

ONTARIO'S CHANGING WORKPLACES REVIEW



**SUBMISSION BY THE UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL UNION (UNITED
STEELWORKERS) REGARDING THE PERSONAL EMERGENCY
LEAVE PROVISIONS OF THE *EMPLOYMENT STANDARDS ACT***

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The United Steelworkers (the “Union” or the “USW” or the “Steelworkers”) has now had an opportunity to review your Interim Report (the “Report” or “Interim Report”) which considers potential amendments to the Ontario *Employment Standards Act* (the “ESA”) and the *Labour Relations Act, 1995* (the “LRA”) in the context of Ontario’s changing workplaces. While we intend to provide comprehensive submissions on the options presented in your Report, we write today in answer to your call for advance comments on the section of the Report dealing with the personal emergency leave (“PEL”) provisions of the ESA.

I. PERSONAL EMERGENCY LEAVE – CURRENT LEGISLATIVE PROVISION

Under the current provisions of the ESA, employees in Ontario working for an employer with 50 or more employees in the province are entitled to take up to 10 days of unpaid job-protected PEL. The leave may be used to deal with an employee’s personal illness, injury or medical emergency, or the death, illness, injury, medical emergency or other urgent matter of certain proscribed family members, including the employee’s spouse, parent, child, brother or sister, or grandparent.

II. ORIGINAL USW SUBMISSION

In our original submission to you in respect of this Review, the USW sought the removal of the 50 employee threshold for entitlement to PEL, and the repeal of the requirement that employees provide evidence “reasonable in the circumstances” to satisfy the employer the employee is entitled to take a PEL.¹ Instead, the USW sought the introduction of a provision which would prohibit employers from requiring evidence that employees are entitled to take a PEL.

III. SUBMISSION ON THE INTERIM REPORT REGARDING PEL

(a) Changes to the PEL provisions should not be made in advance of the delivery of your Final Report

The USW assumes that the Government has sought advance submissions on the PEL provisions of the ESA as a result of the commitment in its 2015 Fall Economic Statement to “lower business costs through modernized regulations.”² In that document, the Government indicated that it would be seeking advice from you to resolve concerns raised by business regarding the application of the PEL provisions of the ESA. The Government indicates in its economic statement that “the advice is to be received in the spring of 2016 and the resolution implemented in 2016.”³

The USW is concerned about the Government’s request that you consider and make recommendation in respect of the PEL provisions in advance of your Final Report. In our view, changes to the PEL provisions of the ESA should be considered together with other changes to the ESA (i.e. paid sick days, small business exemptions from leaves) and LRA as part of a

¹ See section 50(7) of the current ESA.

² <http://www.fin.gov.on.ca/en/budget/fallstatement/2015/chapter1a.html>

³ <http://www.fin.gov.on.ca/en/budget/fallstatement/2015/chapter1a.html#s1a-3>

comprehensive set of amendments which operate to fulfill your mandate to tackle the need for legislative amendments to address issues facing vulnerable workers in precarious jobs. As a result, the United Steelworkers recommends that the PEL provisions be reviewed together with the remainder of the options presented in your Interim Report, and that recommendations and amendments to the PEL provisions not be “fast-tracked” by Government in advance of the delivery of that report.

(b) The USW supports the removal of the 50-employee threshold for entitlement to PEL (Option 2)

The USW has reviewed the options in respect of the PEL provisions set out in your Interim Report. The USW supports the implementation of Option 2 of the Report, which would remove the 50-employee threshold for entitlement to PEL days.

Personal emergencies, such as the illness or injury of an employee or an employee’s family member are not restricted to those working for large employers. The kinds of emergencies to which the PEL provisions are directed happen to all employees in Ontario, regardless of the size of the workplace. Indeed, smaller workplaces are the norm, not the exception, in Ontario. As your Interim Report notes, in 2015, 87% of workplaces in Ontario had fewer than 20 employees and around 30% of all employees worked in such establishments.⁴ This means that over a million Ontario employees currently do not have access to the benefits of job-protected leave when personal emergencies arise that require their attention, like the illness of a child, parent or spouse.⁵ These employees must rely solely on the goodwill of their employer to keep their jobs where an illness or injury arises for them, or in their families, solely by virtue of the fact they work for a smaller employer, rather than a larger one. In the USW’s submission, such an outcome places an undue and unfair burden on these workers and their loved ones.

Further, the exclusion of those working in smaller workplaces from the protection provided by PEL only serves to increase the vulnerability of workers who are already in a highly vulnerable position. Statistics show that those employees working in smaller workplaces in Ontario are more likely to be engaged in part-time and temporary work, more likely to be earning lower wages, and are less likely to be unionized or have access to unionization.⁶ This means that those who would most benefit from the protection afforded by the PEL provisions of the ESA are the very individuals currently excluded from its application.

