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**CHANGING PRESSURES AFFECTING THE WORKPLACE  
AND IMPLICATIONS FOR EMPLOYMENT STANDARDS  
AND LABOUR RELATIONS LEGISLATION**

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## ***Executive Summary***

*Inter-related pressures from the demand side of the labour market include: globalization; outsourcing; technological change; industrial restructuring; deregulation and privatization; and unanticipated demand fluctuations. Implications for ES and LR include:*

- An Increased need for labour regulations to deal with adjustment consequences and new forms of non-standard employment (e.g., definition of employer and employee for coverage of many non-standard employees), and to substitute for declining unionization as a form of providing protection to workers.
- But these pressures have also made it more difficult for governments to provide such protection given the ability of firms to relocate their investment and production.

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- *Inter-related pressures from the nature of the workforce and supply side of the labour market include: workforce diversity and vulnerability to poverty; ageing workforce; immigration assimilation difficulties; sustained labour force participation of women and dominance of the two earner family requiring work-family balance; and school-to-work transition problems for youths. Implications for ES and LR include:*

- Increased emphasis on precarity and vulnerability common to these groups
- Difficulty of informing workers of their rights and having them exercise their rights given language and cultural differences
- Termination issues for the increasing portion of older workers
- Regulating irregular scheduling and providing an explicit right-to-refuse overtime important for work-life balance
- Need to walk a fine-line between ensuring that internships and co-op programs for youths are not regulated out of existence (given their potential positive effects for acquiring experience) versus being abused by employers by being recycled and used as a cheap or free source of labour often displacing other workers.

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*Changing institutional pressures include: a decline in union representation and power; a reorientation from an East-West orientation across Canada to a North-South Orientation with the US and Mexico; and inter-jurisdictional competition for business investment and the jobs associated with that investment. Implications for ES and LR include:*

- Pressure to expand ES to fill the gap in worker protection fostered by the decline of unions and their power, although this must confront the forces that have fostered the decline in union power in the first place.
- Pressure to foster LR policies that can facilitate unionization (e.g, card-check regime, first-contract arbitration, enforcement of unfair labour practices) *if* expanding unionization is considered desirable. These must also confront the forces that have fostered the decline in union power in the first place.
- Consider fostering other or related forms of collective voice or representation at the workplace, including minority unionism or committees akin to health and safety committees with their internal responsibility system.
- Any actions must confront the effect on business costs and competitiveness especially given the increased competitive pressures, the North-South re-orientation and the increased mobility of capital. Need for “smart regulations” that can foster equity with minimal interference with efficiency.

*Important changes in the external labour market include: an increase in non-standard employment, much (but not all) of which is precarious employment and occupied by vulnerable, disadvantaged groups with little or no individual or collective bargaining power; growth of small business including franchises; job instability and decline of lifetime jobs; growing wage polarization and income inequality with stagnant wages in the middle of the occupational distribution; permanent job displacement and large associated wage losses and social costs. Implications for ES and LR include:*

- Issue of coverage for non-standard workers, especially for the precarious who are vulnerable, raising issues such as the definition of employer and employee
- A “one-size-fits-all” solution is neither feasible nor desirable given the variation in the extent to which different aspects of non-standard employment involve precarious work occupied by vulnerable workers. In many cases, non-standard

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employment meets the needs of the increasingly diverse workforce, including the need to achieve work-life balance.

- Attention must also be paid to the fact that some of the rise of non-standard employment reflects the increasing regulation of the standard employment contract. As well, even if the non-standard job is a “bad job” there may be a trade-off between a bad job and no job if the bad job is regulated out of existence.
- Small businesses create regulatory challenges for various reasons. They generally do not have a sophisticated human resource department to be informed of regulations and how to follow them. Their entrepreneurial nature often makes them averse to regulations. Their profit margins are often squeezed such that they are pressured to avoid costly regulations, especially if their competitors do not follow them. They can be difficult for enforcement agencies to monitor, and they are sufficiently small that penalties do not serve a visible precedence that gets the attention of other firms, as would a large employer, and especially one that is sensitive to its public image.
- Franchising also creates regulatory challenges in terms of whether the franchisor or the franchisee is responsible for labour regulations. Similar issues arise with supply chains. Franchisors may facilitate compliance by entering into *co-operative agreements* with enforcement agencies to require their franchisees to comply with labour regulations just as they require them to follow standards of quality, cleanliness and service delivery and how inputs are to be used. This would create a level playing field across the franchisees with respect to labour regulations so there would be no competitive advantage in not complying with such regulations in order to save costs. Franchisors are sensitive to their brand name and public image so they can be susceptible to *public shaming by posting non-compliance*. They also have resources to inform and educate their franchisees about complying with labour regulations. Such “deep pockets,” however, also enable them to resist and contest compliance with labour regulations. As well, when they 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.

