

# Response to Changing Workplaces Review Interim Report



**Restaurants  
Canada**

The voice of foodservice | La voix des services alimentaires

## About Restaurants Canada

*Restaurants Canada is a growing community of 30,000 foodservice businesses, including restaurants, bars, caterers, institutions and suppliers. We connect our members from coast to coast, through services, research and advocacy for a strong and vibrant restaurant industry. Canada's restaurant industry directly employs 1.2 million Canadians, is the number one source of first jobs, and serves 18 million customers every day.*

## Ontario's Restaurant Industry

Ontario's restaurant industry generates \$29 billion in economic activity, representing 4% of the province's GDP. We are the fourth-largest private-sector employer; directly employing 455 000 people in Ontario representing nearly 7% of the province's workforce.

The restaurant industry employs more than 200 000 young people between the ages of 15 and 24, representing one in five youth jobs in Ontario.<sup>i</sup>

## Introduction

We would like to thank the Changing Workplaces Review panel for this opportunity to once again provide input into the process and for their ongoing work on this important initiative.

For the most part business owners in general, and those in the foodservice industry in particular, are not vocal participants in consultative processes. They are focused on running the businesses that contribute to our economy and, in the case of foodservice, maintain almost 455 000 direct jobs in Ontario.<sup>ii</sup>

It is not often that business owners rise up to express their concern to the level that they have in response to the inferred direction of the Changing Workplaces Review as laid out in the Interim Report.

While there are some difficult issues to deal with in our changing workplaces, the extent of the problem is not as dire as some would have the government believe. As cited by the Keep Ontario Working Coalition, part-time employment is down, and employee tenure is up.<sup>iii</sup>

Most of the issues identified by the review could be addressed by better education and enforcement; two strategies that Restaurants Canada heartily endorses.

No one would argue against the need for, as Professor Harry Arthurs mentions, "decent" working conditions. However, the Interim Report chooses to seek definition of decent through another means, the International Labour Organization:

*Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.<sup>iv</sup>*

This definition is intentionally broad enough to incorporate every facet of the workplace as well as society in general. By taking this as the compass, the Interim Report predetermines that the workplace can accomplish society's aspirational goals.

Restaurants Canada has particular concern with the statement in the Interim Report which posits:

Moreover, among employers in the non-unionized private and public sector, there is little appreciation of – and perhaps little sympathy for – the constitutional right of Canadians to: freedom of association, the right to join a union, the right to engage in meaningful collective bargaining and the right to strike.<sup>v</sup>

This statement is illustrative. It implies nefarious motives to employers who may have perfectly valid reasons for seeking alternatives to unionization. By extension, it tarnishes any employee who does not agree with this narrow definition of the right of association. By stating this position there is an inference of bias toward a single solution, that being increased union participation.

A second and related predisposition is that unionization is seen as a goal, rather than an option. Much discussion is given to the declining membership of unions in Ontario and the Interim Report discusses how to reverse this trend rather than investigating the root cause. Whether the decline is a natural evolution of the workplace, a result of increased governmental regulations addressing employment standards issues, employee preference to not cede their voice to others, or a result of union consolidation creating "super-unions" is not investigated.

The stated goal of the Review is to identify elements of the workplace that need to change, not to seek ways to impose a system that was designed decades ago for a society that has evolved.

Lifelong jobs are no longer the norm; jobs change rapidly and new technology is creating jobs that didn't exist before.

The Ontario Government recognized this in their creation of the ORPP, and subsequent support of CPP reform. Ontario, as well as other governments, considered portability as one of the key requirements in program design. This acknowledges the realities of young people who are new or recent entrants to the workforce.

This approach is backed up by the 2010 Work and Lifelong Learning (WALL) survey. Raykov and Livingstone indicate that youth and non-managerial workers in the service industry are not interested in joining unions. This is due to the transitional nature of the service industry in general, and food and beverage in particular. Many workers are students or recent graduates seeking work in another field of study, and do not want to pay union dues for benefits they won't stay long enough to enjoy. Those that do stay in the industry tend to progress into supervisory and managerial positions with corresponding increases to wages, benefits and development opportunities.<sup>vi</sup> A separate study noted that young workers are more mobile and not tied to a particular employer. As part of the school-to-work transition, they also engage in frequent job changing – essentially choosing the exit option as opposed to the voice mechanism when they dislike their working environment.<sup>vii</sup>

This trait is common to younger generations of workers who have different expectations from previous generations. Millennials grew up in the digital age and are accustomed to the speed, connectedness, and anonymity of online platforms. To them, expressing themselves on social websites like *Glassdoor.com* accomplishes the same goals as organizing through a traditional labour union; only more quickly.

