

# **Personal Emergency Leave: A Health Sector Response to Options Identified in the Interim Report of the Changing Workplaces Review**

**Submitted By:**

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Since 2001, Personal Emergency Leave (PEL) has been protected in Ontario under the *Employment Standards Act* (ESA) for employees who work for firms employing 50 or more people. This consists of up to 10 days leave each calendar year in order to attend to personal emergencies without penalty. PEL can include time off due to personal illness, or the death, illness or other emergencies concerning immediate family member or other dependent relatives. Current PEL legislation protects a worker's job when life's emergencies arise.

We appreciate the request for further input regarding PEL. The Interim Report of the Changing Workplaces Review sets out four options and we respond below. Of note, while the Changing Workplaces Review has conducted extensive research, the research studies commissioned did not focus on the peer-reviewed health literature. We believe that in order to fulfill the mandate of the Changing Workplaces Review it is important to take into account health and public health research, especially when considering the implications of changing legislation around PEL and paid sick leave.

## **Option 1: Maintain the current exemption for workplaces with fewer than 50 employees**

We reject maintaining the status quo. Ontario is the only jurisdiction in Canada to use the size of a business (measured by the number of employees) as criteria to decide which workers should receive PEL and which should not. The existing exemption leaves the 1.6 million Ontarians who work for employers with fewer than 50 employees without protection, this represents a third of Ontario's workforce. These workers are likely to be among the most precariously employed and vulnerable workers in the province. A research study completed for the Changing Workplaces Review found that workers in these smaller business were more likely to have lower wages, be part of low-income families, and be in temporary and part-time work, and less likely to be unionized.<sup>1,p.61</sup>

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<sup>1</sup> Vosko L, Noack A, Thomas M. How far does the Employment Standards Act 2000 extend, and what are the gaps in coverage? An empirical analysis of archival and statistical data. Prepared for the Ontario Ministry of Labour to Support the Changing Workplaces Review of 2015. March 2016. <https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/research-projects/Vosko%20Noack%20Thomas-5-%20ESA%20Exemptions.pdf>

Low-income precarious workers, who tend to be over-represented in small firms and non-unionized setting, are also less likely to have Paid Sick Days benefit<sup>2</sup> thus, PEL carries even stronger importance for these vulnerable workers.

We are concerned that such workers can be fired for simply taking a single day of PEL, including if they are dealing with illness. All workers should be able to follow the advice given by their health provider, by public health officials at the Ministry of Health and Long-Term Care<sup>3</sup>, by the Public Health Agency of Canada<sup>4</sup> and by the World Health Organization<sup>5</sup>. All of these bodies agree that workers should be encouraged to stay home when sick in order to recover and to also prevent the spread of illness.

Ontario does not currently have legislation for paid sick days, unlike many other jurisdictions in the world<sup>6</sup>. Therefore PEL is then the only protection for workers to be able to take time off when they themselves or a dependent are sick. A Centre for Disease Control and Prevention study found that nearly 60% of surveyed food service workers continue to work while they are ill<sup>7</sup>. For workers experiencing gastrointestinal illnesses who work in high-risk settings (e.g. daycares, food handlers and healthcare workers), which are settings where the workers' role or the environment puts them at higher risk of spreading infectious diseases, many reported that they continued to work while ill as they cannot afford to take time off<sup>8</sup>. This means that without access to PEL many workers in high-risk settings will likely go to work sick and this is a serious concern for public health.

A further study of food service workers indicated that 25% of those surveyed reported that a fear of losing their job played a significant role in their decision to come to work while sick.<sup>9</sup> Working while sick poses a risk to employees and the health of the public as well. The phenomenon of Sick presenteeism (SP), where workers come to work despite illness, impacts future health outcomes .<sup>10</sup> An example of this can be seen in a study of British employees with

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([https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2015/06/Higher\\_Standard.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2015/06/Higher_Standard.pdf) ; <http://www.unitedwaytyr.com/document.doc?id=307>);

<sup>3</sup> <https://www.ontario.ca/page/flu-facts>

<sup>4</sup> <http://www.phac-aspc.gc.ca/phn-asp/2013/flu-grippe-1022-eng.php>

<sup>5</sup> [http://www.who.int/csr/disease/swineflu/frequently\\_asked\\_questions/what/en/](http://www.who.int/csr/disease/swineflu/frequently_asked_questions/what/en/)

<sup>6</sup> <http://www.worldpolicycenter.org/>

<sup>7</sup> [http://www.cdc.gov/nceh/ehs/ehsnet/plain\\_language/food-workers-reasons-for-working-sick.htm](http://www.cdc.gov/nceh/ehs/ehsnet/plain_language/food-workers-reasons-for-working-sick.htm)

<sup>8</sup> <http://www.phac-aspc.gc.ca/publicat/ccdr-rmtc/06vol32/dr3216a-eng.php>

<sup>9</sup> Carpenter LR, Green AL, Norton DM, Frick R, Tobin-D'Angelo M, Reimann DW, et al. Food worker experiences with and beliefs about working while ill. *Journal of food protection*. 2013;76(12):2146-54.

