Employment Standards Officer, conducted December 17, 2024; See also Tucker et al, 2019, p. 20. .

²² See Tucker et al., 2019, p. 20; Ontario Ministry of Labour, ES Compliance Continuum, obtained through FOI Request G- 2023- 00466; and Interview with former Employment Standards Officer, conducted December 17, 2024.

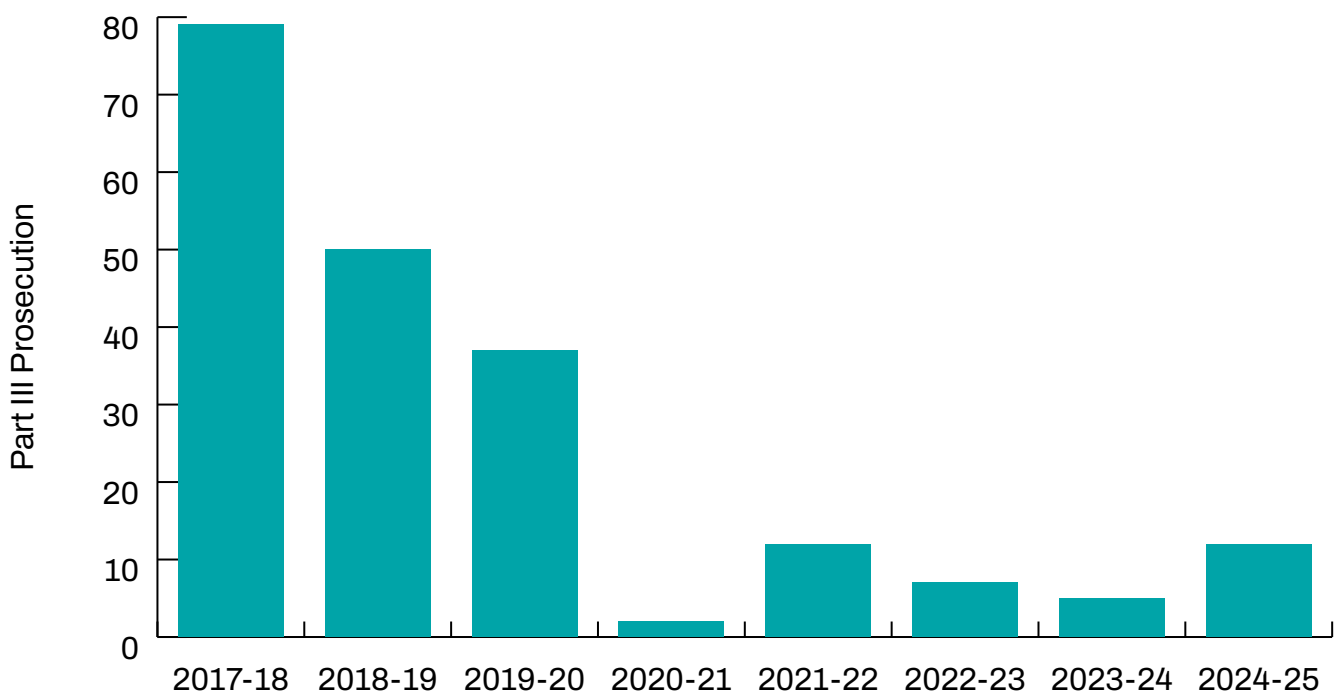
²³ Interview with former Employment Standards Officer, conducted January 7, 2025.

²⁴ Interview with former Employment Standards Officer, conducted December 17, 2024. See also, Tucker et al., 2019 p. 20.

Ontario Provincial Offences Act Part III prosecutions

Because they can result in significant fines or jail time, Part III Prosecutions have the most potential to deter employers from violating the ESA. But since they are so rarely initiated, prosecutions currently contribute almost nothing to the ESA enforcement regime. **From the fiscal year 2020-21 to 2023-24, the number of prosecutions initiated per fiscal year has been in the single digits. In 2024-25, the number of prosecutions initiated crept up to just 12, still 85% fewer than the already low number of prosecutions initiated in 2017-18.**

FIGURE 7: Ontario Provincial Offences Act Part III Prosecutions issued per year



Source: compiled from data received by FOI request from the Ministry of Labour, Immigration, Training and Skills Development, file 2024-00189 and file 2022-1074 and publicly available enforcement data

The sharp decline in the number of prosecutions conducted per year started before the pandemic, and is a clear indication of the policy directives of the current Ontario government. ESOs are directed only to initiate prosecutions in the most egregious

“

*We are so busy trying to hit our target, everything else goes out the window. Prosecutions go out the window because there's genuinely no time. There isn't enough staffing to do them.*²⁵

”

cases, when employers have not complied with orders issued by an ESO and other compliance measures have not worked.

Due to a lack of adequate resources, ESOs face a lot of disincentives which make it unlikely that they will initiate prosecutions, even in the most egregious cases. Initiating a prosecution is a time consuming and administratively burdensome process.²⁶ Because their work performance is evaluated based on the number of cases they close—regardless of the level of complexity of each case—there is no incentive to put in that extra work to ticket or prosecute an employer.²⁷ Additionally, whether a prosecution proceeds is determined by the Regional Program Coordinator or Manager and the Legal Services Branch, not the individual ESO. Anecdotally, former ESOs have told us that most prosecution briefs recommended by ESOs are rejected and do not proceed.²⁸ This makes it far less likely that ESOs will put in the extra work required to refer cases for prosecution.

In 2024, the government passed legislation which increased the maximum individual fine that can be levied for ESA violations in a Part III prosecution from \$50,000 to \$100,000.²⁹ Courts have issued the maximum fine amounts or jail time in only a handful of cases in the last 20 years.³⁰ From publicly available data on

²⁵ ESO interview conducted December 17, 2024.

²⁶ It is the Labour Standard Branch's practice to only prosecute in response to an employer's or director's failure to comply with an order issued by an ESO. What this means is that employers are rarely prosecuted for failing to pay wages or other violations of the act. Rather, they are punished only for not complying with the authority of an ESO. See also, Tucker et al., 2019, p. 23-25.

²⁷ Each ESO must close at least 100 files per year. For a prosecution to be launched, the ESO must conduct a significant amount of extra work. The 100 file target does not distinguish between simpler cases where, for example, parties have settled before a decision was issued, and complex cases, where an officer has taken the initiative to conduct an expanded investigation or initiate prosecution proceedings: Interview with former Employment Standards Officer, conducted December 17, 2024; Interview with former Employment Standards Officer, conducted January 7, 2025.

²⁸ ESO interview conducted January 7, 2025.

²⁹ Working for Workers Five Act, 2024, SO 2024, c 19, Schedule 2, s 4

³⁰ Between 1997 and 2017, the courts imposed fewer than 10 jail sentences on bosses who ignore orders to pay. Mojtehdzadeh, S., 2017. See also, Tucker et al., 2019, p. 25.

convictions for ESA infractions from the past five years, the maximum fine was levied in only one high profile case against three related corporations and their directors during the 2023-24 fiscal year (OMoL, 2024).³¹ Ultimately, 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 noncompliance, especially when repeat offenders often go unpunished.

Recommendations: Impose meaningful deterrence penalties on employers

- ◆ Fines and/or damages should be applied in all confirmed cases of ESA violations (not by the discretion of ESOs). Including when the employer voluntarily pays outstanding wages.
- ◆ Increase fines amounts for Notices of Contravention for first, second and third contraventions to a level for effective deterrence.
- ◆ Use existing powers in the ESA to publish the names of employers who have been issued Notices of Contraventions (fines).
- ◆ Escalating late fees should be charged when employers do not comply with Orders to Pay within 30 days of notice.
- ◆ Make prosecution policy simple and transparent and less administratively burdensome: each repeat violation or non-payment of orders must be prosecuted.
- ◆ Establish minimum fines for corporations prosecuted under Part III provincial offences.³²
- ◆ Create a dedicated team of ESOs and lawyers to focus on prosecutions, including collection activities.

