Consultation for Building Canada Strong for All – Powered by Canada's Workers

Submission by Parkdale Community Legal Services and the Workers' Action Centre

May 22, 2026

Parkdale Community Legal Services
1229 Queen Street West, Lower Level
Toronto, ON M6K 1L2
mary.gellatly@pcls.clcj.ca

Workers' Action Centre
720 Spadina Avenue, Suite 202
Toronto, ON M5S 2T9
deena.ladd@workersactioncentre.org

1) Introduction

These submissions are made on behalf of the Workers' Action Centre (WAC) and Parkdale Community Legal Services (PCLS). Each year, our organizations support thousands of non-unionized workers in low wage and precarious employment. Through case work, public legal education and law reform initiatives, it is our mission to support workers in their struggle for dignity and decent work.

The Honourable Patty Hajdu rightly said that the "world of work is changing and bringing new challenges" when she announced consultations "to ensure that federally regulated workplaces remain fair, modern and supportive while empowering workers to thrive." We are concerned, however, that the significant substantive legislative and policy issues under review for parts of the Canada Labour Code cannot be adequately addressed in 5 weeks to a largely invitation only process. Due to the lack of time available, we will only be addressing 4 of the 13 issues under review. In particular, we will address the following:

1. Assessing sectoral bargaining processes;
2. Strengthening protections against misclassification and wage theft;
3. Sustaining the Wage Earner Protection Program (WEPP); and
4. Other potential changes to the Code that could strengthen supports for workers.

2) Assessing sectoral bargaining processes

Sectoral bargaining can provide opportunities for collective voice and representation. Meaningfully, this would enable workers in non-standard employment to not just voice their opinions, but to democratically engage in negotiations about the terms and conditions of work in their sector. As noted by Slinn and Rawlinson:

> Compelling evidence exists that centralized bargaining structures offer significant benefits to workers, including higher levels of collective agreement coverage, greater worker voice, better labour standards and labour market integration for vulnerable workers, improved productivity, reduced unemployment, higher employment, and reduced income inequality.[1]

They point to New Zealand's Fair Pay Agreement legislation as an instructive model for Canada. Under this model, which has only been in effect since 2022, sector-wide collective agreements are negotiated by an employers' association and a union council. Similar approaches have been implemented in Australia, the Netherlands, Finland, Spain, Sweden, and Belgium.[2]

---

[1] Slinn, Sara and Rowlinson, Mark, "Bargaining Sectoral Standards: Towards Canadian Fair Pay Agreement Legislation" (2022). All Papers. 349: https://digitalcommons.osgoode.yorku.ca/all_papers/349: at p 79.
[2] Sara and Rowlinson (2023) at p 80.

Crucially, the pursuit of an appropriate sectoral bargaining model should be broad and inclusive enough to offer protection and voice to all workers in an employment relationship – including dependent contracts, gig workers, and platform workers.

Sectoral bargaining should not be considered a replacement to enterprise-level bargaining, which still provides workers with the best opportunity to democratically engage with their employers to improve working conditions. Though union coverage has fallen in the FRPS (from 40% in the early 2000s to 35% in 2018), it is still substantially higher than in Canada's overall private sector. Researchers have identified an unsatisfied demand for union representation, particularly in sectors dominated by low wage and precarious work, where workers face significant systemic barriers to unionization and have lower rates of unionization in the FRPS.[3]

Recommendation

The Labour Program should heed the recommendation of the 2019 ESDC-convened expert panel on Modern Federal Labour Standards and further study the legal barriers in Part I of the Code to union representation in the FRPS.[4]

Data from the 2017 LFS suggests that union coverage rates are much lower for temporary employees in the FRPS (about 24%), as well as for employees earning less than $15 per hour (about 21%) and those earning exactly the minimum wage (about 17%). At the same time, sectoral bargaining should be implemented in a way that complements and works in step with the enterprise-level unionization by creating a floor to be enforced and bargained up from for these precarious workers.

Sectoral bargaining would be particularly beneficial in federal sectors with low union density, such as road transport (18% unionization rate) and banks (0.5% unionization rate.[5] and […]. Standards must be bargained by a democratically accountable bargaining agent on behalf of workers in a sector, and by a representative organization of employers on behalf of all employers in the sector.

---

[3] "Report of the Expert Panel on Modern Federal Labour Standards." ESDC: June, 2019: https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/what-we-heard-expert-panel-modern-federal.html#h2.7

[4] Recommendation 23: https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/what-we-heard-expert-panel-modern-federal.html#h2.7

[5] "Collective Bargaining in the Federally Regulated Workplaces: Results from the 2022 Survey of Employees under Federal Jurisdiction" ESDC: 2025-03-11 https://www.canada.ca/en/employment-social-development/programs/labour-relations/reports/survey-results-collective-bargaining.html

Recommendation

The concept of broader-based bargaining merits a wider and more focused discussion than was possible in this consultation. We recommend further consultation with stakeholders, including concentrated study on how to meaningfully engage and encourage democratic participation from workers. The New Zealand model and similar sector-wide arrangements should be studied carefully, along with existing and historical models of sectoral bargaining that exist in Canada, such as in the construction industry, and Quebec's decree system.