Millennials prefer to bypass unions and use the internet in an anonymous capacity to force changes in their workplace.<sup>viii</sup> Organizing through a union seems slow and inefficient to millennials, who are much more likely to turn to a hashtag than cede their voice to others.

When focussing on “good” or “bad” jobs, the panel is setting aspirational goals that are often impossible to meet. We must assume that there will always be low-skill or starting jobs in society. The answer is not to force an artificial construct on the employers, but to provide a way forward for those who wish to build their skills and knowledge for future employment. In many cases, employers are taking this role on themselves through on-the-job training and support that allows, for example, a new immigrant to begin work as a dishwasher and progress to a manager or even the owner of his own franchise.

The Interim Report's dismissal of a distinction between voluntary and involuntary part-time work is unfortunate and somewhat misleading. The example used in the report to justify this is to compare two single-income workers, one a “tenured professional” with a high wage and the other a worker in similar life circumstances with a low-wage (and presumably lower-skilled) job.

Rather than proving why there should be no distinction, this example illustrates why the nature of the job and the skill level of the person should determine wages and benefits. By not taking these factors into account, there is an expectation that employers, rather than the government, will act as social welfare agents. Thirty-five percent of Ontario's part-time workers are youth who would typically be in school and be getting support and benefits from family. By not making any distinctions in the part-time numbers, the statistics tell an incomplete and inaccurate story.

Similarly, the wide net cast to define vulnerable workers is statistically problematic. By including all demographics of historic vulnerability, the numbers are artificially inflated.

If we expand the definition of precarious beyond its natural definition, we risk regulating good jobs out of the market. People that are in a truly vulnerable situation will be less likely to find any job. Those that are new to the job market (youth, new immigrants, adults returning to the workplace) will have a more difficult time finding transitional jobs that allow them to move forward in their careers.

As an example, we can look at youth in the foodservice industry. Over 200 000 youth (from the ages of 15 to 24) work in our industry. Whether it is a job to get some extra money, a job to pay for school, or a transitional job after graduation, these are important opportunities. With a youth unemployment rate of 14.2%,<sup>ix</sup> more than double the general rate, it is obvious these jobs are important to our economy. In fact, in 2013 the foodservice industry created more jobs than any other industry in Canada.

While it is true that the foodservice industry has a higher percentage of workers from traditionally vulnerable demographics, it is also true that ownership and management in the industry is similarly overrepresented by the same demographic. In essence, the industry allows people an opportunity to advance in their career despite the challenges which may face them. This has certainly enriched our dining landscape, but has also enhanced our entire culture.

Simply put, we provide opportunities to all members of society. People who are new to the job market, or who face barriers to employment such as language difficulties or life challenges, can find meaningful employment in foodservice when other industries will not accommodate. The government should encourage opportunity rather than layering on more bureaucracy.

We can turn to Morley Gunderson to sum up this argument. He points out that non-standard employment “can be a ‘win-win’ for both employees and employers, meeting the diverse needs of an increasingly heterogeneous workforce, as well as the needs of employers for flexibility and adaptability.”<sup>x</sup>

Many of the options explored in the Interim Report would increase the cost to employers of creating new jobs and would push our members into providing fewer opportunities for youth and new Canadians to get their first job. We emphasize that these first jobs are a critical rung on the career ladder and caution against the adoption of policies that would diminish opportunities for youth and new Canadians. A reduction in the number of flexible, part-time jobs for youth and new Canadians will have lasting negative implications and may, in fact, make it harder for youth to complete their education and progress into the high-skilled positions required by employers. This would be to the detriment of the entire Ontario economy.

## Related and Joint Employers

When discussing the related and joint employers, we must look once again to the preamble which provides an indication of the Interim Report’s predisposition. The implication is that franchising is a business strategy to avoid “liability for the employees involved in the execution of the strategy and direct selling of the product.”<sup>xi</sup> This is a cynical and unfair characterization of the business model, through which

successful entrepreneurs are able to expand and generate even more economic activity and employment, and new entrants are able to invest their money and run a professional business on a scale that would not be possible without the franchise concept.

There is also a notion, elucidated by the panel members in meetings, that the franchisors have direct input into hiring and personnel matters. This is not only untrue, it is impractical. Franchisors would not have the ability or inclination to interfere with day-to-day human resources issues.

The determination of joint employer status should be based on the actual employee/employer relationship, as it is now. Expanding this definition to accomplish other goals will do nothing to improve workplace relationships.