³¹ During that same time period, 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), one fine was for \$9,375, three were for between \$5,000 - \$6,250, and the rest were for \$2,500 or less (Ontario Ministry of Labour, 2025).

³² The government recently passed legislation for mandatory minimum fines for corporations convicted under the Occupational Health & Safety Act: Working for Workers Six Act, 2024, SO 2024, c 41, Schedule 3.

Employers externalize the cost of wage theft on to workers

Under the current system, workers - not employers - bear most of the costs associated with wage theft. While fines play an important role in the ESA enforcement system, deterrence can also be achieved by legislatively mandated damage awards which, unlike fines, put money directly into workers pockets while still deterring employers from committing wage theft by significantly increasing the cost of violating the law.

Wage theft lets employers benefit from savings on labour costs; even if they have to pay workers later, they can put the short-term savings they make through wage theft into stabilizing or even growing their business. Workers, by contrast, have to spend additional unpaid time tracking down their employers and hounding them for pay. Workers who decide to make a MoL complaint have to do significant work to prepare their complaint and participate in the investigation, which (ironically) sometimes means taking time off work and losing income (Vosko et al., 2011 p. 37). Though some workers are successful in recovering their stolen wages through the ESA complaint process, there are currently no provisions in the ESA or any other statute which would allow workers to recoup the costs associated with bounced pay cheques or other costs associated with servicing debt.

Except in some limited circumstances, ESOs cannot award damages or penalty costs to the worker to compensate them for hardship they have undergone due to having their rights violated.³³ And while the ESA empowers the Director of Employment Standards, with the approval of the Minister of

³³ Section 104 gives ESOs the power to order an employer to compensate a worker for their loss where they have suffered one of four non-monetary provisions, including Leaves of Absence (Part XIV); Lie Detectors (Part XVI); Retail Business EStablishments (Part XVII); and Reprisals (XVIII). Employers can be ordered to compensate for direct earning losses; pay for the time required to find a job (considering employees duty to mitigate losses); compensation for the reasonable expectation of continued employment; emotional pain and suffering; and, reasonable and foreseeable damages. In practice, most s.104 orders are for reprisal and the amounts awarded are usually very modest.

Labour, to set interest rates to be paid on Orders to Pay awarded to workers. Though it was implemented eight years ago, *this provision has never been used*.³⁴

Mandating employers to pay damages to workers serves multiple related purposes, including:

1. Compensating employees for the costs and burdens associated with wage theft, which can be difficult to quantify;
2. Incentivizing workers to take on the significant risks associated with standing up for their ESA rights, thereby making the complaint enforcement system more effective; and
3. Deterring employers from violating the law.

Several U.S. states have implemented laws which actually triple the damage awards for wage theft victims.³⁵ Though these laws vary from state to state, they generally make it possible for workers to be awarded up to three times the amount of unpaid wages they are owed. The *Federal Labour Standards Act* similarly allows for “liquidated damages,” which tend to be double the confirmed amount of wages owed. This approach has been proven by at least one study as the most effective state policy for combatting wage violations (Galvin, 2016, p. 340).

³⁴ Section 88(5) of the ESA allows the Director of Employment Standards, with the approval of the Minister, to set interest rates to be applied to wages owing or wages being held in trust on behalf of workers. There are no interest rates set, meaning that employers are not required to pay interest on the wages that they owe. This provision was implemented in 2017 but has never been put into practice: Fair Workplaces, Better Jobs Act, 2017.

³⁵ States with triple damage laws include Arizona, Massachusetts, New Mexico, Ohio, Idaho, Maine, Maryland, Massachusetts, Michigan, Nebraska, North Dakota, and Vermont (National Employment Law Project [NELP], 2011).

Recommendations: Make employers - not workers - bear the cost of wage theft

- ◆ Use existing powers in the ESA to charge employers pre- and post-judgement interest on unpaid wages.
- ◆ Mandate triple damage awards for all monetary ESA violations, including notice of termination pay.



**Workplace
inspections
remain**

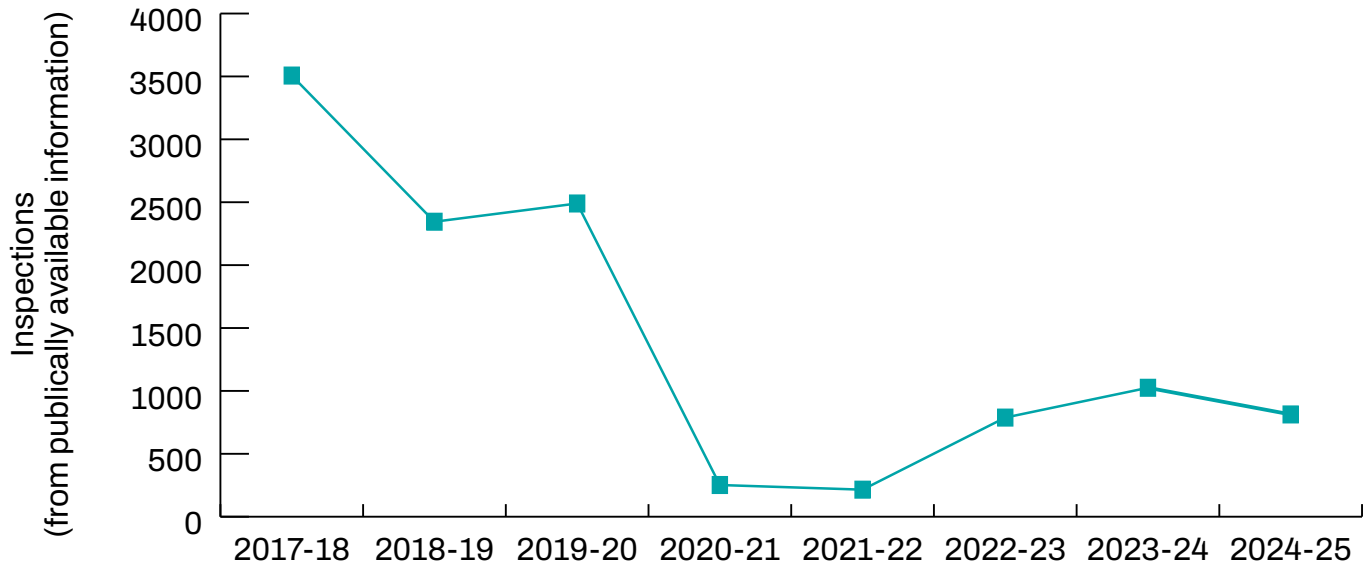
**77%
lower
than six
years ago**

Proactive enforcement needed

Experts and MoL officials generally accept that proactive enforcement conducted through workplace investigations are a more effective mechanism for ensuring ESA compliance than relying on individual employees to file claims (Mitchell & Murray, 2017, p. 61). This is because proactive workplace inspections, when conducted regularly, dissuade employers from breaking the law because there is a higher risk that violations will be detected. Nevertheless, ESOs spend far more time investigating claims and rarely conduct workplace investigations.

