



Niagara Regional Labour Council

Mr. Mitchell and Honourable Murray
Special Advisors
Changing Workplaces Review
ELCPB 400 University Ave., 12th Floor
Toronto, Ontario M7A 1T7

Dear Mr. Mitchell and Hon. Murray:

Re: Submission to the Changing Workplaces Review on the Interim Report

The Niagara Regional Labour Council (NRLC) represents thousands of unionized workers across Niagara. Operating under the umbrella of the Canadian Labour Congress, the NRLC promotes social justice, human rights, fair labour laws, safe workplaces, and we advocate for issues affecting all workers across Niagara.

We wholeheartedly support and endorse the reports produced by the Ontario Federation of Labour (OFL), The Workers Action Centre/Parkdale Community Legal Services, and the Migrant Workers Alliance for Change.

“The Changing Workplaces Review provides an unprecedented opportunity to tackle the root causes of precarious work. As the appointed Advisors to the Changing Workplaces review, you were asked by the government to address why “far too many workers are experiencing greater precariousness” today in Ontario.”

“We are calling on you to reject options that will introduce more precarity to Ontario's labour market and instead recommend a bold and comprehensive vision that uproots the structural sources of precarious employment. As you well know, we cannot expect to fix systemic labour market problems with band-aid solutions.”

“We are heartened that you have correctly identified changing business practices as a source of precarious work. We note that many of these practices stem from the many exemptions and loopholes that make it possible for employers to evade their responsibilities under the law. Accordingly, we need to close the gaps in legislation that contribute to precarious work and that, left unchecked, will continue to exert downward pressure on the wages and working conditions for all of us. In addition to raising minimum standards for all workers, we must also reduce the barriers to collective bargaining that exclude most people in precarious work.”

This review is important to the NRLC, as working people have confronted persistently high levels of unemployment and underemployment in Niagara as our manufacturing base has eroded in the past number of decades. Good-paying unionized work has been replaced with low-wage part-time/temporary work. As precarious work has proliferated, there has been a brain drain of young people away from Niagara who seek employment opportunities elsewhere. Over time this will lead to a shrinking tax base and labour market shortages in an already economically depressed Region.

Provided below are recommendations to improve wages and working conditions. These recommendations are based on the “Building Decent Jobs from the Ground Up” report submitted by The Workers’ Action Centre and Parkdale Community Legal Services. In addition, a report submitted by the Ontario Federation of Labour in 2015 to the Changing Workplaces Review is utilized.

Kind Regards,

Niagara Regional Labour Council

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Key Recommendations

Employment Standards Act

Minimum Wage

- Increase the general minimum wage to \$15/hr and eliminate all exemptions.

Definition of Employee

- “Make the new definition of employee include dependant contractors and workers in an economically dependent position.
- Establish a presumption of employee status.”

Who is the Employer and Scope of Liability

- “Amend the ESA to make companies jointly and severally liable for the ESA obligations of their contractors, subcontractors, and other intermediaries.
- Create a joint employer test similar to the policy developed by the US Department of Labour.
- Make franchisors jointly and severally liable for the employment standards obligations of their franchisees.
- Repeal the “intent of effect” requirement in Section 4 of the ESA “related employer” provision.
- Establish an “oppressions” remedy under the ESA when companies make their assets unavailable.
- Enable the Ministry of Labour to place a lien on goods that were produced in contravention of the ESA.”

Exemptions, Special Rules, and General Process

“We recommend that the following be defined in statute:

Principles:

- Universality and fairness of minimum standards is presumed
- The process of reviewing exemptions must recognize the power imbalances in the employment relationship

Criteria:

- Economic cost of complying with the standard(s) is rejected as a rationale.
- The onus to meet these criteria is on the employer or industry seeking to use an exemption or special rule.
- The economic and social cost of the exemption to workers whose standards reduced shall be considered.
- The industry/business provides equal or greater benefit in compensation or alternative arrangements if exceptions are permitted.

We recommend that a commission be struck to review and eliminate all ESA exemptions and special rules unless they meet the above criteria. This review should be completed within 18 months. Furthermore, the commission should be mandated to review periodically (every 2 years) any exemptions or special rules and to review any applications for future exemptions and special rules.

The commission would be chaired by a neutral person outside of the Ministry of Labour and would have participation of employees from the sectors involved. It could conduct surveys in order to assess the social impacts and costs of exemptions under review.”

Exemptions should be eliminated for intern/trainee, Crown Employees, and for the following categories of workers:

- I. Information Technology Professionals II. Pharmacists III. Managers and Supervisors
- IV. Residential Care Workers V. Residential Building Superintendents, Janitors, and Caretakers
- VI. (a) Minimum Wage Differential for Students Under 18 VI. (b) Minimum Wage Differential for Liquor Servers
- VII. Student Exemption from the “Three-hour Rule”

Hours of Work and Overtime Pay

“We reject most of the options presented by the Advisors in this section. In the alternative, we recommend the following:

- i. **Maximum workday and week** –a maximum 8-hour work day and a 40-hour workweek. Workers retain the right to refuse work beyond the maximum. Overtime at time-and-a-half should be paid (or taken as paid time off in lieu) after 40 hours.