An argument against expanding the definition can be found in the supporting documents. In his Changing Pressures study, Gunderson argues that when franchises:

“operate across different jurisdictions they can face different regulations. Furthermore, they are a step removed from the everyday operation of the business where compliance issues occur.”<sup>xii</sup>

## Card-based Certification

With so much discussion about an employee’s right to have a voice in their own workplace, it would seem counterintuitive that the Interim Report considers a proposal that further limits the rights of the worker to influence their freedom of association.

The card signing system is ripe for abuse, from false promises to a lack of transparency about the implications of a signing a card. In addition to the obvious democratic arguments, it is important to note that the voting process allows employees the opportunity to study the pros and cons of union membership, and to investigate the people and organization to which they will assign their rights.

Some submissions discuss statistics showing lost certification votes as proof that the rules need to be loosened to make organization easier. It is, however, more likely proof of employee choice, showing that the system works. Signing a card at the insistence of an organizer or co-worker should never be considered on par with an opportunity to gather information, reflect and make an informed, anonymous choice free from repercussions.

## First Contract Arbitration

The imposition of a contract is a tool available to the Ontario Labour Review Board, but it is a blunt tool that should only be used in extreme circumstances. This takes away the ability of management, and the responsibility of unions, to bargain in good faith.

If the stated intent is to give employees an opportunity to exercise their right to have input into their workplace, it makes little sense to impose a contract without allowing for the conversation to take place.

Restaurants Canada does not understand the need for First Contract Arbitration (FCA) or what problem government is trying to solve. Currently, employee/employer relations in Ontario are very harmonious with Ontario experiencing one of the fewest number of days lost due to strike and/or lockout in decades. Officials from the Ministry of Labour report that in most cases agreements are negotiated amicably, and should this not be the case, the department has an exceptional track record with conciliation and mediation services. Other tools are available should they be needed. Officials are hard pressed to cite examples where FCA would have been useful in the province. This mirrors the experience in other jurisdictions where very few instances of FCA actually occur. Restaurants Canada also believes FCA distorts the principles of free collective bargaining.

## Sectoral Bargaining

The intent of sectoral or broader-based bargaining is to facilitate an easier path for unions to organize workplaces and to save money on organizational and bargaining expenses.

The Interim Report presents the union assertion:

“The costs of organizing (including costs of legal proceedings) and representing small units one-by-one are too high and effectively deter organization.”<sup>xiii</sup>

These should never be the goals of government. When it comes to employment issues, the primary concern of our government should be representing Ontarians in their workplace life and ensuring there is a legislative and regulatory framework that protects their right to a safe workplace.

If we look at the same situation from the employer side, small businesses are not able to handle the costs. Stating the objective of making it easier for huge unions to organize against small workplaces, sets up a David vs Goliath scenario.

The two options cited in the report to accomplish the narrow goal of sectoral certification would, similar to card-based certification, take away the individual’s right to determine how they want to be represented and who will provide that representation. With the wide range of issues in the workplace, it is doubtful that workers in one region will have the same goals as those in another region. Even within the same franchise system, the issues will vary by each franchisor and their management team. To assume an imposed outside party would be able to represent such a wide variety of issues is not supported by the evidence.

The power structure would shift to large multi-jurisdictional unions who have the resources to steamroll other, more representative unions. It would also harm small and medium sized businesses that do not have access to the unlimited resources of those unions.

In his study, Gunderson argues that sectoral bargaining would allow large firms to further dominate as they would be able to negotiate much more generous terms than medium or small firms.<sup>xiv</sup>

One of the first considerations of collective bargaining is the ability to pay. In a sectoral model, the larger companies with the greater ability to absorb costs would enjoy a significant advantage over smaller, independent businesses without that flexibility. This will hasten the movement away from small business and further reduce employee choice as to the type of workplace they would like to be part of.

## Employee Voice

In the discussion of employee voice in section 4.6.2, the Interim Report states that “every worker should, as a matter of principle, be afforded some system of employee voice.”

The Interim Report exhaustively discusses the worker’s “voice”, which refers to the right to have input into the working conditions in the workplace. The Report and the associated study assume that the sole source of this voice is through the union movement and the collective bargaining process.

While another study suggests that this is not the only option for voice, the bias of the Interim Report is on the side of unionization to achieve this goal; the implication being that collective association is not only a right, but a requirement of a workplace.

On the other side, Gunderson argues that there are many other options for employee voice: Employee committees, flexible hours and compensation, increased diversity, and profit sharing are all examples of alternative opportunities for employees to exercise their voice.<sup>xv</sup>

There also needs to be significant study into the new realities of the workforce. There is evidence to suggest that younger generations of workers are more willing than their predecessors to speak up, or “vote with their feet” as an expression of their workplace voice. The service economy has replaced industrial jobs. These higher skilled jobs have given employees greater power. Employers who offer greater benefits, training, and job satisfaction are able to attract and keep employees. This creates an upward spiral of employment standards that raise all workers.