When Premier Ford took office in 2018, the MoL instructed staff not to initiate any new proactive Employment Standards inspections, and all inspection and prosecution training for new staff were put on hold (Mojtehdzadeh, 2018). **Workplace inspections started to plummet before the pandemic and remain more than 77% lower than they were six years ago.**³⁶

³⁶ Source: Ministry of Labour, Immigration, Training and Skills Development, Employment Standards Enforcement Statistics

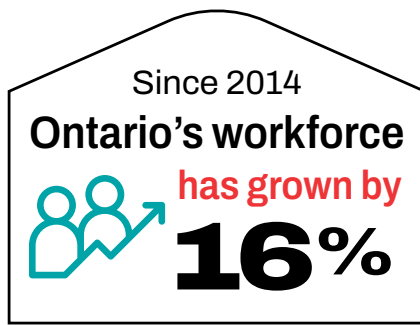
FIGURE 8: Inspections per year

Source: Ministry of Labour, Immigration, Training and Skills Development, Employment Standards Enforcement Statistics

Even when ESOs do conduct investigations, they are not as effective as they could be because although it is within their power to do so, ESOs are advised *not* to conduct unannounced field visits, which would ensure that investigators are finding the workplace as it actually operates. Under the current model, employers are given advance notice of inspection and are required to do a self-audit of their payroll to expose violations (Vosko et al., 2016, p 39).

Lack of strategic enforcement wastes government resources

Each year, the MoL collects volumes of information through the ESA complaint process. It also has the ability to consult with stakeholders to devise compliance initiatives and targeted campaigns, as it does when enforcing health and safety legislation. However, according to publicly available information, the last time an ESA compliance campaign was initiated was from September 1, 2019 to February 14, 2020 (OMoL, 2025b).



**The number of
Employment
Standards Officers
remains
the same**




"Expanded inspections" are full workplace investigations which are sometimes conducted after confirmed ESA violations are found through individual complaints. A study of MoL data found that 82% of expanded inspections find additional ESA violations (Vosko et al., 2016, p. 41).

Despite yielding high rates of detection, expanded investigations have become a rarity in recent years, with only 109 expanded investigations having been conducted in 2023-24. **What this means is that the MoL will not even investigate workplaces where they have already confirmed violations through the individual complaint process.**

Instead of developing strategic proactive solutions which would deter violations before they happen, the government's current approach has ESOs spending the majority of their time investigating an endless stream of individual complaints. By missing strategic opportunities to even investigate known violators, the MoL's current approach needlessly wastes taxpayer money.

Lack of adequate resources is contributes to wage theft

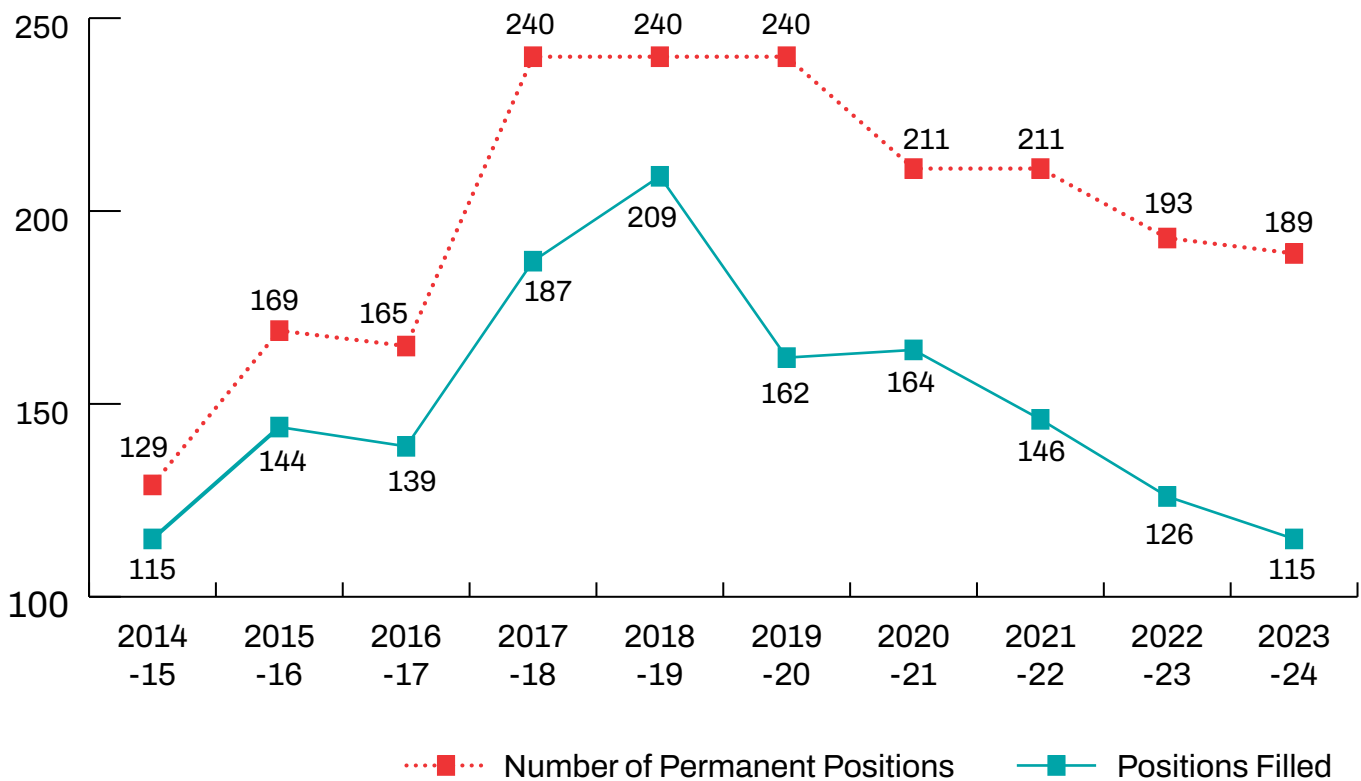
Funding and staffing

Funding and staffing for the Employment Practices Branch has decreased significantly in the last 10 years. This has contributed to the precipitous drop in the number of workplace investigations and penalties levelled against ESA violators, leading to an even wider enforcement gap in the province.

The previous government had, in response to the final report of the Changing Workplaces Review, committed in 2017 to add 175 new ESOs to the existing team of 240 and to inspect 1 out of 10 workplaces annually (OMoL, 2017b). The current government cancelled those plans when it came into power in 2018.

Data obtained through *Freedom of Information and Protection of Privacy Act* requests shows that since then, the government has both reduced the number of ESO positions and left a significant number of permanent positions unfilled in the Employment Standards Branch. As of 2023, there were only 115 permanent ESOs working on ESA enforcement in the entire province. Though Ontario's workforce has grown by 16% since 2014, the number of ESOs remains the same as it was at that time.³⁷

FIGURE 9: Number of Employment Standards Officers in Ontario



Source: Ministry of Labour, Immigration, Training and Skills Development FOI Request 2024-00189

³⁷ According to Statistics Canada, there were 6.8 million Ontario employees in 2014 and over 8 million in 2025.

Increased complexity of cases requires more staff time

Increasing complexity of claims due to misclassification and new employer practices means that cases take longer to resolve. Because ESOs are under pressure to resolve the backlog of individual complaints, they do not have time to initiate investigations or prosecutions. Another former ESO reported to researchers that they are under pressure to maintain service standards and meet their quotas so things like education and inspections are the first things to go. Inadequate resourcing of proactive inspections leaves the burden of enforcement squarely on the victims of wage theft.

Recommendations: Increase enforcement and inspections

We recommend that the government take a strategic proactive enforcement and deterrence approach to wage theft. Such an approach must detect violations, provide effective remedy for the harms of wage theft, and assign costs to violations that provide real deterrence to future wage theft. In order to do this, the Ontario government must do the following.

1. Increase Capacity for Enforcement

- Invest in funding an adequate and effective ESA enforcement regime by hiring at least 200 additional Employment Standards Officers.
- Use fine amounts collected from employers who have violated the ESA to expand proactive inspections and enforcement.³⁸

2. Conduct Strategic Workplace Inspections

- Create a dedicated team of at least 50 ESOs to focus on proactive enforcement.
- Inspect at least 10% of Ontario's workplaces per year.