- ii. **Repeal all overtime averaging provisions** since it allows employers to enter into firm-based agreements and to average hours of work over a period longer than one week for determining workers' overtime pay. This lowers the amount of owed overtime pay. Workers in nonunionized workplaces have no real power to refuse to sign averaging agreements without penalty, enabling employers to effectively contract out of overtime pay requirements.
- iii. **Overtime approvals/permits** – Ministry of Labour approval for overtime in excess of 48 hours a week should only be given in exceptional circumstances and be conditional on demonstrated efforts to recall employees on layoff; offer hours to temporary, part-time, and contract employees; and/or hire new employees. Annual caps of no greater than 100 hours per employee should be set on overtime hours allowed by permits.
- iv. **Maintain right to refuse overtime** and Ministerial oversight of employer-employee agreements to vary or reduce hours of work standards.”

Scheduling

“Require all employers to:

- Post employee schedules two weeks in advance
- Pay employees more for last-minute changes to employees' schedules (e.g., employees receive the equivalent of one hour's pay if the schedule is changed with less than two days' notice and four hours' pay for less than twenty-four hours ;
- Offer additional hours of work to existing part-time employees before hiring new employees or using staffing agencies;
- Provide part-timers and full-timers equal access to scheduling and time-off requests;
- Get consent from workers in order to add hours or shifts after the initial schedule is posted;
- Provide new employees with a written estimate of their expected monthly minimum number of shifts hours and hours;
- Pay the employee a premium of two to four hours of pay at regular hourly rate if he/she is not called into work.
- Increase the minimum reporting pay to four hours of regular pay or length of the cancelled shift.
- Ensure that the minimum allowable shift per day is three hours.”

Public Holidays and Paid Vacation

“We recommend the repeal of the exemptions and special rules for public holidays and more proactive inspections and deterrence measures to address the high rates of violation of public holiday rules.

We support moving to the former ESA method for calculating holiday pay for workers with regular full-time hours. We recommend that the determination of thirteen or four weeks be based on whichever option provides the greater benefit to the part-time employee.

Increase vacation entitlement to three weeks vacation per year for all employees.”

Personal Emergency Leave

“We believe the ESA should maintain the current scope and flexibility in emergency leave provisions to address the current and future realities of workers' lives. The leave must be made accessible to *all* employees. Exemptions must be removed.”

Sick Leave

“Require employers to provide paid sick days (One hour for every thirty-five hours worked, up to a cap of seven paid sick days). There should be no qualifying period and no medical note required before an employee is entitled to sick leave.”

Other Leaves of Absence

“We Support the following options:

Option 2: Ontario should monitor other jurisdictions and the federal government's approach to leaves and make changes as appropriate and amend Ontario's ESA . Job-protected leave provisions are necessary for non-unionized workers in low-wage and precarious work to access leaves. It is those with the least bargaining power that will be denied access to such leaves.

Option 3(a) would introduce paid Domestic or Sexual Violence Leave for a number of days followed by a period of unpaid leave. This will help provide the support that women need to escape abusive situations and help reduce barriers they face.

Option 3(c) would extend the Death of a Child Leave to enable employees who are dealing with the death of a child that is not a result of a crime.”

Part-Time and Temporary Work – Wages and Benefits

“We support that all part-time, temporary, contract, and casual employees receive treatment in pay, benefits, and working conditions equal to that of full-time employees doing comparable work, unless there are objective factors to justify the difference. Similar work shall be determined by appropriate collective agreement or by similar work for that occupation or sector. For fixed term contract workers, the number and total duration of contracts should be capped.

We recommend a one-year cap on term of contract, after which appropriate termination and severance provisions apply. Contracted employees should become permanent employees where the position is not truly temporary. Just cause protection must be provided to contract workers if, at the end of a contract, another worker is hired to do the work previously done by the temporary contract worker.”

Termination, Severance, and Just Cause

“We support:

- Eliminating the three-month eligibility requirement for termination notice or pay in lieu of notice.
- Requiring employers to provide notice of termination, or pay in lieu of notice, based on the total length of employment, including seasonal employees who have recurring periods of lay off beyond the 13-week layoff period.
- Making severance pay accessible to all workers by eliminating the employment, payroll, and firm size thresholds for severance pay. We recommend eliminating the cap on severance pay entitlements.
- Requiring employers to have “just cause” for terminating an employee’s employment to protect workers from unjust dismissal.
- Implementing an expedited adjudication process for Temporary Foreign Workers who have been unjustly dismissed.”