The idea that lower unionization rates are a result of employer obstruction is simplistic and inaccurate. There are a number of reasons for this occurring, some of which were previously listed. Next to the transition away from an industrial economy, the greatest factor is a generational shift. This bears additional discussion.



If we use the Wagner Act in the US as a starting point, the current union structure dates back 80 years. The structure is essentially unchanged and no longer resonates with those new to the workplace. This is not new, with each successive generation moving further from the movement. A study of millennials notes that:

Millennials have distinctive characteristics that may make interacting with them different from with previous cohorts, but each modern generation has arrived in the workplace with its own unique set of qualities.<sup>xvi</sup>

While this is true, the numbers indicate that we may have reached a tipping point. It is clear that the membership and public support of organized labour is historically low.

At the very least, the Changing Workplaces Review provides an ideal opportunity to look at different models of achieving employee voice that recognize the needs of the 21<sup>st</sup> Century workplace. To get to this, we must further examine why successive generations have turned away from the old system.

A 2001 study by Raphael Gomez and Morley Gunderson looked at this in a general way and found a number of reasons for youth being less interested in union membership. The cost of dues and the indirect costs of engaging in a strike are cited as possible reasons.

A further reason cited has to do with the union orientation toward seniority over other factors.

Youths may also regard unions as imposing a cost to the extent that the egalitarian emphasis of unions “blunts” the economic returns to such factors as education and skills – factors that youths often disproportionately possess given the dramatic increase in education and “professionalization” that is occurring. This blunting of returns often occurs through the union emphasis on seniority as opposed to what unions perceive as subjective and managerially determined merit or performance evaluations. As well, unions tend to negotiate equal absolute wage increases, which imply smaller relative gains for higher paid, more skilled and educated workers.<sup>xvii</sup>

This has been a common complaint among those who work in unionized workplaces, but as young workers achieve increasing levels of education and older generations do not make way for this highly-motivated cohort, the desire to move away from an egalitarian system is more pronounced.

They [millennials] are likely to have different, often broader, perspectives about the world marketplace, supervisor-subordinate relationships, cultural diversity, performance of tasks, and ways that communication and information technologies can be used to enhance organizational performance and to maximize productivity.<sup>xviii</sup>

The set of attributes identified in this article could be viewed as opportunities for organizations rather than obstacles. If that is the case, there is a real disconnect between what a union can offer this new workplace dynamic where the employee is open to expressing their own voice.

What about the other side of the equation? How are employers responding to workplace realities?

With tightening labour supplies and the willingness of employees to “vote with their feet”, employers are increasingly more receptive to non-traditional work relationships. These include team concepts and work-sharing programs that give employees a direct voice in the workplace. They could also include flexible hours and profit-sharing programs affording employees better work/life balance and more control over their jobs. These reflect what Hershatter and Epstien call the millennials’ trust, which “relies on an equitable system, one that assures that industriousness and accomplishment will be rewarded with acknowledgement, encouragement, and access.”<sup>xix</sup>

The current expression for this is Employee Engagement. What once might have been a yearly survey of employees is now an ongoing, two-way conversation between employers and employees. This has grown into a common feature of workplaces, especially among young people who have grown up with the expectation of this collaboration.

This is the first generation to be fully immersed in mentoring programs. Many aspects of these programs can be used as models for alternative statement of employee voice in the workplace.

We have also seen models such as the Employee Health and Safety Committee that could easily be adapted to provide a more agile and productive tool for structured employee influence.

As Gunderson states in *Changing Pressures*, other reasons for union decline include movement away from blue collar jobs, lower public approval of unions, decline in the wage premium, and the rise of union substitutes. While it is true there is an employer resistance to unions, this has a lot to do with the increased bureaucracy, cost and restrictive work rules that can limit the flexibility needed in today’s economy.

These and other factors require further study to understand the societal shift. It is no use imposing a static, 1950s system on a 21<sup>st</sup> century workplace. The Changing Workplaces Review should be an opportunity to investigate alternate forms for the exercise of employee voice that recognize today’s realities.

## Employment Standards

### Employer and Scope of Liability

This discussion centers around many of the same factors as the Related and Joint Employers section of the LRA review.

Much of the discussion in this section refers to Temporary Help Agencies (THA) and contract employees. While our industry is not affected greatly by the issues surrounding the THAs, there were suggestions that would directly affect franchise systems.