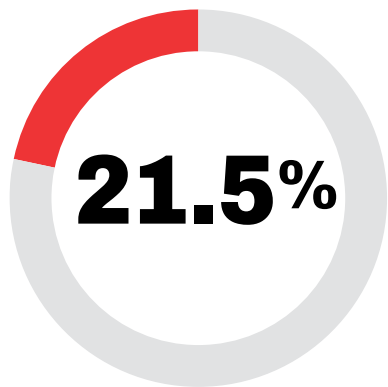
³⁸ As the Special Advisors to the Changing Workplaces Review point out, other tribunals such as the Securities Commission have both the power to order administrative penalties for violations of the Ontario securities law and to use these funds for educating and promoting compliance with the Securities Act. (Mitchell and Murray, 2017, p 130-131).

- Shift the focus of inspections from education to deterrence by conducting surprise inspections.
- Monitor and publicly report on what sectors and business practices have the highest rates of violations and the most severe violations, then target sectors with high rates of violations for inspection blitzes. This should involve sectoral analysis of the factors giving rise to higher rates of wage theft and ESA violations.
- Prioritize doing strategic inspections of new business models that seek to shift employer liabilities onto other entities, and in the case of misclassification, onto workers themselves.
- Use individual ESA complaints to find likely violators by automatically conducting expanded inspections after more than one complaint is filed in a workplace within a five year period.
- Partner with organizations working with low-wage and migrant workers (e.g., workers' centres, community legal clinics, unions and migrant-serving agencies) to identify where wage theft is occurring for proactive inspections.
- Develop inspection strategies tailored to specific workplaces with high rates of violations. For example, different strategies will be needed when inspecting the growing number of employers who do not have a physical worksite, or when inspecting employers who are likely employing migrants with precarious immigration status.

Between 2014-2023
**Total amount of
Orders to Pay:**

**\$102.4
million**

Yet only
**\$22.03
million**
was collected



Collections failure

We know from our experience in helping workers file ESA Complaints, that even when workers receive a positive decision and their employer is issued an Order to Pay wages, it is still common for workers not to get their money. Between 2013 and 2023, the MoL referred \$102.4 million to the MoF for collections.³⁹ The MoF was successful in collecting just \$22.03 million of that amount for workers with confirmed violations of their rights. **That means that less than 22% of money sent to collections were actually recovered.**⁴⁰

Unpaid wages successfully collected by the Ministry of Finance 2014-2023*

Total Amount (in dollars) of Orders to Pay referred by the Ministry of Labour for collections	Amount Collected by the Ministry of Finance through collection methods	Percentage (%) Collected
\$102.4 Million	\$22.03 Million	21.5%

The MoL is not responsible for enforcing the orders to pay wages that it issues. Since 2014, the Ministry of Finance, Account Management and Collections Branch (MoF) has provided collection services to the MoL to collect amounts owed under the ESA and the *Employment Protection for Foreign Nationals*

³⁹ The Ministry of Labour referred 31,529 Orders to Pay to the Ministry of Finance for collections during this time period. Since the amounts collected by MoF each year may correspond to Orders to Pay that were issued in previous years, it is more accurate to look at the data provided by the MoF in aggregate, as opposed to on a year to year basis. The amounts provided above include all the types of orders which may be issued by the MoL or Ontario Labour Board for ESA violations, including fines for Notice of Contravention. The data provided by the MoF avoids double counting (where, for example, an order to pay and a director's order to pay have been issued for overlapping amounts on a file). The dollar amount referred to MoF for collections (\$102.4 million) and the amount returned to MoL as uncollectible (\$64.8 million) include the 10% administrative fee levied by the MoL, but not collections fees, which can be levied by the MoF. The dollar amount collected by the MoF (\$22.03 million) does, however, include both the MoL fees and the MoF collection fees. What that means is that the amount 21.5% collected is actually slightly inflated, as it represents additional fees which are not included in the other tallies.

⁴⁰ Ministry of Finance, Data obtained through Freedom of Information Requests: FOI A-22-111 and A-24-024.

Act, 2009 (“EPFNA”).⁴¹ The MoF is delegated authority to exercise the collection powers which are granted to the MoL in the ESA.⁴²

Information obtained through freedom of information requests shows that *MoF officers rarely exercise their discretion to use the full breadth of powers they have at their disposal.*

FIGURE 10:

Number of Orders to Pay that are referred to collections by MoL between the fiscal years 2014-15 and 2023-24	31,176
% of orders for which MoF issued a demand to a third party to garnish wages or other income	41%
% of orders for which a warrant was issued to a sheriff to enforcement payment	40%
% of orders for which a real property lien was registered on the title of property owned by the employer ⁴³	3%
% of orders for which a lien and charge was registered on personal property ⁴⁴	39%
% of orders for which MoF had a copy of the order to pay certified with the court	21%
% of orders for which MoF enforced an order to pay that was registered with the court	1%

⁴¹ Some claims do not need to be referred to collections because the parties settle or the amount is voluntarily paid by the employer - either before or after an Order to Pay is issued. Because of the way the MoL collects information, MoL data on the amount assessed as owing to workers cannot fully be compared to the amount recovered. As such, we do not have an accurate way of knowing the percentage of wages recovered through all possible methods (settlements, voluntary compliance, investigations, and collections). However, data from previous studies suggests that recovery rates for monetary orders have been steadily deteriorating since at least 2009. In their study of 2009-2015 enforcement data, Vosko et al., (2016, p. 70) found that only 39% of monetary orders were fully satisfied, and 6% were partially satisfied. They noted that the full recovery rate appeared to be deteriorating during that same time period. That study of MoL data found that 70% of complaints with monetary orders were sent to collections for recovery, and of those orders only one in five (20%) was fully collected. That number is consistent with our findings for the more recent time period, showing that collections have not meaningfully improved in the last 10 years, and that the success rate for claims sent to collections remains abysmally low.

⁴² Including the power to a) Issue third party demands to garnish employer’s money from banks, employers or other income sources; b) Issue a warrant to a sheriff to enforce payment of an order to pay c) Register a real property lien on the title of property owned by the employer corporation or Director’s found liable; d) Register a lien on personal property for amounts owing on an order to pay; and e) Certify a copy of an order to pay or notice of contravention in court in order to enforce it, which can include bringing the employer before a judge for a debtor’s examination: Employment Standards Act, 2000, SO 2000, c 41, s 125-126.

This may be because officers do not have enough time to do the work that would be necessary on each individual case. Investigating where an employer banks and whether they have land or property that can be seized is time consuming, as are court processes, which involve finding and serving the employer, appearing in court, etc. Regardless of the stated rationale, the consequence of not following through on collecting unpaid wages is that workers have only about a 22% chance of recovering their unpaid wages if the employer does not agree to pay the monies owed. Even then, it can take years before workers see a dime of what they are owed. In the meantime, workers, their families, and whole communities pay the price.

In some U.S. jurisdictions, states and city governments raise minimum standard compliance by requiring employers to disclose ESA violation history as a condition for issuance or renewal of business licenses or registration (NELP, 2011, p. 25). Ontario's new temporary help agency recruitment licensing regime has taken a similar approach by requiring temporary help agencies and recruiters to have complied with any orders under the ESA and *Employment Protections for Foreign Nationals Act* as a condition of issuing or renewing a license.⁴⁵ Policies such as this can be a powerful way to change employer behaviour, especially where a license is a significant source of revenue for a business, such as a liquor license for the service industry - which, incidentally, is the industry with the highest rates of ESA complaints.⁴⁶

⁴³ Prior to legislative changes in 2019, MoF did not have the legislative authority to apply Real Property Liens and Personal Property Security Act Liens. The percentage of orders for which this power was used is therefore calculated based on the number of claims received from the fiscal year 2019-20 onwards (13,054 claims referred to the MoF): FOI A-24-024, 2024.