<sup>10</sup> Bergström, L. Bodin, G. Aronsson, J. Hagberg, T. Lindh, M. Josephson Does sickness presenteeism have an impact on future general health? *Int. Arch. Occup. Environ. Health*, 82 (2009), pp. 1179–1190 <http://dx.doi.org.ezproxy.library.yorku.ca/10.1007/s00420-009-0433-6>

underlying health conditions. This study demonstrated that those who took no sick days had twice as many heart attacks as their colleagues who stayed home when sick.<sup>11</sup>

Another benefit of PEL is that it also allows employees to attend to the health needs of dependents. There are positive effects on children's emotional and physical health when parents are able to stay at home with them while they are sick.<sup>12</sup> In addition 25.7% of older workers in Canada now provide adult elder care<sup>13</sup> and it is anticipated that this number will increase as Canada's population continues to age. On an annual basis caregivers provide \$25 billion in unpaid labour to the health-care system<sup>14</sup>. Caregivers providing end of life care report higher levels of caregiver strain, including increased levels of stress<sup>15</sup>, increased work-life conflict<sup>16</sup>, and emotional fatigue<sup>17</sup> and these concerns are likely exacerbated when workers have to choose between going to work or being able to take a day off to attend to life's emergencies. Having legislated protection to take time off is needed for all workers.

### **Option 2: Remove the exemption for workplaces that employ fewer than 50 employees**

We support this option for the reasons cited above.

### **Option 3: Replace the general 10 day entitlement to PEL with a number of separate leave categories (illness, bereavement, dependent illness/ injury)**

The third option to reform PEL by creating a number of separate leave categories appears burdensome to employees who are under duress as they would likely have to provide more documentation to prove that their leave falls into that specific leave category. Breaking down

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<sup>11</sup> Kivimaki M, Head J, Ferrie JE, Hemingway H, Shipley MJ, Vahtera J, et al. Working while ill as a risk factor for serious coronary events: the Whitehall II study. *American journal of public health.* 2005;95(1):98-102.

<sup>12</sup> Schuster MA, Chung PJ, Elliott MN, Garfield CF, Vestal KD, Klein DJ. Perceived effects of leave from work and the role of paid leave among parents of children with special health care needs. *American journal of public health.* 2009;99(4):698-705.

<sup>13</sup> Uriarte-Landa, J., & Hébert, B.-P. (2009). "Work-life balance of older workers," *Perspectives on Labour and Income*, Ottawa: Statistics Canada, [www.statcan.gc.ca/pub/75-001-x/2009110/article/10944-eng.htm](http://www.statcan.gc.ca/pub/75-001-x/2009110/article/10944-eng.htm)

<sup>14</sup> Hollander, M., Liu, G., & Chappell, N. (2009). "Who cares and how much? The imputed economic contribution to the Canadian healthcare system of middle-aged and older unpaid caregivers providing care to the elderly," *Healthcare Quarterly*, 12, 2, 42-49, [www.longwoods.com/content/20660](http://www.longwoods.com/content/20660).

<sup>15</sup> Canadian Institute for Health Information (2010c). *Supporting informal caregivers, the heart of home care*, [secure.cihi.ca/cihiweb/products/caregiver-distress-AIB\\_2010\\_EN.pdf](http://secure.cihi.ca/cihiweb/products/caregiver-distress-AIB_2010_EN.pdf).

<sup>16</sup> Uriarte-Landa, J., & Hébert, B.-P. (2009). "Work-life balance of older workers," *Perspectives on Labour and Income*, Ottawa: Statistics Canada, [www.statcan.gc.ca/pub/75-001-x/2009110/article/10944-eng.htm](http://www.statcan.gc.ca/pub/75-001-x/2009110/article/10944-eng.htm).

<sup>17</sup> Duxbury, L., Higgins, C., & Schroeder, B. (2009). *Balancing paid work and caregiving responsibilities: A closer look at family caregivers in Canada*, Ottawa: Canadian Policy Research Networks, [www.cprn.org/doc.cfm?doc=1997&l=en](http://www.cprn.org/doc.cfm?doc=1997&l=en).

PEL would mean that if an employee or a dependent had a prolonged illness they would have no job protection and would have to return to work sooner than they when they have actually recovered.

We also believe that this policy engenders a sense of mistrust between employers and employees by requiring documentation for each specific leave. In our first submission to the Changing Workplaces Review, we noted that requiring sick workers to get a doctor's note unnecessarily burdens employees, the health care system and may create more work for employers to track the separate leave categories. The Ontario Medical Association<sup>21</sup>, Doctors of Nova Scotia<sup>22</sup>, and the Newfoundland and Labrador Medical Association<sup>23</sup> have called employers to stop demanding sick notes. Hence, we reject this option.

#### **Option 4: Combining option 2 and Option 3**

This option entails all of the consequences that we have outlined in response to Option 3 and we reject this option.

#### **Summary**

We believe that all Ontarians, irrespective of the size of firm they are employed by, should be able to access PEL and be protected by legislation. We believe this would best advance the health and well-being of Ontarians, and help protect the most vulnerable workers. We thank you for conducting an extensive review of all the issues pertaining to employment and working conditions in Ontario and for encouraging an ongoing discussion of these matters in the province.

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<sup>21</sup> <https://www.oma.org/Mediaroom/PressReleases/Pages/PleaseStayHome.aspx>

<sup>22</sup> <http://www.cbc.ca/news/canada/nova-scotia/no-more-sick-notes-from-workers-pleads-doctors-nova-scotia-1.2491526>

<sup>23</sup> <http://www.cbc.ca/news/canada/newfoundland-labrador/physician-says-mds-drowning-in-paperwork-over-sick-notes-1.2551736>