The ESA already includes a related employer provision under which a franchisor may be found to be a joint or common employer. There is no evidence to support the assertion that franchisees experience higher rates of ESA non-compliance than their non-franchised peers. ESA compliance is perhaps more challenging for our members than for other industries because of the foodservice industry's employment of a large number of part-time workers. Franchisors often play an important role in supporting ESA compliance amongst their franchisees by providing education and support. Recognizing that franchisors are not typically involved in the day to day operations of their franchisees, it would be wrong to penalize them by automatically making them joint or common employers. Rather, it should be government policy to encourage franchisors to provide education and support to franchisees, by amending the ESA to expressly provide that franchisors are not the employers of their franchisees or their franchisees' employees. By permitting franchisors to provide education and support without fear of being named a joint employer over the franchisees' employees, franchisors can play a helpful role.

## Exclusions

The discussion around exclusions in our industry deals with the Student Wage differential, the Minimum Wage differential for Liquor Servers, and the Student Exemption from the "three-hour rule".

The claim in *Vosko, Novak and Thomas* that 20% of liquor servers do not make minimum wage stretches credulity when one considers that the differential is only \$1.45 per hour.<sup>xx</sup> It's difficult to imagine a server in a liquor-licensed establishment earning less than this amount in gratuities. In many cases, they are the highest earning employees. A Restaurants Canada survey of Prince Edward Island restaurants found that serving staff earned between \$9.21 and \$22.74 per hour in tips alone. There is no reason to think this would not be similar in Ontario.

Restaurant Type	Av. Tip/Hour
Pub	\$13.17
Casual Restaurant	\$22.74
Casual Restaurant	\$13.14
Casual Restaurant	\$10.61
Casual Restaurant	\$16.78
Pub	\$19.24
Pub	\$9.21
Pub	\$17.20
Casual Restaurant	\$10.91
Fine Dining	\$19.09
Fine Dining	\$21.91
Pub	\$21.78
Fine Dining	\$21.57
Bistro	\$20.01

The liquor server differential allows restaurants to compensate other staff that do not have access to gratuities.

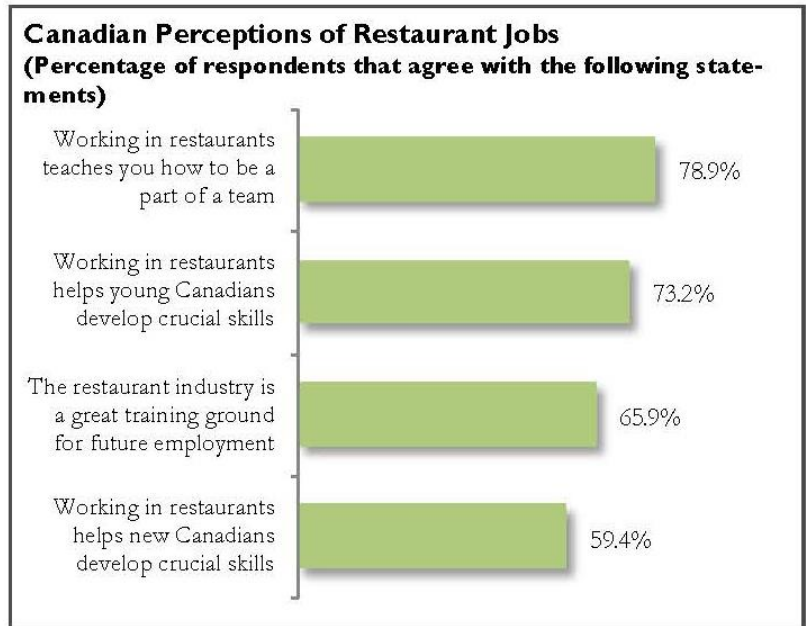
Prior to discussing the student exemptions, it is important to put student jobs in context. The importance of first-time and student jobs cannot be overstated. They give workers important training for the workplace that will serve them throughout their lives. Young people working in foodservice learn the hard skills necessary for the job, but also soft skills such as responsibility, time management, problem-solving, and cooperation in a diverse workplace. These are the skills that provide a foundation for career growth and development.

The perception among Canadians of the skills gained by working in foodservice is very positive. According to a 2010 Ipsos survey a clear majority of Canadians believe that these jobs teach teamwork and other crucial skills to youth and New Canadians, and 66% further believe that the restaurant industry is a great training ground for future employment.<sup>xxi</sup>

This training, however important, does not come without a price. Employers must ensure that young workers are learning and developing these fundamental career skills while still accomplishing the tasks required for the job. There is no question that, by virtue of their inexperience, employees under the age of 18 are less productive and have a higher turnover rate than other, more experienced workers.

Student wage differentials have historically been in place to help employers offset the additional costs in training and lost productivity while giving students valuable work experience and the opportunity to earn and save.