⁴⁴ Same as above.

⁴⁵ *Employment Standards Act, 2000*, SO 2000, c 41, s.74.1.4.

⁴⁶ According to the information provided by the MoL (FOI request 24-189), the NAIC code for accommodation and food services had the highest number of claims per year in each of the last five years. This is consistent with findings made by researchers for the previous time frame (Vosko et al., 2016, table 1.1a.)

Recommendations: Improve Collection of Unpaid Wages

- ◆ Assess the reasons that the Ministry of Finance collection rate is so low (22%) and why utilization rates of collection tools is so low. More staffing capacity is essential.
- ◆ The Ministry of Labour requires temporary agencies and recruitment agencies to post \$25,000 bonds when applying for a license to operate. These bonds may be used by the Ministry in unpaid wage claims against these companies. This requirement for bonds should be expanded to other industries with high rates of ESA violations and wage theft.
- ◆ The Ministry of Labour should use pre-judgement liens or require bonds in cases of repeat offenders who want to set up a new business.
- ◆ The Ministry of Labour should identify licenses under the province's authority that can be used in the collections process. For example, a liquor license (in the case of a restaurant) or drivers licence could be revoked until outstanding orders to pay are remitted.

ESA complaint process inaccessible to most workers

Isaac

Occasionally their cheques had been short on payday, but Isaac and his co-workers really started to worry when their boss didn't pay anything at all for a few pay periods. After months of asking for back wages, Isaac and 18 of his co-workers met after work to strategize collaboratively. They agreed that if they were not getting paid properly, they would not go to work the next day. Somehow Isaac's boss found out about their plan before they could put it into action. The boss called and told Isaac that any worker involved in the plan was fired. Isaac and four of his co-workers filed Employment Standards Act complaints to claim their unpaid wages and damages for reprisal, since they had essentially been fired for trying to enforce their right to be paid the wages that they had legally earned. In total, the Ministry of Labour found that the four workers were owed \$35,415.13, but their claim for reprisal damages was denied. Because the workers' collective activity—withholding labour for a day to protest their unpaid wages—was not protected activity under the ESA, their employer could fire them without any consequences. Any of the workers who remained on the job were too intimidated to make further attempts to reclaim their wages. Despite the significant amount of wages owed, and the fact that multiple workers had filed claims, the Ministry of Labour did not issue any additional penalties or tickets against the employer. Nor did they do an expanded inspection after the four claims confirmed unpaid wages. Though their boss is still in business, he has not paid Isaac or the other claimants a cent of what they are owed.

Reprisals and fear of retaliation

What lessons are Isaac and his coworkers supposed to take away from this experience? If workers are not protected when they try to work collaboratively to recover their unpaid wages *and* they cannot rely on the MoL to collect their wages for them, workers have virtually no effective means of combating wage theft. By the same token, employers learn from this type of experience that they can bully and intimidate their workers, not pay them properly, and even be found in violation of the *Employment Standards Act*, without facing any meaningful consequences.

Employees do have a role in helping the system to detect violations. But we need to adopt effective measures of protection to enable them to do so. The literature is clear: fear of reprisals is widespread and undermines workers' confidence to enforce their rights. The literature is also clear that when workers do attempt to address ESA violations at work, employers do retaliate, and the system that is supposed to protect workers takes too long or is out of reach entirely (Murray and Mitchell, 2017, p 58).

Indeed, Ontario's Changing Workplaces Review found that over 90% of ESA violation complaints to the MoL are made by people who have quit or been fired from their job. MoL investigations of these complaints confirm violations in 70% of these cases (Murray and Mitchell, 2017, p. 98). This clearly shows that workers generally feel they cannot afford to stand up for their rights while still on the job. It explains why workers are most likely to make a complaint after they have moved on to other employment. Because the MoL conducts very few workplace inspections, a single complaint very rarely leads to an expanded investigation of that workplace, meaning that conditions remain unchanged for the workers still on the job with that employer.

Where an ESO finds an employer has retaliated against a worker who has attempted to enforce their ESA rights, the officer technically has the ability to reinstate the worker. However, this remedy is rarely ever used. Because ESA complaint decisions

take at least six to eight months to resolve, most complainants have moved on to other employment, or the prior employment relationship had become so toxic that the ESO deems reinstatement an unsuitable remedy. Because they rarely find out what happened to the worker who suffered the reprisal after they are terminated, the workers who remain in the workplace are left with the impression that the employer can—and will—fire them if they try to stand up for their rights.

In some jurisdictions, non-unionized workers have just-cause protections, which require employers to provide good reasons before terminating workers. Since 1978, The *Canada Labour Code* has provided just cause protection for federally-regulated, non-unionized workers after one year of service.⁴⁷ In Quebec, after two years of continuous service, an employee is protected from unjust dismissal. The onus is on the employer to prove the dismissal was for good and sufficient cause.⁴⁸ Employers would have to give workers advance notice of performance issues and a good chance to address them. This helps prevent unlawful retaliatory firings by giving workers an expedited route to reinstatement if they are fired for trying to enforce their ESA rights.

Without protection for concerted activity, the evidence shows that in non-unionized workplaces like Isaac's, workers are still less likely to enforce their ESA rights while they are on the job. As it stands in Ontario, a group of workers can be fired without recourse for collectively meeting to discuss how to improve working conditions, or for signing a letter demanding higher pay or improved working conditions. Fear of retaliation is all the more severe for workers without regularized immigration status

⁴⁷ Jurisprudence has developed under this provision for more proactive principles of progressive discipline for employees to avoid unjustly dismissing employees (Arthurs, 2006, p. 96).

⁴⁸ Act respecting labour standards, CQLR c N-1.1, 124.

and migrant workers, who fear that employers will have them deported or returned to their home country if they speak out.

In the U.S., the *National Labor Relations Act* has long recognized that collective action is one of the ways to mitigate the extreme power imbalance between workers and their employers. Section 7 of the *National Labor Relations Act* in the U.S. provides statutory protection against reprisals for concerted activities undertaken by employees who collectively voice concerns. This protection covers all employees, unionized or non-unionized, who take actions to improve their current terms and conditions of employment. The range of protected concerted activities is wide and can include complaints or grievances presented to employers, informal discussions between workers, and group activities such as work stoppages and walkouts in the interest of employees. The employer is prohibited from interfering in these protected activities.

Recall that the purpose of the ESA is to address the power imbalance between employers and employees that allows employers to drive down wages and working conditions below what society believes should be the social minimum. A system that relies on workers with the least power and resources to detect and report ESA violations undermines its own credibility unless that system also attempts to correct for those inequalities.

Recommendations: Protect Workers who Stand Up for their Rights

- ◆ Amend the ESA to provide protection from unjust dismissal.
- ◆ Employees should have the right to participate in concerted activities without employer interference. Employees who have been disciplined because they have exercised their rights should be protected against such reprisals.
- ◆ Reprisal, concerted activity, and unjust dismissal claims should be investigated on an expedited basis, and workers should be granted interim reinstatement, where appropriate, pending a final outcome in their case.
- ◆ Create a system for making—and investigating—anonymous or third-party complaints.

Barriers in the complaint process

Undeniably, workers also face significant practical barriers to pursuing their unpaid wages through the claims process. Information on the Ministry's website is in English. Digital literacy and internet access create barriers to some in filing their claims. While information used to be provided in multiple languages, that is no longer the case. During claims investigations, workers who do not speak English or French are not provided with language interpretation and must provide their own interpreters for conversations with ESOs.⁴⁹ In practice, workers are expected to provide documentary evidence to make their case – this is particularly difficult where employers have failed in their legal obligations to provide pay statements. If the evidence the worker provides is not in one of Canada's official languages, the worker must translate the documents – which is impossible for workers who do not speak English or French.