Concerted Activity

Any effort to improve workers' ability to voice their concerns in the workplace will fail unless workers are afforded legal protection when they speak up or act collectively. As Harry Arthurs recognized in his 2006 review of federal labour standards, the Code has historically provided minimal mechanisms for workers to express their collective views on working conditions. Section 246 provides protection to individuals against reprisal for exercising any rights conferred by Part III of the Code. Though workers in theory have the right to reinstatement, this remedy is rarely, if ever applied. Significantly, s.246 does not apply to workers acting collectively to improve conditions above the minimum floor outlined, or who seek to voice their concerns about workplace issues not protected by Part III of the Code, such as contracting out.

In the United States, section 7 of the *National Labor Relations Act* (*NLRA*) provides the right to engage in "concerted activity for the purpose of collective bargaining or other mutual aid or protection" to both unionized and non-unionized employees. This right has been broadly construed to include concerted complaints or grievances presented to employers regarding compensation, benefits or working conditions, as well as informal discussions between employees about their working conditions. Section 8 then makes it unlawful for employers to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

Workers in low wage and precarious work cannot afford to speak up about unfair or unsafe working conditions. 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. U.S. based research indicates that as few as 2% of workers experiencing wage theft made a complaint to a state regulatory body.[6] The Canadian statistics are likely comparable. Workers know from experience that if they speak up in the workplace – either for themselves or their co-workers – they are likely to face retaliation.

[6] Schneider, D., Khulman, E., Harknett, K., & Weil,D. (2024). Compliance and the Complaint Gap: Labor Standards Violations in the California Service Sector. The Shift Project. https://shift.hks.harvard.edu/wp-content/uploads/2024/05/CA_Violations_Report_Final.pdf at p 9.

Concerted activity protection gives more robust protection to workers who act collaboratively to improve their working conditions. In recent years, it has been used more frequently as a shield by precarious workers in sectors with low union density. It is therefore an absolute prerequisite to any effect to enhance worker voice.

Recommendation

The Labour Program should heed the recommendation of the 2019 ESDC-convened expert panel on Modern Federal Labour Standards and introduce protection for concerted activity in Part III of the Code.[7]

Working with Third Parties Advocates

The Labour Program does not adequately consult with the non-unionized workers who make up at least 65 percent of the FRPS. Working conditions for unionized and non-unionized workers are starkly different in the federal public sector. In consultations such as this one, the Federal Government engages with unions and their associations – as it should – but they cannot adequately speak to the experience of non-unionized workers. As a result, the perspective of employers are overly represented, particularly as it pertains to the development of Part III of the Code. There are several organizations across the country that represent, support, and advocate for non-unionized workers in the FRPS, including the Workers Action Centre, community legal clinics, the West Coast Trucking Association, the Immigrant Workers Centre of Montreal, Justice for Truck Drivers, Labour Community Services of Peel, the Halifax Workers Action Centre – to name only a few. We speak to thousands of workers every year and assist workers in filing hundreds of Federal Labour Standards Complaints every year. Our members and staff intimately understand the issues that precarious workers face in the FRPS and how the current laws and administrative processes affect them. By excluding such organizations from these consultations, the Labour Program is sorely missing the opportunity to hear directly from non-unionized workers' organizations.

In the United States, some labour enforcement agencies have adopted a collaborative approach to minimum standards enforcement, partnering with worker centers and unions to improve compliance in hard-to-reach industries. Under this model, which has been executed at the federal, state and municipal level, community-based organizations received public funding to assist labour agencies by providing education, doing outreach to marginalized communities, and referring cases to enforcement agencies.[8] Community organizations can assist in practical,

---

[7] Recommendation 24: "Report of the Expert Panel on Modern Federal Labour Standards." ESDC: June 2019: https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/what-we-heard-expert-panel-modern-federal.html#h2.7

[8] Deutsch, Rachel and Terri Gerstein, "Power in Partnership: "How government agencies and community partners are joining forces to fight wage theft," (2023, EPI: https://files.epi.org/uploads/267794.pdf).

tangible ways in relation to ongoing investigations, by keeping in touch with worker witnesses who move, answering worker inquiries about case status, and locating workers owed restitution.

We also have specialized knowledge about particular industries, business models, and their methods of violating the law that can inform strategic enforcement initiatives and/or identify possible targets. In California, for example, ongoing partnerships between the state and 17 labour organizations allowed the labour commissioner to intensify enforcement in several low-wage industries. After the implementation of the program, the labour commissioner has been able to bring bigger citations against employers, assessing over $50 million in wages owing per year between 2017 to 2020, which is 40 percent higher than the wages assessed in the five preceding years.[9]

One of the significant benefits of this approach is that it creates partnership and collaboration with workers who otherwise face significant barriers to other collective voice mechanisms, including language barriers and precarious immigration status. We know that racialized and migrant workers are more likely to work in non-standard employment, such as part-time and contract work, and to move in and out of sectors based on what work is available. For these workers, community organizations can act as an anchor, allowing them to access advocacy, resources, and collective representation which may not otherwise be available.