We also know that certain social groups, like women, racialized persons and single parents with children under 25 (the majority of whom are women) are overrepresented amongst precarious

⁴ Ministry of Labour, *Changing Workplaces Review: Special Advisors Interim Report*, p. 32.

⁵ See Leah Vosko, Andrea Noack, and Mark Thomas, *How Far Does the Employment Standards Act, 2000, Extend And What Are The Gaps In Coverage? An Empirical Analysis of Archival And Statistical Data*, (March 2016), <https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/research-projects/Vosko%20Noack%20Thomas-5-%20ESA%20Exemptions.pdf>, p. 27

⁶ *Ibid*, p. 61

workers.⁷ As a result, we can expect that the absence of PEL protection will have a disproportionately negative effect on these social groups who already experience greater job insecurity and high rates of wage inequity as a result of structural societal discrimination. The USW notes that the Ontario Government has specifically sought to address the gender wage gap through the establishment of the Gender Wage Gap Strategy Steering Committee. That Committee's Final Report includes recommendations which would require the Government to, among other things, promote gender equality at work and increase women's ability to participate fully in the workforce.⁸ The USW submits that increasing the number of workers who can benefit from job-protected PEL is consistent both with your mandate to reduce issues facing vulnerable workers and the Government's commitment to address the gender wage gap in Ontario workplaces.

Finally, the elimination of the 50-employee threshold for access to PEL days would bring Ontario in line with other provinces in Canada, none of which currently have a threshold for entitlement for unpaid leaves under minimum standards legislation.

(c) The USW rejects Options 1, 3 and 4

The USW rejects Options 1, 3 and 4 as set out in your Interim Report. The USW submits that the maintenance of the status quo (Option 1) is not acceptable or consistent with your mandate to address employment and labour issues arising from the increase in precarious work in the province.

Further, the USW rejects Options 3 and 4, which would break up the existing 10-day PEL provision into separate leave categories without increasing the total amount of leave (Option 3) or completely eliminate the 50-employee threshold provision allowing all employees in Ontario to access PEL days (Option 4).

The focus of both Options 3 and 4 appears to be on the splitting of the current 10-day PEL provision into separate leave categories based on employer concerns that employees should not be able to access employer-provided paid leave days and the unpaid PEL provisions in the ESA. The employer community has referred to their concern as preventing employees from "doubling up" on leave benefits⁹. However, our experience in this area suggests that employer concerns are less about "doubling-up" on such benefits and more about restricting employee leave entitlements. If employees are able to take advantage of PEL where an employer has paid (or unpaid) leave policies, they are able to do so because employer leave policies are narrower, and fail to cover all of the contingencies provided for under PEL. As a result, the issue is not about employees receiving twice the benefit to which they are otherwise entitled, as asserted by the employer community, but rather the employer failing to ensure that their leave policies meet the requirements set out in the ESA.

⁷ Ministry of Labour, *Changing Workplaces Review: Special Advisors Interim Report*, p. 34.

⁸ Minister of Labour; Minister Responsible for Women's Issues; *Final Report and Recommendations of the Gender Wage Gap Strategy Steering Committee*, https://www.ontario.ca/page/final-report-and-recommendations-gender-wage-gap-strategy-steering-committee?_ga=1.243955782.2119732228.1472580180, p. 8-11.

⁹ <http://keepontarioworking.ca/recommendations/minimum-standards#more>

To the extent that employers are seeking to “opt-out” of the ESA in this area by suggesting that the ESA be amended to clarify that where the employer has existing leave entitlements (paid or unpaid) that equal 10 days the PEL provisions not apply, the USW urges you to reject that proposal. Such a move would reduce the circumstances under which employees in the province could access job-protected leave, and eliminate flexibility with respect to employee leave entitlement, one of the current benefits of the PEL leave for employees. For the same reason, the USW asks you to reject the splitting of the current 10-day PEL provision into separate leave categories in the ESA. Again, the result of splitting the current PEL leave provision would be to eliminate the flexibility inherent in the current language, a flexibility which is of significant benefit to workers in the province, and to vulnerable workers in particular.

Finally, the USW continues to advocate for the repeal of the provision which requires employees who take advantage of PEL to provide evidence that they are entitled to such leave. Such a requirement creates an impediment to employees accessing such leave, by requiring them to pay the cost of obtaining medical notes, but also places an additional (needless) burden on our already overburdened public health care system.

IV. CONCLUSION

This Review has the potential to make important and significant improvements in the working lives of Ontarians.

As a result, we urge you to:

- consider the PEL provisions of the ESA in the context of the entire Changing Workplace Review process, and not in advance or isolation from it;
- recommend the repeal of the exemption to PEL for employers with 49 employees or less in the province;
- remove the requirement that employees provide employers with evidence of entitlement to take PEL days; and
- recommend the introduction of a provision confirming that employers are prohibited from requiring evidence that employees are entitled to take a PEL.

We thank you for the time to consider our submission. We are available to meet with you to discuss any questions or comments you may have in regard to any of the above.