If the seventy-cent student wage differential was removed it would hurt a business's bottom line, but more importantly it would reduce the opportunities for youth to get that ever-important first job that will set them on the path to a successful future career.



Q: To what extent do you agree or disagree with the following.

Note: the results are based on the top 3 box scores on a 7-point agreement scale.

Base: 1,028 respondents.

If the government decides that it no longer wants to provide incentives to hire youth, that is a discussion that should occur independent of this review as it relates directly to the government mandate of providing opportunities for youth.

## Scheduling

This is a particularly important issue in the foodservice industry. Schedules are posted in advance, and full-time employees typically have a predictable schedule. Changes happen often, in the vast majority of cases to accommodate employee requests to manage their school, family and social obligations. These requests are made on short notice and necessitate movement of shifts to accommodate.

As noted in Vosko, over two-thirds of part-time employees voluntarily seek the flexibility of part-time work. By restricting this option, or by inflicting punitive costs upon business, that flexibility is lost; to the detriment of the employees. This would result in an unhappy workforce and would make it harder to retain employees who have other commitments.

On the business side, restaurants are greatly affected by external factors that do not affect other businesses; weather, tourism, sports teams going on an unexpected run, large groups and others. Without schedule flexibility, owners' tendencies would be toward understaffing. This would not be beneficial to the overworked staff, or the staff that did not get additional hours.

## Public Holidays

There is very little about public holidays in the Interim Report, but there has been a lot of talk about the *Public Holidays Act* being out of date with our multicultural society and the fact that it is more punitive to certain industries (such as the restaurant and foodservice industry) that stay open on holidays for economic and public service reasons. There was a time when businesses were expected to be closed on holidays, but that expectation has reversed over the years.

We are not advocating a reduction in public holidays, but we would argue against additional holidays due to their inordinate cost to business.

The issue should be studied as to whether the current *Public Holidays Act* is best able to serve the expectations of society or if there is a better way to provide employees with this benefit while recognizing current realities.

## **Paid Vacation**

The issue of increasing paid vacation is similar to other increased benefit proposals in that it adds up to additional cost that must be borne by business. Rather than looking at this and other enriched benefits independently, the entire suite of proposed changes in this review process and other governmental initiatives must be looked at together to get a clear picture of the total costs that government will ask business to bear.

## **Personal Emergency Leave and Other Leaves of Absence**

Paid vacation and increased benefits must be looked at in the totality of business pressures. Even unpaid leaves cost businesses in scheduling conflicts, delayed projects, and short-term staffing costs. If these changes occur in concert with temporary help agency restrictions, some business models may be stressed to accommodate the changes.

Government must walk a fine line between providing a compassionate or needed leave and the obligation to avoid abuse of the system. We believe a balance could be achieved by using a few basic principles for guidance.

Currently, there is an exemption for workplaces with fewer than 50 employees. This recognizes the difficulty for small businesses to accommodate leaves on short notice or of indeterminate length. This does not mean that these workplaces are unsympathetic to the needs of their workers. Typically, smaller workplaces are closer to the employees and will find ways to accommodate the requirements of life events absent of regulatory impositions.

The growing list of “other leaves of absence” creates a continuously shifting foundation that is difficult for employers to manage. The fact that seven new leaves were created in ten years proves this point. While each is important in its own right, it would assist employers if these were consolidated into broader categories.

It is also important that any new leaves are not seen as add-ons to current rights and benefits that already exist in many companies. If the company policy provides equal or greater benefit, the employee should be exempted from that clause of the ESA.

## Part-time and Temporary Work - Wages and Benefits

In many restaurant operations, business volumes are highly variable – throughout the day, the week, and seasonally. Restaurants employ full- and part-time employees to meet both their business and employee needs. Part-time positions provide:

- the flexibility that is essential to meet fluctuating sales volumes and operate 24-hours a day, 7 days a week
- the flexibility for employees who can't commit to a set schedule or full-time hours – particularly youth.

Part-time and full-time employees often do the same work in restaurants, whether it be food preparation, or greeting and serving guests. However, there is an important distinction between the two groups; full-time employees work more hours. With more time on the job comes an increase in skills, qualifications, abilities and certainly experience. Compensation reflects this and is based on merit and experience. Forcing changes to pay rates would undermine an employer's ability to reflect and reward this.

## Terminations, Severance

The discussion surrounding termination and severance is very much about whether to increase or decrease the termination and severance requirements. In *Employment Standards Enforcement*, Vosko, Noack and Tucker<sup>xxii</sup> noted that the vast majority of ESA complaints and enforcement orders are due to termination or severance pay.