Recommendation

The Labour Program should heed the recommendation of the 2019 ESDC-convened expert panel on Modern Federal Labour Standards and provide funding to community organizations that facilitate participatory initiatives outside the workplace.[10]

3) Strengthening protections against misclassification and wage theft

Legislative gaps in the Canada Labour Code, ineffective enforcement of the Code and widespread employer violations are leaving many federally regulated employees, particularly truck drivers, without protection from deteriorating wages and working conditions. In 2005, 78 percent of confirmed Canada Labour Code Part III violations were in road transport.[11] In 2022, that increased to 85 percent[12] and now stands at 90 percent of violations even though trucking only makes up 17 percent of federally regulated workers. Clearly the current phenomenon of

[9] Lazo, Alejandro, and Jeanne Kuang. 2022. “To Fight Wage Theft California Gets Strong Assist from Worker Centers.” California Divide, November 15, 2022.
[10] Recommendation 24
[11] Arthurs, Harry W. Fairness at Work: Federal Labour Standards for the 21st Century. Gatineau, QC: Government of Canada, 2006, p. 76.
[12] ATIP-A-2022-01-01434. Data extracted August 11, 2022

"Drivers Inc."[13] is not the only driver of wage theft in the sector. The long-standing employer practice of wage theft is rooted in the deregulation of the sector and failure of labour standards to address the restructuring in the sector.

Canada followed the U.S. in deregulating road transport with the passage of the 1987 Motor Vehicle Transport Act (MVTA). Shippers gained substantial control resulting in workplace fissuring, the growth of subcontracting and vertical disintegration in the sector. This led to a highly competitive industry dominated by low-cost tendering practices pressing transport carrier companies to respond to low margins by slashing labour costs and violating the Labour Code. This is particularly the case for the small and medium enterprises that dominate the trucking sector (60 percent of drivers work for companies with less than 100 employees).

The federal government's Labour Program enforces the Labour Code through a reactive compliance model based on the standard employment relationship. While arguably long haul driving was likely never "standard", exemptions to the Code's hours of work and overtime for these drivers and atypical pay structures, third party hiring and subcontracting ensure that these employment structures are not standard.

The compliance model of labour standards enforcement assumes most employers follow the Code and, where they depart, enforcement strategies rely on the provision of information, persuasion and negotiation to bring employers into compliance. This compliance model relies on employees who face wage theft to enforce their rights by filing individual complaints when or after the violation has taken place. That is, it is largely a reactive, individualized model that makes employees more responsible for asserting their rights regardless of the power imbalances in the employer-employee relationships that the remedial Labour Code seeks to redress.

This model has been failing federally regulated employees. There is little risk that employers violating the Labour Code will be detected. Barriers to filing complaints means that most workers facing wage theft do not file claims with the Labour Program. Even when complaints are laid, the Labour Program doesn't recover the unpaid wages from over 80 percent of orders to pay. There is no real cost to wage theft. There have been only ten fines levied against employers in violation of Part III since the Administrative Monetary Penalties came into effect in January 2021 – only two of the fines were actually paid.

Employers have long called for more effective enforcement.[14] More recently, Stephen Laskowski, CEO of the Canadian Trucking Alliance, told the Transport Committee, "Do not trust us… We do not have the proper oversight, enforcement and penalties."[15] The Evaluation of the

---

[13] See for example, Minister Champagne clamps down on Driver Inc. scheme in Budget 2025. News Release, October 30, 2025.
[14] See for example, Garland Chow, Labour Standard Issues in the Inter-provincial Canadian Trucking Industry. Submitted to the Federal Labour Standards Commission. June 5, 2006.
[15] Deputation to the Changing Landscape of Truck Drivers in Canada, Standing Committee on Transport, Infrastructure and Communities, Tuesday October 7, 2025. https://www.ourcommons.ca/DocumentViewer/en/45-1/TRAN/meeting-9/evidence

Labour Standards Program for 2011-12 to 2015-16, recommended stronger enforcement measures and proactive strategies.[16] Prof. Vosko's analysis of the federal Labour Program concluded that the reliance on a compliance model of enforcement may contribute to the erosion of labour standards, particularly for those workers in industries where small firms and precarious employment dominate, and recommends a more proactive deterrence model of enforcement.[17]

Recommendation

The Labour Program should move from a compliance model to a proactive deterrence model of Labour Code enforcement.