⁴⁹ The Workers' Action Centre helps hundreds of workers file ESA complaints each year, most of whom do not speak English or French as their first language. It has been our experience that complainants are contacted by ESOs in English either by phone or email. Paradoxically, workers are often told in English that if they cannot understand, they need to find their own interpreters. Some ESOs will use google translate to communicate with complainants or translate documents. The former ESOs we interviewed also confirmed that they did not know about translation or interpretation services being available to them, except in exceptional circumstances: Employment Standards Officer, conducted December 17, 2024; Interview with former Employment Standards Officer, conducted January 7, 2025.

The ESA claims process is even more inaccessible where the workers' claim requires complex legal arguments as is the case for employee misclassification, reprisal, and constructive dismissals. Given the lack of affordable legal services available in Ontario, organizations such as the Workers' Action Centre reluctantly fill a public service role by assisting workers through the ESA complaint process.

Recommendations: Make the ESA complaint process more accessible

- ◆ Hire ESOs who are representative of Ontario's diversity and can conduct claims investigations in multiple languages and/or provide interpretation and translation services to ESA complainants.
- ◆ Provide free legal assistance to ESA claimants for complex matters such as reprisal, employee misclassification, and constructive dismissal cases.

“

Most of the workers who come to WAC don't know they can file an ESA complaint. Then they need help submitting the claim and responding to the ESO because they do not speak English, or don't have a computer at home. We help as many workers as we can, but we can only do so much.

Jared Ong, Workers Action Centre Organizer

”

Gaps in employment standards regulation of wage theft

Alice

Alice worked as a cleaner in a tea and coffee manufacturing plant responsible for producing several recognizable major brand-name products. For over three years, she worked either six or seven days a week, 12 hours per shift. She was paid less than minimum wage and did not receive overtime premium pay, public holiday, or vacation pay. She was ultimately fired for asking about her entitlement to vacation and public holiday pay. Alice thought she was employed by a company we'll call Winter Services: she was hired by a representative of Winter Services, wore their uniform, and followed their policies. She also took direction and communicated directly with supervisors and employees of the tea and coffee manufacturer. In the course of preparing an Employment Standards Act complaint, however, Alice learned that Winter Services had actually been paying her through a different labour leasing company, creating yet another subcontracting layer. She did not know the name of that other company, and had only the first name of one of its representatives. In her ESA complaint, she estimated that she was owed over \$30,000 in unpaid ESA entitlements.

Fissured workplaces

In the last section we outlined how the MoL's approach to ESA enforcement is ineffective and under-resourced. Even by its own (inadequate) standards, the MoL is not doing what it should to prevent wage theft. This section focuses on the other major contributing factor to the wage theft epidemic; that Ontario's labour laws have not kept pace with changing business practices.

Today's corporations cut costs by outsourcing or downloading significant aspects of their business. Many high-growth sectors

in Canada have shifted away from the tradition of a direct employer-employee relationship to a more complex web of companies that prioritize shedding labour costs and employer liabilities in order to maximize profits. As a result, modern companies tend to employ fewer workers in the traditional sense and have looser, less direct employment relationships with a greater number of workers through subcontractor agreements, temporary help agencies, and franchisees. Former U.S. Head of the Wage and Hour Division, David Weil, has famously described this phenomena as a “fissuring” of the traditional workplace (2014). Though the company at the top retains significant control over how work is performed, these practices shift the legal liability that employers have for their employees’ working conditions and employment benefits onto intermediaries and, in the case of employee misclassification, onto workers themselves. Our employment laws and enforcement regime are ill-equipped to deal with these changes. As a result, the system cannot effectively serve its protective purpose, causing workers’ wages and working conditions to suffer.⁵⁰

Far from being neutral, the company at the top actively negotiates terms which set the conditions for excessive hours of work done beyond employment standards limits. Subcontractors like “Winter Services” in the story above are in frantic competition with one another, and small margins for profit are often made by lowering labour costs through cutting corners on wages and worker health and safety (Weil, 2014, p. 10). Employees of franchised businesses face similar challenges to subcontracted workers. Through franchise agreements, which create exacting standards to ensure that each store operates uniformly, the franchisor controls most aspects of the business, and extracts a

⁵⁰ The basic approach and conceptual framework of the ESA and other minimum standards legislation were designed “largely for an economy dominated by large fixed-location worksites,” where the workforce was, by and large, male, blue-collar, and working full-time for large employers “protected by tariffs and limited competition.” Today’s labour market is, by contrast, dominated by the service sector, not manufacturing, with more low-paying precarious jobs replacing stable middle-class employment (Mitchell and Murray, 2017, p 29-33).

“

In subcontractor situations, I am stuck at the bottom. I cannot go any higher. I can't go after the employer at the top who enables the whole thing. I can only go after the smallest fish at the bottom. That's an order (to pay) that's probably going to go unpaid.

- Former ESO

”

considerable profit from the franchisee, without taking on risk or liability. In order to make a return on their investment, franchisees are under considerable pressure to reduce labour costs, and may commit wage theft or employee misclassification in order to do so (Tess, 2019).

Alice's story, while shocking, is not uncommon. The commercial cleaning industry in Canada offers one example of how the risk of wage theft gets integrated into the structure of the sector. While janitorial service companies in Canada will generate almost \$8 billion in revenue this year (JanPro, 2025), the sector also has one of the highest recorded rates of wage theft in the province.⁵¹

At the Workers' Action Centre, we meet many workers like Alice, whose livelihood is cleaning office buildings, hotels, big box stores like Walmart or Loblaws, and even public institutions such as long term care facilities without being paid properly. They often wear the uniform of a recognizable cleaning company such as Jan-Pro, White Rose, or Service Master, without realizing that they have been employed by a subcontractor or small franchisee. Workers who file ESA complaints in these fissured workplaces often do not know the correct employer to name in their complaint. They are also less likely to be able to collect their wages as subcontractors and franchisees tend to be undercapitalized. The small employers down the supply chain rarely have brick and mortar offices, and can disappear overnight.

⁵¹ In FOI request 24-189, we asked the MoL to provide data on the number of ESA claims made by industrial sectors for each fiscal year from 2017-18 to 2023-24. The MoL tracks the industrial sector for claims closed by 2-digit NAICS codes. According to the information provided by the MoL, the NAIC code for janitorial services had the second highest number of claims each year, second only to accommodation and food services. This is consistent with findings made by researchers for the previous time frame (Vosko et al., 2016, table 1.1a).

Building meaningful employer accountability into the ESA

Under the ESA as currently written, the party liable for violating the Act is usually the direct employer. Under limited circumstances, the ESA (s. 4) provides that two persons/businesses may be treated as one employer if they are sufficiently related. Some indicators of “relatedness” are when two or more companies share common ownership/management, finances and assets, trade names, and employees.⁵² This narrow test is seldom found to be applicable, and would almost never apply to common arrangements like subcontracting and franchising. Given that control over the terms and conditions of employment is now often spread across multiple parties, this approach is outdated and inadequate.

There is a substantial body of research from Canada and the U.S., which suggests that workers are more likely to recover their unpaid wages where liability for unpaid wages is spread across the supply chain (Vosko et. al., 2020; Weil, 2014, Hardy and Howe, 2015, Rawling, 2006). The International Labour Organization has called on governments to assign obligations and liabilities in multi-party situations so that workers at the bottom are not at risk of non-payment of wages and other basic standards (ILO, 2016, 276). Other jurisdictions in Canada have some provisions that attempt to achieve this:

- Saskatchewan extends liability for unpaid wages beyond direct and related employers in certain circumstances where employers contract out work.⁵³

“

[L]egislation is needed to address grey areas in the law, as well as to assign joint and shared liability in multi-party employment arrangements and ensure that all workers have access to freedom of association and collective bargaining rights.