The discussion of the Just Cause provision centers on the conflict between tighter restrictions on termination and the employers' ability to make business decisions. The argument for keeping the status quo is that the termination and severance provisions are enough to dissuade employers from severing employees without reason. Without this Just Cause provision, employers would be more hesitant to take a chance on inexperienced or young employees.

## Enforcement and Administration

Most of the data and options in the report and supporting documents surround how to better make and enforce claims, collect monies owed, and reduce the real and implied threat of reprisals.

The current Ministry of Labour statistics only track two things: complaints and charges. There is a huge gulf in between that is being filled with fear-mongering and giant leaps of logic.

Most of the complaints not prosecuted would be due to no follow up by the complainant. Labour groups have stated that this is due to employees giving up or fearing reprisal. While this cannot be discounted totally, a more reasonable assumption would be that the complaint was resolved and no Ministry of Labour intervention was needed.

While data on this issue is scant, there is some. As noted earlier, the vast majority of complaints stem from termination and severance. This is understandable, as some employers find the rules about severance pay complex. This is also an emotional time for employees and they often feel that they should receive more compensation than they are entitled. These disputes are usually settled between the two parties with no need of intervention.

We can also turn to a recent Ministry of Labour enforcement blitz of high-risk employers for information. The violation rates were certainly higher than they should be, and it is important for the Ministry of Labour to continue such initiatives. However, if we look at the violations we see that many are for administrative issues such as improper bookkeeping, failing to keep schedules or missing posters. Even the monetary infractions are in areas that small businesses find complex. This would point to a need for the government to focus more on education in harmony with increased enforcement.<sup>xxiii</sup>

In addition to targeted enforcement blitzes, the MOL needs to seek alternative, inventive methods of enforcement. For example, Employment Canada collects information from people claiming Employment Insurance benefits. If there is a discrepancy, the employee is expected to seek a remedy. If the Ministry of Labour could seek ways to share information with Employment Canada and other government agencies, perhaps they could more easily identify those that are not following the rules without subjecting all employers to increased regulation.

Similarly, the Secretary of Cabinet in the Ontario Government has undertaken a strategic change project which seeks to identify ways the government could work better across ministries and with their customers (the people of Ontario). The Ministry of Labour should use this initiative as an opportunity to seek ways to share information with other ministries that could be helpful for enforcement.

Many complaints arise when a bankruptcy is involved. It is an emotional time for employees who have lost their jobs, but also for the employer who has lost much more. When dealing with severance and wages owed after a bankruptcy, the ESA regulations are superseded by other legislation.

Amending the bankruptcy laws to protect workers is a discussion worth having, but it should not be in the context of the ESA regulations.

Currently there is a project underway at the Ministry of Labour that seeks to identify some of these issues. Restaurants Canada is participating in this process because we agree that enforcement needs to be effective. We do feel, however, that the enforcement and any recommended changes need to be systematic and based on real data; not on anecdotal reviews of the worst case scenarios.



For a long time, we have asked the government to collect additional data on the ESA complaints. Without this information, a discussion of the issue would be unproductive.

We do not accept the view that the self-help requirements in the ESA claim process equate to workers being dissuaded from exercising their rights. While it would be naïve to assume no worker was ever dissuaded from their rights, it is more likely that this process enables employees and employers to work out the dispute without external assistance.

It must be remembered that the Ministry of Labour resources are finite. If opportunities for self-help or to settle complaints amicably were not in place, the result would be that claims would go uninvestigated and unsettled for long periods due to the sheer volume. This would not be in the best interest of any of the involved parties.

## Conclusion

There is no doubt that the workplace has changed radically over the years and we need to look at these changes with an eye to providing the best opportunities to employees to find the work/ life balance and career growth that suits their needs. This must be made with fresh eyes, and not through decades-old systems that are rapidly losing favour with workers.

The restaurant industry is proud of its role in providing opportunities for youth and people who are new or returning to the workforce. It is these opportunities that provide training that will serve them throughout their lives, regardless of the field they choose.

A common expression is that people work in restaurants “for a year or for a career”. This illustrates the opportunity to provide transition employment, or opportunities to raise through the industry.

Restaurant operators want to be allowed to continue providing the flexible opportunities they always have. By layering additional bureaucracy and costs upon businesses, the government restricting these opportunities.

We do agree that workers’ rights must be protected. By strengthening enforcement and education tools, the government can do a lot to identify and prevent situations that harm employees financially or in other ways. Government must look at new and innovative ways to share information within government and with governments of other levels to focus scarce government resources in the most targeted manner.

Businesses large and small want to do their part to ensure that society moves forward, but they cannot be expected to be the solution to societal ills that are more appropriately and effectively addressed by governmental intervention. The restaurant industry does its part by providing opportunities for training and advancement to demographic groups that are often ignored by other employers. This should not be penalized by layering on additional costs and administrative burdens.