Strategies to stop wage theft

Remove barriers to Labour Code complaints

The 6-month time limit to file federal labour code complaints limits employers liabilities for violating the Code. At the same time, it creates substantial barriers to employees facing wage theft. Over one-third of federally regulated drivers report that their pay is often late. Employees spend substantial time trying to get their employers to pay their wages, resulting in many drivers being timed out by the time they try to make a labour program complaint. Half of Canadian provinces and territories have longer time limits on filing employment standard claims than do federally regulated workers, ranging from 12 months to 24 months.

Currently workers are told that they will face a 15 to 16 month wait until their complaint can be assigned to a Labour Affairs Officer for investigation. Some employers know that the Labour Program does not use AMPs to compel them to provide records or participate in the investigation, thereby delaying the process further. This backlog is putting complaints close to the two year time limit on claims investigation.

Recommendations

- Establish a two year time limit for filing complaints for reprisals, unjust dismissal and monetary and non-monetary complaints under the Labour Code.
- Use s. 251(1.2) of the Code to use available forms of evidence, including employee testimony, to decide claims (especially where the employer does not participate in the investigation).

---

[16] ESDC (2019) Evaluation of the Labour Standards Program. https://www.canada.ca/en/employment-social-development/corporate/reports/evaluations/labour-standards-program.html#h2.5

[17] Vosko, Leah; Noack, Andrea (Andie); King, Adam; Osten, Victoria; Clare, Emily (2022). A Model Regulator? Investigating Reactive and Proactive Labour Standards Enforcement in Canada's Federally Regulated Private Sector. Toronto Metropolitan University. Journal contribution. https://doi.org/10.32920/21631922.v1

- Increase the number of Early Resolution Officers and Labour Affairs Officers to reduce the backlog on claims.
- Multiple complaints against an employer must trigger an expanded investigation to bring the employer into compliance for all employees.

Remedy for Victims of Wage Theft

Under the current system, workers - not employers - bear most of the costs associated with wage theft. When employers withhold pay or provide partial pay, workers must still pay the rent and feed their families. In sectors such as road transport, substantial wages may be owed by the time a job ends. For example, a recent survey of federally regulated truck drivers found that 53 percent of drivers had unpaid wages over $10,000.[18] The economic insecurity arising from wage theft may have depleted savings and pushed workers into debt. Low-income workers face higher debt servicing costs. This burden on the victims of wage theft is exacerbated by long delays in claims processing and low collection rates on unpaid wages. This financial harm is born by the very workers that the Labour Code is supposed to protect and has no remedy for these damages.

Legislatively mandating damage awards can deter employers from committing wage theft by significantly increasing the cost of violating the law. Currently wage theft lets employers benefit from savings on labour costs; even if they have to pay workers later, they can put short-term savings into stabilizing and growing their business. In contrast, workers spend unpaid time tracking down employers for their unpaid wages. Workers that try to enforce their claims for unpaid wages have to do significant work to prepare the complaint and participate in the investigation. There are no provisions in the Code to recoup the costs of bounced pay cheques, debt servicing, or interest for unpaid wages.

Several U.S. states have wage theft laws that award damages to victims of wage theft, in some cases up to three times the amount of the unpaid wages they are owed.[19] This approach has been proven by at least one study as the most effective state policy for combating wage violations.[20]

Recommendations

- Enact powers to charge pre- and post-judgement interest on unpaid wages.
- Mandate triple damage awards for all monetary Part III violations.

---

[18] Running on Empty: Truck Drivers in Canada are Underpaid and Overworked, February 2026. Report by West Coast Trucking Association, Justice for Truck Drivers, Labour Community Services of Peel and Parkdale Community Legal Services. p 8

[19] States with triple damage laws include Arizona, Massachusetts, New Mexico, Ohio, Idaho, Maine, Maryland, Michigan, Nebraska, North Dakota, and Vermont. See National Employment Law Project (2011) Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft.

[20] D. Galvin (2016) Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance. *Perspectives on Politics* Vol 14, No. 2.

Deterrence through effective penalties for labour code violations

Under Part III of the Code, there are currently three main deterrence methods. Administrative Monetary Penalties, Prosecutions and Public Naming of Employers.

Administrative Monetary Penalties (AMPs) were brought into effect on January 1, 2021 (Part VI) to deter non-compliance and penalize ongoing non-compliance. In theory, Officers could use AMPs when employers fail to provide documents in a timely way during investigations. AMPs could also be used when employers fail to comply with orders to pay wages.

Over the past five years, the Labour Program issued 41 AMPs, with the majority of those being for Part II Occupational Health and Safety violations with fines ranging up to $87,000. Only ten AMPs have been issued for Part III labour standards violation ranging in amounts of $3,500 to $7,000. Only two out of the ten fines have been paid and in none of the cases has compliance been confirmed.

The overly complex and discretionary AMP scheme has rarely been applied over the past 5 years for wage theft. Officers have reported to us that they are not able to decide to apply an AMP during investigations or after employers fail to pay wages. Rather, there are multiple layers of decision making at the regional and national level leading to the under utilization of this penalty.

