

Council of Ontario Universities Submission on the Changing Workplaces Review, Special Advisors' Interim Report

The Council of Ontario Universities (COU) is a membership organization of Ontario's 20 publicly assisted universities.

COU thanks the government for the opportunity to comment on the *Changing Workplaces Review Special Advisors' Interim Report*. Some of Ontario's universities may have submitted their individual comments on the Interim Report. COU has prepared this submission from the sector as a whole. It reflects the significant concerns that are common to Ontario universities.

Ontario's publicly assisted universities operate on the forefront of the knowledge economy and employ a wide spectrum of employees, all engaged in the mission of delivering excellence in teaching and research. The universities represent an employer community that is principled and committed to supporting fair practices and working conditions for all their employees. Unlike for-profit businesses, universities are not-for-profit institutions that provide a fundamental service for societal good: the education of our citizens and the advancement of research. Universities are workplaces unlike most other workplaces in many regards.

Ontario's universities applaud the government's objective of setting standards for precarious work and support increased compliance of all employers with existing labour and employment standards legislation. There are significant concerns, however, that "one-size-fits-all" legislative changes that may apply to other workplaces do not appropriately reflect universities' workplaces, and could have negative and unintended consequences on their ability to serve their students and provide teaching and research excellence.

Unique Categories of Employment at Universities

Universities engage certain employees on a short-term, part-time, or casual basis for reasons that would be undermined by some of the options in the Interim Report. Most critically, these categories include instructors engaged on short-term contracts (who may at different institutions be considered contract faculty members, stipendiary instructors, or other terms for this type of short-term teaching work), post-doctoral fellows, and students. The universities are of the view that these categories of workers do not fit within the definition of "vulnerable workers" endorsed by the Special Advisors in the Interim Report. Any legislative amendments that would impact the universities' flexibility to engage the above categories of employee (such as limiting the number or duration of short-term employment contracts), limit the universities' discretion in setting their pay and benefits, or limit flexibility in scheduling,¹ have the potential to undermine the very nature of these categories of employment. Three unique categories of employment are discussed briefly below.

¹ Pay, benefits and scheduling are subject to terms and conditions negotiated with bargaining agents where applicable.

Contract and Term-Limited Instructors or Faculty Members

- Contract and term-limited instructors or faculty members are hired to teach courses on a short-term (often sessional) basis. These positions are intentionally term-limited for both the universities' reasons (for example, to provide students with courses taught by highly-qualified teachers with specific subject matter expertise) and the instructors' reasons (for example, those who engage in contract teaching in addition to other careers, notably professional occupations). Sessional instructors are frequently engaged to teach courses that are not being delivered by tenured faculty members for reasons including: students benefit from being taught a particular subject by a practitioner in a particular field; tenured faculty have been assigned courses and instructors are needed to teach the remaining courses; or instructors are needed to fill in for faculty members who are on research, study, administrative or other leave.
- Contract and term-limited instructors are highly-educated and fairly-compensated individuals who do not fit within the term "vulnerable workers" as defined in the Interim Report. Some universities have mechanisms for advancement or career progression for employees in this category that are responsive to both the needs of the institution and the wishes of the employees. For those reasons, universities do not see the need for legislative amendments impacting this category of workers (for example, limiting the number of limited-duration contracts). Such measures would limit the universities' ability to respond to emerging academic areas and changing student interests and enrolment. They could limit student choice and access to deep expertise in their fields of study, and could affect the ability of many professionals to continue teaching on a part-time basis.
- To the extent that contract and term-limited instructors focus on teaching their specific course(s), they, unlike tenure-stream faculty, are not engaged to undertake research, supervise graduate students' theses, or engage in university administration. On this basis, it is important that legislation not require pro-rating of salary and benefits of contract teaching staff based upon the salary and benefits of full-time faculty.

Student Employment

- Students are hired by their universities for a wide range of jobs, including teaching and research assistance, administration, and service work. These opportunities provide students not only with income during their studies but also with valuable work experiences and professional development opportunities that reflect the Ontario government's priority of empowering students to make successful transitions into the labour force after graduation.² Although this work

² The Premier's Highly Skilled Workforce Expert Panel, *Building the Workforce of Tomorrow: A Shared Responsibility* (June 2016).

may be part-time, term-limited, and/or casual in nature, this work does not fit within the term “vulnerable workers” as defined in the Interim Report.

- Some of the options set out in the Interim Report may have unintended negative consequences on the employment and paid developmental opportunities that universities provide to their students. For example:
 - The hours that a student employee may work might be restricted by design to allow students to focus on their primary reason for attending university – to study.
 - Any limitation on the total number or duration of limited-term contracts, or any provision that requires a transition to permanent employment in order to continue working, would negatively affect universities’ ability to offer employment to their students, which would be a detriment to both students and the university community.

Post-Doctoral Fellows

- Post-doctoral fellows have term-limited employment (although in some institutions and in some circumstances post-doctoral fellows are not employees in a research field). The purpose of such work is to provide an intensive period of research in order to allow the fellow to gain experience necessary to seek employment in their field. Although this work is term-limited, post-doctoral fellows are highly-educated and well-compensated, and the fact that they are engaged for limited terms does not make their employment fit within the term “vulnerable workers” as defined in the Interim Report. Provisions limiting the flexibility of the post-doctoral fellow to conduct the research and gain the experience that is the core purpose of the relationship would be detrimental to these relationships. Such provisions include those relating to hours of work, scheduling, and number/total duration of term contracts.