- (ILO, 2016, 317)

”

⁵² A study of ESA data from 2009 to 2015 found that about 1% of complaints with noncompliant employers trigger an Order to Pay Wages for a related employer. At the time of that study, the *ESA* required proof that the Employer's corporate structure was intended to thwart the *Act*. This criteria was removed in 2017, but the criteria for determining employer relatedness remains overly stringent and certainly does not cover arms-length relationships that typically exist in supply chains (Vosko et al., 2016, p. 48).

⁵³ *The Saskatchewan Employment Act*, SS 2013, c S-15.1, s.2-69.

- In Quebec, an employer who enters into a contract with a subcontractor, either directly or through an intermediary, is jointly and severally responsible with the subcontractor and intermediary for monetary obligations under its labour standards act.⁵⁴
- British Columbia has provisions that extend liability for unpaid wages beyond the direct and related employer where employers contract out work.⁵⁵
- Ontario does make temporary help agencies and client companies jointly and severally liable for employment standards violations (wages, overtime, public holiday pay and reprisals).⁵⁶ The province, which is underutilized by ESOs, does not currently extend the principle of joint and several liability to subcontracting or franchise arrangements.

The New York Construction Wage Theft Law, (New York State Senate Bill S2766C), went into effect in January 2022. It makes prime or general contractors jointly and severally liable for unpaid wages and benefits owed to workers on the construction project, including wages owed to workers at any level of subcontracting.

Contractors may require subcontractors at any tier to provide payroll records so that contractors can determine if subcontractors are in compliance. Contractors may withhold payments to subcontractors until these entities are in compliance. Not only does this provide a remedy for workers down the subcontracting chain when wages go unpaid or they are misclassified, but it incentivizes construction contractors to compel subcontractors to comply with wage theft provisions in the first place.

⁵⁴ *Act respecting labour standards*, CQLR, cN-1.1, s. 95.

⁵⁵ *Employment Standards Act*, RSBC 1996, c 113, s. 30(1).

⁵⁶ *Employment Standards Act*, SO 2000, c41, s.74.18.

Recommendation: Expand liability to address multi-party employment arrangements

- ◆ Expand liability so the parties at the top of the supply chain who are accessories to wage theft - either through subcontracting or franchise arrangements - are jointly and severally liable for wages and statutory entitlements owed under the ESA.

Employee misclassification

Another growing business strategy is to misclassify employees as independent contractors to shed employer liability for mandatory deductions and contributions to public pensions, employment insurance, workers compensation and basic employment standards requirements. Misclassification is widespread and long-standing in some sectors such as construction and road transport (Ontario Trucking Association, 2024). The Ontario Construction Secretariat estimated that there were government revenue losses of \$1.8 to \$3.1 billion annually during the 2013-2017 period due largely to the misclassification of employees as independent contractors (Ontario Construction Secretariat, 2019).

The misclassification business model is increasingly used by employers in a variety of sectors. With no proactive enforcement, employees have looked to class actions as strategies to take on the fight against wage theft and misclassification. Ontario courts have certified misclassification claims in a wide range of industries and contexts:

- the misclassification of salespeople as independent contractors (*Omarali v. Just Energy*, 2016);
- the misclassification of cable and internet installers as independent contractors (*Sayers v. Shaw Cable Systems Ltd*, 2011);
- the misclassification of teachers as independent contractors (*Walmsley v. 2016169 ON Inc.*, 2020); and,

In 2023

Toronto ride-hail drivers

estimate median
pay as low as

\$6.37/hour



- the misclassification of document reviewers as Independent contractors (Sondhi v. Deloitte, 2017).⁵⁷

Uber and other digital platform / gig employers have innovated on employee exploitation, introducing substandard employment practices on a mass scale. Study after study demonstrates that platform workers earn exceedingly low-wages. Toronto ride-hail drivers estimate median pay in 2023 as low as \$6.37 per hour (RideFairTO, 2024). This amount mirrors other jurisdictions including California where ride-hail drivers earned median net hourly earnings of \$7.12 and delivery workers earned a median \$5.93 per hour in 2022 (US dollars) (Jacobs et al., 2024). Racialized workers and women are more likely to receive poor ratings, fewer tips, and more cancellations when working in the technology-based gig economy, which ultimately leads to lower overall earnings for workers in this heavily racialized industry (Canada Press [CP] 2020).

The role of the government in enforcing minimum standards becomes particularly important when confronting companies who demonstrate that they are prepared to openly flout the law and social norms. The MoL has made no attempt to investigate or limit these practices of misclassification. Instead, the government has left it up to workers to fight independently for their employment rights.

In 2019, Foodora workers voted almost 90% in favour of unionizing only to have this challenged at the labour board by Foodora. The Ontario Labour Relations Board ruled in 2020 that Foodora workers were not independent contractors and were able to unionize.⁵⁸ A class action is currently before the courts in Ontario to challenge Uber's misclassification of employees as

⁵⁷ For a fuller discussion see Mandryk and Brown.

⁵⁸ Canadian Union of Postal Workers v Foodora Inc. d.b.a. Foodora, 2020. Foodora responded by declaring bankruptcy in Ontario and withdrew from the Canadian market altogether. After five years in Canada, Foodora left without ever being targeted by the government for proactive enforcement regarding its misclassification or contraventions for tax, EI or CPP remittances.

independent contractors (Uber v. Heller, 2020). There have been similar efforts by app-based workers to assert their employment rights against business misclassification models in other jurisdictions as well. App-based workers successfully unionized in Norway in 2019 (ITF, 2019). In other jurisdictions, employees successfully sought their employment rights through the courts -- California in 2018 (California v. Uber), France in 2020 (Rosemain and Vidalon, 2020), the U.K. in 2021 (Uber BV v Aslam) and Netherlands in 2023 (FNV v Deliveroo, 2023). These cases tackle the main problem of the business model -- that is, misclassification of employees as independent contractors. In each case, workers were found by the courts to not be independent contractors and thereby were entitled to associated employment standards and labour laws. Indeed, companies, including Uber and Deliveroo, have faced at least 40 major legal challenges around the world as delivery workers try to enforce their rights. An analysis of 39 employment cases covering legal action in 20 countries, including Canada, highlights a string of court rulings in favour of app-based workers.

Companies using the misclassification business model seek to avoid the overwhelming evidence of misclassification cases in multiple jurisdictions by lobbying for legislative changes to exempt app-based workers. Indeed, following the \$200 million dollar campaign in California by Uber, Lyft and Instacart, Proposition 22 carved out app-based delivery workers from protection under state labour laws. Similarly, in 2022 Uber successfully lobbied the current Ontario government into carving platform drive-share and delivery workers out from employment standards' protections that would otherwise guarantee minimum wage, hours of work, and provide coverage against illegal employer deductions and termination protections.⁵⁹

⁵⁹ *Digital Platform Workers' Rights Act*, 2022, S.O. 2022, c. 7, Sched. 1 that came into effect July 1, 2025.

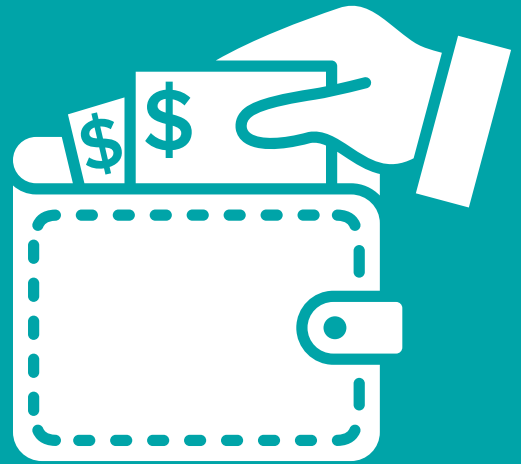
Currently the classification of employee status rests on a complex multi-factoral test which places the burden on workers to challenge and prove their status. That test is outdated and ill-suited to modern employment relationships. To address the rampant misclassification of employees in the federally regulated road transport sector, a new presumption of employee status came into effect for all federally-regulated employees on June 20, 2024. The Canada Labour Code sets out the presumption that workers are employees unless the employer can prove otherwise. Employees are by default entitled to protections of the Code. To demonstrate otherwise, the hiring entity must meet the burden of proof set out in jurisprudence (Employment and Social Development Canada [ESDC], 2025).