The Code enables the Labour Program to prosecute employers in cases of serious offences or where compliance tools have been unsuccessful in convincing the employer to comply with the legislation. Since 2010, there have been no prosecutions of employers in violation of Part III despite the extremely low rate of compliance with Orders to Pay outstanding wages and the ongoing high rates of violation in the trucking sector. Failure to prosecute wage theft, particularly in the road transport sector, tells employers that the federal government condones wage theft.

The names of employers are published on the department's website for 2 years when they have been issued an AMP or in certain cases where the payment orders have been filed in the Federal Court.

Penalties will not deter wage theft if they are rarely or never used.

Recommendations

- Remove the discretion in AMPs and require Labour Affairs Officers to issue AMPs in all cases of confirmed monetary and non-monetary violations of Part III.
- Ensure Officers use AMPs when employers fail to comply with an investigation of a complaint.
- Prosecute employers in all cases of unpaid orders to pay.

Collections

For enforcement to be effective, employers must know that the Labour Program can and will force them to pay wage violations once they are detected. This is not the case. Only 18 percent of Orders to Pay are recovered by the Labour Program.

Part III of the Canada Labour Code contains only two provisions for collections of outstanding orders to pay. The Program can issue third party orders to a party that is indebted to the employer in violation or to a bank if known. Otherwise, the Program can file the order to pay in federal court. The Program takes no further action on enforcing the order at Federal Court – that is up to the victim of wage theft.

The Federal Court process for enforcing a debt is complex, costly, and time consuming, particularly if the debtor is uncooperative. It is not a process which most workers can access without hiring legal counsel. Placing the burden on employees whose labour code rights have been violated to pay thousands of dollars to a lawyer to recover unpaid wages is unfair and contravenes the remedial purposes of the Labour Code.

Due to the failures of the compliance model of labour standards enforcement, many provinces and territories have enacted collection tools and established collection procedures within their labour standards claims enforcement. The Canada Labour Code must be modernized to do the same.

Recommendations

- Enact provisions in Part III of the Code to facilitate the collection of money owed to include the following:
    - Liens on real and personal property
    - Issue warrants to a sheriff to enforce an order to pay and the costs and expenses of the sheriff
    - In addition to filing an order in federal court, provide legal services to claimants to enforce the order to pay in court
    - Require pre-judgement liens or bonds in cases of repeat offenders
    - Prosecute all employers that fail to comply with orders to pay
- Adequately staff and resource collection activities within the Labour Program.

Gaps in the Labour Code that contribute to wage theft and misclassification

While wage theft is a persistent feature of the road transport sector, how employers evade and avoid the law changes over time. Employers are nimble in identifying gaps in labour market regulation and leveraging open opportunities to shift employer liability down the contracting chain or on to workers themselves. We have witnessed this in employers' use of platforms in the employment of ride hail and delivery workers on a provincial basis and misclassification of drivers on a federal scale.

While misclassification of drivers has been used by employers for decades in trucking, its current dominance in approximately 20 to 30 percent of the sector is quickly being replaced by other strategies such as chameleon carriers, nominal lease of in-house trucks and temp agencies to name a few. We must avoid a ‘whack-a-mole’ approach to employers' violation strategies and look at the gaps in the underlying legislative architecture and enforcement regimes.

Fissured Road Transport

Deregulation of the trucking industry during the 1980s and 1990s created multiple layers in the chain of production with shippers, brokers, carriers, sub-brokers, temporary agencies, drivers and owner-operators regulated through provincial and federal labour and road transport laws. There are multiple ways that sectors shift away from the traditional direct employer-employee relationship to more complex webs of companies that prioritize shedding labour costs and employer liabilities. Misclassification is just one of these strategies. Subcontracting and third party contactors are another. Our labour code and enforcement regime are ill equipped to deal with these changes.

Related employers

The Labour Code defines the employer as “any person who employs one or more employees” and is interpreted in IPG - 068 as implying there can only be one true employer of an employee. Based on outdated notions of a standard employment relationship, the Code needs to be updated to reflect the reality of employer entities that should share liability for employees. Truck drivers report working for carriers in which there are multiple corporate entities in shifting forms of sub-brokers, dispatchers, and carriers. Employees face barriers to filing complaints for wage theft when such related entities are involved. The Labour program will only accept one entity in its investigation. There is a need to assign obligations and liabilities in multi-party situations so that employers cannot use corporate veils to evade responsibility for wage theft.

A new practice is emerging among federally regulated employers called “chameleon” companies. These entities exploit gaps between corporate registration, safety certification, insurance requirements and enforcement systems, allowing entities to use corporate veils to escape prior non-compliance with labour standards, health and safety and transportation regulations. Chameleon carriers are trucking companies that:

- Shut down following safety violations, audits or enforcement actions
- Register anew under a new corporate number or operating authority
- Continue operations with the same management, vehicles, drivers and business practices
- Avoid accountability for past safety records, outstanding debt to employees, penalties and liabilities

These employers exploit weaknesses in how carrier safety records, corporate structures and operating certificates are tracked across jurisdictions.

