



November 10, 2016

Honourable John C. Murray & Mr. Mitchell
Special Advisors, Changing Workplaces Review

Dear Sirs,

Thank you for your work on the Ministry of Labour Consultations: Changing Workplaces Review. As you may recall, Home Care Ontario made a submission to your original consultations, and discussed the highlights of our comments at one of the public hearings (September 10, 2015). At your request, we also provided supplementary information (November 2015) based on your questions at the hearing.

We appreciate your efforts to reach out to the community to ensure that you have views of all stakeholders in order to guide your thinking. As the Association representing the providers of services to Ontarians in their homes, we want to take the opportunity to reiterate our position with respect to three areas:

1. Temporary Help Agency (THA) Designation
2. Personal Emergency Leaves
3. Scheduling

By way of reminder, Home Care Providers are responsible for the provision of frontline supportive and clinical care to individuals at home and/or in institutional care. Home Care Providers deliver professional (regulated) health services such as nursing care, physiotherapy, occupational therapy, social work, dietetics, and speech language therapy. They also provide unregulated supportive care including home support services, personal care, and sitter services.

1. Temporary Help Agency Designation

Because Home Care Providers employ workers that are given assignments to work in a client's setting, they are sometimes erroneously assumed to be "temporary help agencies". As you note in the Interim Report, the OLRB typically determines the "true employer" on a case by case basis. While the Board can look to the ESA¹ for guidance, we understand the complexities that are involved in making that determination.

Home Care Ontario requests that Home Care Providers be expressly excluded from the definition of a temporary help agency (THA).

This will achieve clarity for a distinctly defined group of employers that are entirely and exclusively responsible for the standard of service delivered by their staff; for selection of staff, ongoing and regular supervision, and continuous education; and for ensuring that their workers adhere to their policies and procedures and consult with supervisors when any client request is inconsistent with employer expectations.

¹ The ESA currently provides a specific exception applicable to the home care industry:

- a) Where an 'assignment employee' is 'assigned' to perform the work 'under a contract' between a Community Care Access Corporation (CCAC)¹ and the worker or the worker's employer; **and**
- b) The 'assignment employee' is providing professional services, personal support services or homemaking services as defined in the Long-Term Care Act, 1994 (renamed the Home Care and Community Services Act, 1994 as of July 1, 2010).

Furthermore, expressly excluding Home Care Providers from the THA designation will enable consistency for Home Care Providers who work for institutions such as hospitals, long term care facilities, retirement homes, hospices, group homes and assisted living facilities, and individual Ontarians.

2. Personal Emergency Leaves

As we advised previously, Home Care Ontario members report confusion about the personal emergency leave (PEL) entitlement. From a small sampling of members, we have confirmed that workers know that they are permitted a leave but do not understand the specifics of the Act. Many workers believe that the PEL is in addition to other leaves provided by the employer, an accumulation of benefits.

Home Care Ontario requests that greater clarity and a simpler process of assisting employers who are attempting to determine if their benefit is greater than the standard.

This would help to avoid extension of the existing misperceptions through the introduction of additional leaves.

3. Scheduling in Home Care

Home care in Ontario is organized so that Home Care Providers can only visit clients and bill when service expressly authorized to do so. Furthermore, out of respect for the client in whose home care is provided, Home Care Providers defer to clients regarding times of service, last minute cancellations etc. This client-centred model requires maximum flexibility on the part of both the employer and the employee. As such, elect-to-work staffing enables the flexibility required to meet unpredictable fluctuations in service demand.

Beyond the individual, client need and preference determine the supply of workers required throughout the day and week. Peak service times are mornings and evenings and most often at the beginning of the week. It is clear that an employer could have multiple clients all wishing to receive their morning and evening service on the same day and at the same time of day. To respond to these clients, several employees are required as the hours of work are concurrent, not consecutive. Also, many clients request changes in the timing of their visits in order to accommodate the other events in their lives. Provided the treatment plan is not compromised, the home care provider is both obligated under the CCAC contract, and expected to adapt flexibly to the service to meet the needs and wants of the client. Elect-to-work enables these adaptations.

Traditional scheduling of work in home care is a misnomer. Guaranteed hours are costly to support and not wanted by workers if the result are hours that do not draw on their skills and passion of providing health care to people at home.

Home Care Ontario requests that Home Care Providers and their workers be permitted to use elect-to-work for organizing hours of work.

On behalf of the member of Home Care Ontario, thank you for your consideration of the points outlined.

Sincerely,



Sue VanderBent
CEO