## Recommendations

1. Encourage the creation and expansion of job opportunities for a diverse workforce that requires availability of both part- and full-time jobs.
2. Maintain the current provisions governing related-employers to ensure small investors can continue to invest in and run independent businesses (i.e. franchises).
3. Maintain secret ballot provisions in the certification process to protect an employee's constitutional rights.
4. Learn from the experiences of other provinces and reject the call for First Contract Arbitration. Maintain the current harmonious balance in labour relations with the existing tools which encourage open bargaining.
5. Avoid the inevitable problems created by any type of sectoral organization which would create an uneven playing field for small and medium-sized businesses without the resources or ability to pay the inevitable costs.
6. Investigate the underlying reasons for declining union membership rather than assuming government invention is needed.
7. Study alternative options for the expression of employee voice and constitutional rights beyond a single, outdated system.
8. Provide greater clarity and certainty with respect to franchisor's and franchisee's distinct employment and labour law liabilities and make clear that franchisors are not considered to be the employer of a franchisee or a franchisee's employees.
9. Maintain the current liquor server wage differential in order to increase compensation throughout the business.
10. Maintain the student wage differential in recognition of higher business costs and the government's goal of providing youth job opportunities.
11. Do not take away scheduling flexibility that allows employees to balance work/ life responsibilities.
12. Recommend the government study the Public Holidays Act to investigate if it is meeting the needs of today's multicultural society.
13. Government should streamline the Personal Emergency Leave and Leave of Absence benefits to enable business to better assist employees facing difficult life events while avoiding potential abuse.

14. Reject the call for equal hourly pay for part- and full-time workers which would be disruptive to workplaces, are expensive to govern, and reduce part-time opportunities that offer highly-valued flexibility.
15. Maintain “Just Cause” provisions to encourage employers to provide opportunities to inexperienced workers.
16. Encourage Ministry of Labour “blitzes” of high-risk areas and previous offenders.
17. Recognize and expand the Ministry of Labour’s education campaign which seeks to provide information to both employers and employees in multiple formats and languages.
18. Seek to simplify regulatory requirements to make them easier for all parties to understand.
19. Seek out partners within the Ontario Public Service and other levels of government to achieve better enforcement results without massive expenditures.
20. Ministry of Labour must undertake more complete data collection of Employment Standards Act complaints and resolutions
21. Investigate opportunities to maintain the self-help provisions of the Employment Standards Act while addressing any appearance of reprisals.

Note: Restaurants Canada would like to recognize and thank Antonia Prlic for her assistance with the research and writing of this submission.

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<sup>i</sup> Source: Restaurants Canada, Statistics Canada and NPD Group

<sup>ii</sup> Ibid.

<sup>iii</sup> Keep Ontario Working and Phillip Cross, *Reform that Works: A Call for Evidence-Based Workplace Law Modernization in Ontario*, p. 18

<sup>iv</sup> Changing Workplaces Review, *Special Advisors’ Interim Report*, p. 12

<sup>v</sup> Ibid, p. 7

<sup>vi</sup> Raykov, M. and Livingstone, D.W., *Interest in Unions and Associations in a Knowledge-based Economy: Canadian Evidence*, 2014, York University p. 12

<sup>vii</sup> Lowe, G. and Rastin, S. (1999), *Organizing the Next Generation: Influences on Young Workers’ Willingness to Join Unions*, University of Toronto, p. 9

<sup>viii</sup> Stanberry, DM., *Youth and Organizing: Why Unions will Struggle to Organize the Millennials*, 2011, p. 113

<sup>ix</sup> Statistics Canada, Labour Force Survey, September 2016

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- <sup>x</sup> Gunderson, Morley, *Changing Pressures Affecting the Workplace and Implications for Employment Standards and Labour Relations Legislation*, p. 31
- <sup>xi</sup> Changing Workplaces Review, *op cit*, p. 28
- <sup>xii</sup> Gunderson, Morley, *op cit*, p. 32
- <sup>xiii</sup> CWR, *op cit*, p. 114
- <sup>xiv</sup> Gunderson, *op cit*, p. 33
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- <sup>xvi</sup> Myers, Karen K. and Sadanghiani, K, *Millennials in the Workplace: A Communication Perspective on Millennials' Organizational Relationships and Performance*, p. 234
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- <sup>xxii</sup> Vosko, Leah F., Noack, Andrea M., and Tucker, Eric, *Employment Standards Enforcement: A Scan of Employment Standards Complaints and Workplace Inspections and their Resolution under the Employment Standards Act, 2000*, p. 74
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