It is not just related entities that need to be addressed. Workers are more likely to recover their unpaid wages when liability for unpaid wages is spread up the supply chain to the entities exercising control. A number of jurisdictions in Canada extend liability beyond direct and related employers where employers contract out work. For example, 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.[21] British Columbia and Saskatchewan also have provisions to extend liability for unpaid wages beyond direct and related employers where employers contract out work.

Recommendations

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

Unpaid work

Special rules and exemptions on hours of work, overtime, hours-of-service regulations, and outdated pay systems other than on the basis of hours of work have led to substantial unpaid work time and wage theft for drivers.

Long ago, employers in the road transport sector argued that workers should be paid on the basis of miles driven rather than work time because employers could not directly observe if employees were working efficiently. A patchwork pay structure emerged in which carrier companies paid workers on the basis of mileage, drop-offs and pick-ups, border crossings and layovers. Mileage is not calculated on the actual miles driven but often on an app-based “shortest route” estimate that does not include route detours, construction, weather conditions etc. Employers pay drivers piece rate for some of the non-driving tasks but do not pay for all hours worked.

With changes in technology, there is now a complete, time-stamped record of all hours worked including driving, waiting, inspections, delays etc through E-logs (ELDs) which are legally required by Transport Canada. Carriers should no longer be able to pay piece rate hourly estimates or estimates of mileage driven. A recent survey of over 400 truck drivers found that 74% of federally regulated drivers report not being paid for all the hours worked. Further, 51% of federally regulated drivers report not being paid for the actual distance driven.[22] To address wage theft and unpaid work time, there are two legislative gaps that must be addressed – the lack of a definition of deemed work and a definition of regular rate of pay.

---

[21] *Act respecting labour standards*, CQLR, cN-1.1,s.95.
[22] Running on Empty

In 2019, the government established an independent Expert Panel on Modern Federal Labour Standards that conducted extensive research and consulted over 140 organizations and individuals. One of the key issues addressed was the lack of a clear definition of work time and the need for clear statutory boundaries on what is deemed work time and what should be compensated as work. The Panel's Recommendation 16 calls for a statutory definition of "deemed work", saying:

> Determining the circumstances under which employees are deemed to be at work, regardless of worksite(s), enables employees to be compensated for all time spent at the behest of the employer… Employees should be deemed at work "when providing services required or permitted by the employer".[23]

The longstanding concept of being paid for time worked has been recognized in standard employment relationships. Changing models of work challenge this practice, particularly in the absence of a clear definition of deemed work. Manitoba, Saskatchewan and Quebec have resolved the issue by incorporating statutory definitions of deemed work into labour standards. Clear definitions create more certainty and less litigation while reducing labour disputes.

Regular Pay Rates

Not only is deemed work time essential to employee rights under the Code, so too is the concept of "regular rate of pay". To establish employers obligations for payment to employees under the Code's various leave provisions, employers must pay the "regular rate of wages".[24] For employees in more traditional employment models that are paid hourly, this is their regular rate of wages for their normal hours of work.

Without a clear legislated definition of deemed work time and rate of pay, the earnings calculation may be much lower than what these employees should be paid during their leaves. As the government is now asserting that employees who are paid on a basis other than time, only need to be paid at least minimum wage for hours worked, these earnings may be much lower than expected. This sets up a two-tiered system where workers in standard employment relationships get regular rates of pay for hours worked while non-standard workers get earnings averaged over 20 days which may not reflect actual hours worked or regular pay rates and need only be above the minimum wage. Surely this is not the intention of the government to reinforce sub-standard conditions for non-standard workers that are more likely to be women, in the case of flight attendants, or workers of colour, in the case of truck drivers.

---

[23] Employment and Social Development Canada, **Report of the Expert Panel on Modern Federal Labour Standards.** June 2019. P. 102.
[24] See for example Division VIII Bereavement leave and Division XIII Medical Leave.

Recommendations

- Enact a definition of deemed work time where work shall be deemed to be performed by an employee for an employer, regardless of worksite(s), and compensated for all time spent at the behest of the employer.
- Regular rate of pay should be defined in the Code to clarify that the employer shall pay the regular rate of pay agreed to by the employer and employee for hours worked.

Misclassification

It is hard to estimate how many companies use a business model of misclassifying employees as independent contractors. The CRA found in their study of misclassification that 32% of workers surveyed were found to not be independent contractors with the majority of them reporting that they believed they had to incorporate to find work.[25] A recent report found that 38% of federally regulated truck drivers surveyed were misclassified as independent drivers in their current job.[26]

When workers are misclassified, they are cheated out of vital benefits including Employment Insurance, the Canada Pension Plan and provincial or territorial workplace injury compensation. Workers are denied protections under the Canada Labour Code for illegal deductions, wage theft, overtime, paid sick leave and health and safety standards. Misclassification also creates an uneven playing field for employers that follow the law.