Teaching and Research Excellence

As publicly assisted, not-for-profit enterprises whose mission is to provide a societal good, universities require significant flexibility in order to manage their workforce. Any measures that reduce flexibility would hinder universities’ ability to provide teaching and research excellence to their students and to society at large.

- Universities have employees engaged in various types of work (e.g., teaching, research, administration, service work), much of which is scheduled around course timetables and the requirements of particular research projects. In order to meet their teaching and research priorities, universities require flexibility in the hours of work and scheduling for all employees. A short list from many examples is as follows:

- During welcome week, support staff may need to work extended hours to ensure service and integration of incoming students;
- Faculty members largely control the timing of their work output in teaching, research and service, and may work extremely long hours during intense research activity or teaching during the regular academic year, but work fewer hours during the summer months;
- Research projects sometimes require long hours for a period of time, balanced by shorter hours at other times;
- Staff members may choose to work full-time in a non-faculty position, while also teaching a course – often providing specialty expertise important to a student’s development; or
- Staff members may be engaged on a part-time or casual basis to match the required hours of operation in hospitality or other ancillary support services during peak times.

Because of the varied nature of work at a university, the universities are very concerned about provisions that would reduce flexibility in scheduling and/or increase costs. Some of the options discussed in the Interim Report that would have such negative effects include reducing the weekly overtime pay trigger from 44 to 40 hours, limiting averaging overtime agreements, and provisions for schedules and schedule changes. The universities do not see any need for these measures.

- Provisions affecting an institution’s discretion in hiring and retention are also very concerning to the universities. Universities seek to hire and retain the best-qualified candidates. In fields such as teaching and research, expertise in the areas taught and research conducted at the university, and excellence within the area of expertise, are critical. The following options set out in the Interim Report would unduly interfere with the universities’ discretion in hiring and retention:
 - Requiring employers to offer additional work to existing part-time employees before hiring new employees would represent a significant and troubling interference in the universities’ ability to hire the best-qualified candidate for a position. In the case of academic positions, part-time positions are often of a different nature and have a different set of expectations from full-time positions. For example, a part-time faculty appointment may be given to a specialist in a particular field (e.g., a musician in a faculty of music).
 - Requiring “just cause” for termination has the potential to significantly restrict the universities’ ability to exercise appropriate discretion. Universities should not be restricted from terminating employment for reasons such as limitations on grant funding, changes in academic

programming in response to student demand or other factors, or changing research priorities. Further, universities generally provide fair termination arrangements, which in many cases are negotiated in employment contracts and collective agreements. These agreements take into account the parties' understanding of the nature of work in the universities.

Collective Bargaining in the University Sector

Universities have already developed, with associations representing their employees where applicable, terms and conditions of employment that are fair, that in many respects exceed existing standards, and that address the concerns that the workplace parties have identified. Universities do not wish to see the implementation of measures that would interfere with existing forms and conditions of employment, particularly if they would add cost and decrease flexibility. Any amendments that would interfere with existing arrangements should only be done based upon demonstrated need for amendments.

Universities are also of the view that measures designed to facilitate unionization are not necessary in this sector and could have a significant negative impact. For example:

- Given the already high rates of unionization in this sector, sectoral bargaining is not necessary in order to facilitate access to collective bargaining. Sectoral bargaining would be in direct opposition to the strategy of differentiation that the universities and the Ontario government have been pursuing.
- While a single bargaining agent may represent multiple bargaining units at a particular university, the different bargaining units are often very distinctive and have no community of interest. To allow “as of right” amalgamation of different-sized bargaining units would run the risk of smaller voices not being heard. Amalgamation would also significantly alter the balance of power in these existing relationships. This would increase union leverage and add undue complexity to bargaining – with the possible result that more strikes and/or strikes involving larger bargaining units would occur, which may require universities to shut down, affecting students' educational progress.
- Allowing unionization of personnel such as physicians who are appointed to provide clinical teaching to a university medical school, but whose primary relationship (which in many cases is not an employment relationship) is with a hospital or clinic, would add a layer of complexity to an already complex set of relationships.
- Restricting universities from hiring replacement workers (for example, security personnel in the event of a campus police strike) would increase likelihood of having to close a university in the face of a strike, thereby negatively affecting the educational progress of thousands of students.

Cumulative Impacts of Increased Costs

Ontario's universities are publicly assisted and must exercise responsibility and accountability for the spending of public funds. In addition, universities' revenue is largely constrained through government grant models and tuition caps. Universities are established and compliant employers with mature collective or other agreements in place with their faculty and staff. Many measures that are proposed in the Interim Report (such as joint liability with contractors, increased overtime, self-auditing, and committees for ESA oversight) would add administrative burden and cost pressures and liabilities with minimal advantage to either employer or employee.

In addition, any additional call on labour costs would divert necessary funds from the execution of universities' academic mission. For example, fewer staff would mean higher workloads; fewer faculty would mean larger class sizes and higher workloads; and reduced student choice of courses would mean a lower quality of education. All of these measures combined would have negative effects on the quality of education and research that universities provide to students and society, and the work lives of university faculty and staff.

Conclusion

Ontario universities have concerns that many of the options for changes to the *Labour Relations Act* and the *Employment Standards Act* addressed in the Interim Report would carry adverse impacts on universities' capacity to deliver effectively their teaching and research mandates. Universities employ a very diverse workforce in ways not common to many employers. This workforce is very highly unionized, and existing freely-bargained collective agreements have resolved the issues addressed in the Interim Report in ways that respect the interests of both employers and employees. Universities remain an employer community that is principled and committed to supporting fair practices and working conditions for all their employees.

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