Temporary Help Agencies

- “Making the client company the employer of record for all employment standards.
- Requiring employers to provide equal pay and working conditions to an assignment worker who performs substantially similar work to workers directly employed by the company.
- The government moving immediately to use the regulation-making authority it has to require the WSIB to assign injuries and accident costs to client companies rather than THAs.”

Greater Right or Benefit

“Maintain the status quo; prohibit any contracting out of the ESA.”

Enforcement and Administration

Education and Awareness

- “Require mandatory ESA training for all newly registered business owners and managers.
- Make ESA education part of the provincial high school curriculum.”

Creating a Culture of Compliance

- “We recommend a robust model of strategic enforcement to create a culture of compliance that includes: joint and several liability that compels lead companies to comply with the ESA throughout the chain of contracting; expanding the definition of employee to include all dependent workers (contractors); consistent and effective deterrence (monetary penalties) for violations that are then made public; and effective protection of workers from employer reprisals.”

Reducing Barriers to Making Claims

- “Remove the ESA provision that allows the Ministry of Labour to require a worker to first attempt to resolve the violations with their employer (self-help provision).

- Establish formal anonymous and third party complaints.
- Establish a reverse onus on employers to disprove the complaint against them rather than workers having to prove the employer violated the Act.
- Provide legal support for workers to file ESA claims.”

Reprisals

- “Provide an expedited anti-reprisal process with an option for interim reinstatement while the reprisal complaint is investigated.
- Provide legal support for workers making anti-reprisal claims.
- Publicize successful anti-reprisal claims to increase awareness of reprisal protections under the Act.
- Prohibit employers of Temporary Foreign Workers from forcing deportation / “repatriation” of an employee who has filed an ESA complaint. Migrant workers who have filed complaints are granted open work permits so that they may continue to work while their claim is investigated.”

Strategic Enforcement:

- “Expand the scope of the ESA to include dependent contractors.
- Establish a presumption of employee status (a worker must be presumed to be an employee unless the employer demonstrates otherwise) (Section 5.5.2).
- Employers to be jointly and severally liable for ESA compliance of contractors, subcontractors, and other intermediaries and between franchisors and franchisees (Section 5.5.2).
- Improve related employer provision (Section 5.5.2).
- Adopt “oppressions” remedy (Section 5.5.2).
- Enable the Ministry of Labour to place a lien on goods that were produced in contravention of the ESA (Section 5.5.2).
- Effective deterrence strategies are central to effective proactive enforcement strategies (Section 5.5.3).”

Individual claims and proactive inspections:

- “Maintain requirement to investigate all individual claims of employment standards violations.
- Target proactive inspections in workplaces where misclassification takes place and where migrant and other people in precarious work are employed.
- Adopt a consistent strategy of expanding investigations when ESA violations are confirmed through individual claims to a full inspection of the employer.
- Increase the administrative fee payable when a restitution order is made to include the costs of investigations and inspections.”

Use of Settlements

- “Establish criteria for settlement of ESA complaints, in which settlements shall not be for less than a worker’s legal entitlement under the ESA.
- Provide legal or paralegal assistance for employees in the settlement process under the ESA.”

Remedies and Penalties

- “Establish a systematic and transparent deterrence model of penalties.
- Set fines automatic in all cases of confirmed violations. No exceptions.
- Increase fines to double or triple the amount owed or double the dollar value of NOCs. Increase the fine for a first contravention to \$500, second contravention to \$1,000, and third contravention to \$2,000 (multiplied by the number of employees affected by the violation).
- Require employers to pay damages equal to twice the unpaid wages owing.
- Amend the ESA to require that interest be paid on all wages owing, both pre- and post-judgement.
- Require employers to post notices in the workplace where claims investigations have found contraventions.
- Establish a new director of enforcement who could take cases directly to the OLRB, to seek monetary penalties up to \$100,000 per infraction in cases of reprisals, multiple violations, or repeat offences.”

Applications for Review

- “Require ESOs to provide claimants with all the documents the officers relied on when reaching the decision under review.
- Increase support for unrepresented workers with claims under the ESA and representation with reviews at the OLRB.”

Collections

“**Prioritize Option 5**, which would establish a provincial wage protection plan paid for by employers, similar to the Workplace Safety and Insurance system.

WAC’s Collection strategies from other sections of the report:

- Make companies jointly and severally liable for the ESA obligations of their contractors, subcontractors, etc.
- Repeal the “intent or effect” requirement in Section 4 of the ESA related employer provision (5.2.2).
- Establish an “oppressions” remedy under the ESA when companies make their assets unavailable (Option 6, Section 5.5.2).
- The scope of director’s liability should be expanded to all employment standards violations.
- Make it a statutory requirement that Part III prosecutions will take place for failure to pay an order or when an employer has intentionally violated the Act.