Misclassification is not new for federally regulated workplaces. Prof. Garland Chow's study of federal trucking in 2006 found the use of drivers misclassified as independent contractors was growing at the turn of the Century.[27] The current five-year program to crack down on misclassification in the trucking sector is a good start on this long-standing problem. But as noted in the preceding discussion, without effective financial consequences from Labour Code penalties and prosecutions for employers using this business model, it will be difficult to curb this pattern of labour code violations. Not surprisingly, the Labour Program found significant rates of ongoing violation when it did follow up investigations of companies found in violation of misclassification.

Employer associations have been successful in pressing the government to use CRA to address misclassification in the sector. The Labour Program has entered into an Information Sharing Agreement with the Canada Revenue Agency to target carrier companies that do not

[25] CRA, Personal services business pilot. https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/corporation-income-tax-return/personal-services-business-pilot.html
[26] Running on Empty
[27] Garland Chow, Labour Standard Issues in the Inter-provincial Canadian Trucking Industry. Submitted to the Federal Labour Standards Commission. June 5, 2006.

file T4As for contract workers and misclassified employees who file taxes as independent contractors. This strategy places a disproportionate burden on drivers who have the least power to refuse misclassification and effectively relies on drivers to be the corrective by not working for Driver Inc. companies.

Unlike the remedial purposes to address the power imbalance in the employer-employee relationship under the Canada Labour Code, the CRA treats employers and employees as equal parties for the purposes of taxation, CPP and EI remittances. The financial cost of misclassification on employers is less. Companies are required to file T4As for the amounts paid to independent contractors. If a company is late in filing a T4A, they face a $10 per day fee for late filing of each T4A. If CRA investigates the contractor (i.e. the driver) receiving the T4A and determines the contractor is an employee, then the employer has to pay both the employer and employee share of EI and CPP – about $2,695 and $4,230 respectively. Alternatively, CRA could determine the driver is a “Personal Service Business”, that is in an employee like position. In this case, the company would not be liable for EI and CPP, it merely has the responsibility to issue T4As.

For misclassified drivers, the costs are much higher. CRA has no mandate to protect workers’ rights. It is approaching the issue of misclassification to determine if a driver should pay taxes as a small business or a Personal Service Business (PSB). A typical small business in Ontario pays about 12 to 15% in corporate taxes. PSBs on the other hand are taxed like employees (28% federal and 11.5% provincial) plus an additional 5% PSB penalty tax for a tax rate of almost 45% on earnings. This is retroactive. So a misclassified driver making $60,000 facing reclassification by CRA as a PSB faces a retroactive tax bill of $27,000 - a much higher burden than the company that holds all the power will face under this so-called enforcement strategy.

Additionally, because misclassification was not enforced through the Canada Labour Code, the misclassified employee will not recover unpaid vacation pay (4%), unpaid public holiday pay, unpaid overtime and illegal deductions that they may have been entitled to.

This strategy turns an issue of worker exploitation into a neutral tax matter that burdens the victims of misclassification more than the perpetrators. It further burdens drivers to stop employers from misclassifying them by not working in situations that place them in such risk. Drivers have to forgo work or find an employer that will not misclassify them. Whether this is the intent or an unforeseen consequence, it must be stopped.

Employment status is critical to both the floor of protections under Part III and to other federal programs such as EI, CPP and taxes. To reflect the realities in business practices and employment relationships, the conception of employment status must be addressed across all these programs.

Recent changes to the Canada Labour Code creates a presumption of employee status and places the onus on the employer to prove otherwise. This provision rightly reflects the statutory recognition of the power imbalance between the employer and employees. Unfortunately, the

government did not also modernize the test to determine employee status. The Labour Program still relies on common law multifactorial tests that are not weighted. These common law tests are subjective and unpredictable leading to confusion for both employers and employees.

Recommendation

We need consistency in defining the employment relationship across federal programs – that means the Canada Labour Code, Employment Insurance Act, Canada Pension Plan and the Income Tax Act.

The presumption of employee status and the ABC test have long been used in over 25 American States to determine who is an employee to access employment rights such as workers' compensation, unemployment insurance and labour standards protections. This robust test provides clear, equally weighted, cumulative factors that must be met for a person to be deemed an independent contractor and not an employee.

The " ABC test" 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;
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.

By enacting a presumption of employee status and the ABC test, the government will be able to address the huge costs of misclassification. The public faces billions of dollars of loss of taxes and revenues to Employment Insurance, Canada Pension Plans and workers compensation. Employers face unfair competition when up against companies that flagrantly flout the law. This drives down wages and working conditions more generally which has a negative impact on the economy. We need a simple inclusive definition of employee status.