Recommendation: Modernize the legal test for employee misclassification

Enact the “ABC test” that provides that a worker is *presumed to be an employee* unless the hiring entity can establish each of the following three factors:

- a. The worker is free from control and direction of the hiring entity in connection, both under the contract and in fact, for the performance of the work; *and*
- b. The worker performs work that is outside the usual course of the hiring entity’s business; *and*,
- c. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

4



Summary of Recommendations

Impose meaningful penalties on employers

1. Fines and/or damages should be applied in all confirmed cases of ESA violations (not by the discretion of ESOs). Including when the employer voluntarily pays outstanding wages.
2. Increase fines amounts for Notices of Contravention for first, second and third contraventions to a level for effective deterrence.
3. Use existing powers in the ESA to publish the names of employers who have been issued Notices of Contraventions.
4. Escalating late fees should be charged when employers do not comply with Orders to Pay within 30 days of notice.
5. Make prosecution policy simple and transparent and less administratively burdensome: each repeat violation or non-payment of orders must be prosecuted.
6. Establish minimum fines for corporations prosecuted under Part III provincial offences.
7. Create a dedicated team of ESOs and lawyers to focus on prosecutions, including collection activities.

Make employers - not workers - bear the cost of wage theft

8. Use existing powers in the ESA to charge employers pre- and post-judgement interest on unpaid wages.
9. Mandate triple damage awards for all monetary ESA violations, including notice of termination pay.

Increase capacity for enforcement

10. Invest in funding an adequate and effective ESA enforcement regime by hiring at least 200 additional Employment Standards Officers.
11. Use fine amounts collected from employers who have violated the ESA to expand proactive inspections and enforcement.

Conduct strategic workplace inspections

- 12.** Create a dedicated team of at least 50 ESOs to focus on proactive enforcement.
- 13.** Inspect at least 10% of Ontario's workplaces per year.
- 14.** Shift the focus of inspections from education to deterrence by conducting surprise inspections.
- 15.** Monitor and publicly report on what sectors and business practices have the highest rates of violations and the most severe violations, then target sectors with high rates of violations for inspection blitz. This should involve sectoral analysis of the factors giving rise to higher rates of wage theft and ESA violations.
- 16.** Prioritize doing strategic inspections of new business models that seek to shift employer liabilities onto other entities, and in the case of misclassification, onto workers themselves.
- 17.** Use individual ESA complaints to find likely violators by automatically conducting expanded inspections after more than one complaint is filed in a workplace within a five year period.
- 18.** Partner with organizations working with low-wage and migrant workers (e.g., workers' centres, community legal clinics, unions and migrant serving agencies) to identify where wage theft is occurring for proactive inspections.
- 19.** Develop inspection strategies tailored to specific workplaces with high rates of violations. For example, different strategies will be needed when inspecting the growing number of employers who do not have a physical worksite, or when inspecting employers who are likely employing migrants with precarious immigration status.

Improve collection of unpaid wages

20. Assess the reasons that the Ministry of Finance collection rate is so low (22%) and why utilization rates of collection tools is so low. More staffing capacity is essential.
21. The Ministry of Labour requires temporary agencies and recruitment agencies to post \$25,000 bonds when applying for a license to operate. These bonds may be used by the Ministry in unpaid wage claims against these companies. This requirement for bonds should be expanded to other industries with high rates of ESA violations and wage theft.
22. The Ministry of Labour should use pre-judgement liens or require bonds in cases of repeat offenders who want to set up a new business.
23. The Ministry of Labour should identify licenses under the province's authority that can be used in the collections process. For example, a liquor license (in the case of a restaurant) or drivers licence could be revoked until outstanding orders to pay are remitted.

Make the ESA complaint process more accessible

24. Hire ESOs who are representative of Ontario's diversity and can conduct claims investigations in multiple languages and/or provide interpretation and translation services to ESA complainants.
25. Provide free legal assistance to ESA claimants for complex matters such as reprisal, employee misclassification, and constructive dismissal cases.

Protect workers who stand up for their rights

- 26. Amend the ESA to include protection from unjust dismissal.
- 27. Employees should have the right to participate in concerted activities without employer interference. Employees who have been disciplined because they have exercised their right to concerted activity should be protected against such reprisals.
- 28. Reprisal, concerted activity, and unjust dismissal claims should be investigated on an expedited basis, and workers should be granted interim reinstatement, where appropriate, pending a final outcome in their case.
- 29. Create a system for making—and investigating—anonymous and third-party complaints.

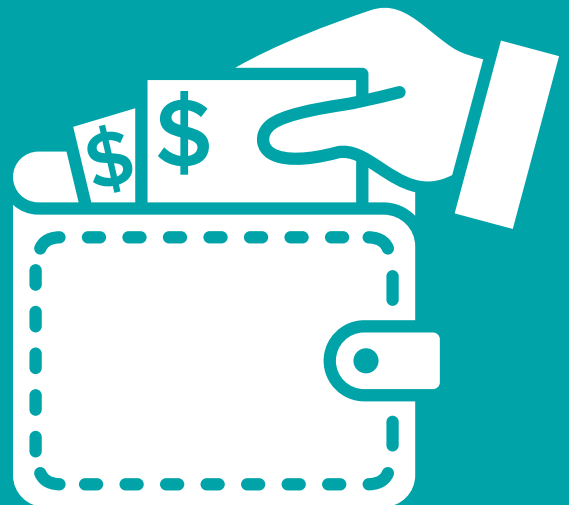
Expand liability to address multi-party employment arrangements

- 30. Expand liability so the parties at the top of the supply chain who are accessories to wage theft - either through subcontracting or franchise arrangements - are jointly and severally liable for wages and statutory entitlements owed under the ESA.

Modernize the legal test for employee misclassification

- 31.** Enact the “ABC test” that provides that a worker is presumed to be an employee unless the hiring entity can establish each of the following three factors:
- a. The worker is free from control and direction of the hiring entity in connection, both under the contract and in fact, for the performance of the work; *and*,
 - b. The worker performs work that is outside the usual course of the hiring entity’s business; *and*,
 - c. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Appendix A - Methods



The Workers' Action Centre, with the assistance of Parkdale Community Legal Services, used a number of methods in this review of wage theft with the goal of exploring current experiences of wage theft, employer wage theft practices and gaps in Ministry of Labour enforcement.

We conducted a survey in 2024 targeting workers in sectors at high risk of wage theft. To reach out to workers who are typically hard to reach in traditional surveys, we provided the surveys in multiple languages: Chinese, Tamil, Bengali, Spanish, Somali and English. Outreach was done online and in person by front-line staff at the Workers' Action Centre and other community organizations. This method of sampling enabled us to obtain 513 completed surveys. It has also allowed us to reach populations of workers and undocumented workers who are most in need of protection from wage theft.

In general, our sample sought to include workers who are more often left out of labour force statistics such as workers with precarious immigration status. There were more women than men which is consistent with the low-wage workforces in cities across the province. There were significantly more people of colour in our group than is generally found in Toronto. Consistent with low-wage industries in Toronto, im/migrants made up the majority of our sample.

We also interviewed three former Ministry of Labour Employment Standards Officers. Freedom of information requests were obtained from the Ministry of Labour and Ministry of Finance.

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