We support:

- 1) Amending the ESA to give the Ministry of Labour the authority to issue warrants and/or place liens on personal property.
- 2) Allowing the Ministry to impose a wage lien on an employer’s property upon filing of an employment standards claim if there is a risk of non-payment of wages owing.
- 3) Allowing the Ministry to require the employer to post a bond to cover future unpaid wages if the employer has a history of contraventions or operates in a sector with a high rate of ESA violations.
- 4) Providing the authority to revoke operating licences, liquor licences, permits, and driver’s licences of those who do not comply with orders to pay.”

Labour Relations Act

Union Certification (Card-Check)

“It is fundamental to any meaningful labour law reform to restore what was a key feature of the Ontario labour relations system for over 40 years – *card-based certification* —and to eliminate mandatory certification votes. The card-based system for selection of a union is prevalent in most Canadian jurisdictions and ensures effective freedom of association. The mandatory vote system leaves employees vulnerable to employer coercion and unfair labour practices so they cannot fully and freely express their true wishes.”

Early Disclosure of Lists

“Where a union demonstrates it is engaged in a bona fide organizing drive, the employer should be required to disclose employee lists to the union, together with the employees full contact information.”

Expedited and extended power to reinstate workers prior to first agreement

“Workers who are disciplined, discharged or discriminated against during an organizing drive and before a first collective agreement is concluded, must be immediately reinstated to their original terms and conditions pending the outcome of a hearing on the legality of the discipline imposed on such workers, unless the employer can establish that reinstatement would cause it irreparable harm.”

Neutral and off-site voting, including telephone and electronic voting

“The Labour Relations Act should help achieve these goals by ensuring where possible that any required vote takes place in neutral locations and that there is a legal right to use telephone or online voting.”

Interest arbitration for a first contract

“Ontario should adopt measures that provide automatic access to binding first agreement arbitration.”

Successor rights where contracts are retendered

“The Labour Relations Act should extend successor rights to the growing number of vulnerable workers in the services sector who are at risk of losing all collective agreement protections when contracts are retendered.”

Anti-Scab Rules

“Prohibit the use of replacement workers during work stoppages.”

Protection for employees who have exercised right to strike

“Employees who exercise their lawful right to strike have an unrestricted right to return to their former position without penalty.”

Coverage and Exemptions

- “Remove all exclusions to the LRA with the exception of managers involved in labour relations.
- Remove exclusion of domestic workers (including workers under the Caregiver Program) and adopt sectoral bargaining and representation that fully enables these workers to unionize and bargain collectively.”

Agricultural and Horticultural Workers

- “Remove exclusions of agricultural and horticultural workers from the LRA and repeal the Agricultural Employees Protection Act.”

Related and Joint Employers

- “The ORLB may declare two or more entities to be “joint employers.” The criteria would not impose a requirement that there be common control and direction between the businesses.
- The OLRB may declare a related employer where an entity has the power to carry on associated or related activities with another entity under common control or direction, even if that power is not actually exercised.
- The joint employer provision should designate client companies and their temporary help agency as joint employers for the purposes of the LRA.
- Franchisors and franchisees would be declared joint employers for all those working in the franchisee’s operations.”

Broader-Based Bargaining Structures

“We recommend enacting key changes to the LRA that would make broader-based, sectoral bargaining possible.

- 1) Expand the recognition of who is an employee entitled to engage in collective bargaining. In addition, to extend access to collective bargaining to non-traditional arrangements (e.g., on-demand platform economy).
- 2) Expand the recognition of who the employer is to include joint employers such as franchisors, lead employers in contracting relationships, and new on-demand platform relationships.
- 3) Enable workers to organize and bargain collectively from multiple locations with the same employer/franchisor. Additional units would be brought in under an initial agreement with a union or council of unions.
- 4) Enable organizing and collective bargaining on a multi-employer and/or sectoral basis. Empower the Board to require employers in the same sector to bargain together in a council where the workplaces have been organized.
- 5) Provide a legislative framework that enables and supports collective organizing, representation and bargaining for workers in vulnerable and precarious work. This would include designating an employer entity that is the counterpart in bargaining. All special rules and exemptions would be eliminated. The framework should recognize the triangular relationship which may involve recruiting and employment agencies. There must be appropriate enforcement and labour inspection strategies. It must also allow for the development of the capacity to enhance protection for social security, group benefits coverage, and entitlement.”

4.6.2 Employee Voice

- “Enact legislation protecting concerted activity along the lines of that set out in the NLRA.”

Conclusion

The recommendations outlined above (taken directly from the report submitted by The Workers' Action Centre/Parkdale Community Legal Services and the report submitted by the Ontario Federation of Labour in 2015) provide the building blocks on which decent jobs can be created in this province. The Niagara Regional labour Council encourages you to support and advocate for the abovementioned recommendations.