4) Sustaining the Wage Earner Protection Program

The Wage Earner Protection Program (WEPP) is an important program for workers facing unpaid wages and other labour standards entitlements when their employer closes. This is particularly the case when it can take close to 2 years to get an order to pay against an employer who is likely to disappear.

We do not have the capacity to comment on the issues raised by the Labour Program on new corporate restructuring methods to shed liabilities through "reverse vesting orders" that leaves many workers without remedy through WEPP. However, we do want to raise another substantial problem faced by employees in small and intermediate companies when their employer closes

without any formal bankruptcy or insolvency process. These workers are barred from applying for WEPP.

The Canadian Federation of Independent Business survey found that only 10% of Canada's small business owners would file bankruptcy if they were unable to keep their doors open.[28] While these findings likely overstate the reality of such closures, it is very costly and public for companies to go through bankruptcy. The Labour Program found that during its reinspection of employers suspected of misclassification, 25% of companies merely disappeared. It's hard to know how many of these became phoenix entities rising under a new or related corporation.

As discussed above, the rise of chameleon corporate structures enables companies to shed one of its entities, leaving workers with little recourse. Average workers have no real mechanism to force a company into bankruptcy to avail themselves of WEPP.

When companies do actually file bankruptcy thereby opening a path to WEPP, misclassified employees face many barriers. For example, a driver for such a company will appear on records as an independent contractor. Trustees treat these misclassified employees as unsecured creditors and not eligible for WEPP. The misclassified employee must obtain a determination that they are employees either through the Labour Program claims process or through CRA. Some workers report that Labour Affairs Officers will not investigate their claim if the company is bankrupt, leaving workers between a rock and a hard place; they cannot get the Labour Program determination needed to make them eligible for WEPP. In most cases, workers in this position are timed out from WEPP because they must apply within 56 days of bankruptcy or receivership.

Recommendations

- Modernize WEPP to recognize multi-employer and related employer structures to improve access to WEPP.
- Explore pathways to WEPP for employees when their employer disappears.
- Provide a clear pathway to WEPP for workers that have been misclassified as independent contractors.

5) Other potential changes

After conducting consultations and studying the issue, the Federal Government implemented a short-term job-protected sick leave program which took effect in December, 2022. Heeding the advice of healthcare practitioners, the program includes 10 paid sick days and does not put onerous and unnecessary evidentiary burdens on our healthcare system by requiring workers to provide sick notes for absences of 5 days or less (s. 239). The Medical Leave with Pay provisions, along with the Personal Leave provisions (206.6), help workers and their families stay healthy and reduce the spread of disease and illness in our communities. The COVID-19

[28] CFIB, (2022) Small Business Insolvency: The Tip of the Iceberg? https://www.cfib-fcei.ca/en/research-economic-analysis/small-business-insolvency-the-tip-of-the-iceberg

pandemic taught us this is absolutely crucial to our collective wellbeing and our economy. Without employer-paid sick days, low wage workers cannot afford to stay home to take care of their health or the health of their dependents. Studies have repeatedly shown that this undermines public health, reduces workplace productivity, and puts undue burden on the medical system, as workers often forgo medical attention until their medical conditions worsen and become more costly and complex.

There is no evidence to support the claim that employees are abusing paid sick days, or that the new program has had any negative effect on worker productivity. The broader Labour Force Survey shows that private sector workers were absent an average of 9.5 days in 2025. This suggests that the current entitlement is in no way excessive. In the upcoming Survey of Employees under Federal Jurisdiction we can hopefully gain a deeper understanding of how the program is being implemented; how many workers are actually able to access the benefit, and to what extent it has increased absenteeism, if at all.

According to the 2015 Federal Jurisdiction Workplace Survey (FJWS), only 5.6% of employers in road transportation (a sector largely composed of trucking employers) offered paid sick leave. For workers in this industry, who the Labour Program knows to face higher levels of exploitation and wage theft, paid sick days are incredibly meaningful. In more densely unionized sectors of the FRPS, between 25% and 70% of employers already provided paid leave. These companies may have faced some growing pains as they adjusted to the new regime, but that does not mean that providing 10 paid sick days is excessive. Rather, the unevenness of who had access to paid sick leave in the FRPR prior to the enactment of s. 239 suggests that implementing paid sick days in Part III of the Code was badly needed to set a floor of decent working conditions in the federal private sector. Low-wage and precarious workers need paid sick days to live healthy lives and make ends meet. This is particularly true for women workers, who face lower rates of unionization in the FRPS but bear heavier caretaking responsibilities at home.

Any concerns regarding stacking are addressed by IPG-199 Medical leave with pay - No stacking, which clearly states that the medical leave entitlements in Part III of the Code are a minimum standard and not intended to impact employers who already offer equal or greater paid leave benefits. Employer's self-reported difficulties and/or concerns about benefit stacking or absenteeism is in no way sufficient to justify changing or diminishing this badly needed program.

Recommendations

We strongly recommend that no changes be implemented to the current 27 week job-protected medical leave, including 10 employer-paid sick days.