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- Increased job instability and the decline of lifetime jobs suggests that alternative forms of representation and employee voice may take on more importance if conventional union coverage under the former standard employment contract is less feasible. More attention may have to be paid to providing income security through the tax-transfer system if it is more difficult to provide through the employment relationship – that is, focus on the *individual* and not the *job*.
- The growing wage polarization and income inequality suggests that ES and LR regulations are viable policy instruments that can deal at least somewhat with these equity oriented issues. The key is to insure that providing a more equitable distribution of the pie does not dramatically reduce the size of the pie (again, easier said than done). As well, it is important that regulations do not foster protected “insiders” at the expense of unprotected “outsiders.” The polarization also raises the issue of whether the growing portion of higher-end occupations (supervisors, managers, professionals) should be covered by ES regulations.
- Permanent job displacement and large associated wage losses especially for older workers highlight the importance of advance notice especially for mass layoffs (which generally have favourable effects on both displaced workers and hiring by subsequent employers) as well as termination protection, albeit the latter can foster protection to “insiders” at the expense of reduced opportunities for “outsiders” as firms anticipate expected termination costs into their hiring decisions.

*Changes in the workplace practices of firms include: high-performance work systems; broader-based job classifications; breakdown in pattern bargaining; flexible compensation and pay for performance; flexible worktime arrangements; and increased workforce diversity. Implications for ES and LR include:*

- High performance work systems rely on the use of peripheral subcontracting, temporary-help agencies and limited-term contracts, raising the issue of the definition of the employer and employee for purposes of ES regulations. Their emphasis on aligning human resource and workplace practices with the business strategy of the organization implies that workplace practices have to be aligned with the profit motive; this can mean evading labour regulations that are costly

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and that interfere with the business strategy of the organization. High-performance work systems generally have a resistance to unionization since unionization is often adversarial rather than being aligned with the business strategy of the organization. Direct employee involvement can be an alternative to employee involvement through the union. High-performance work systems also have general resistance to bureaucratic and regulatory intervention on the grounds of interfering with the business strategy of the organization.

- Broader-based job classifications where employees are expected to do a wider range of tasks generally under reduced supervision can make leave policies easier for employers to accommodate since others can take over tasks of the person on leave, although team production may make accommodating leaves more difficult if missing team member are crucial to the operation. The requirement for broader-based job classifications can also conflict with collective agreements, and hence foster resistance to unions, with their emphasis on the demarcation of more narrowly-defined job classifications.
- Breakdowns in pattern bargaining and an increased emphasis on the ability-to-pay of individual organizations could imply difficulties in having sectoral agreements, at least in terms of having common terms and conditions extended throughout the industry.
- Flexible compensation and pay-for-performance tend to have positive effects on productivity and performance, but pay dissatisfaction which often arises from the perception of being paid “unfairly,” tends to have negative effects on employee productivity and performance. This has mixed implications for requiring equal pay for equal work based on employment status (e.g., part-time vs. full-time; limited-term contract workers vs. permanent employees; temporary-agency workers vs. regular employees). On the one hand, requiring equal pay can have negative effects on performance and productivity if there are differences in the nature of the work. This could be the case, for example, if part-time, or limited-term contract or temporary-help workers do not do all of the work typically done by regular, full-time permanent employees. On the other hand, if they truly do the same work, then they will be dissatisfied with their pay with its negative effects on



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performance and productivity. This highlights the importance of ensuring that the work is equal in mandating equal pay for equal work – a difficult task as evidenced by the job evaluation procedures required under pay equity legislation for males and females. It also highlights that employers have some incentive to provide equal pay if the work truly is equal so as to avoid the negative consequences of pay dissatisfaction from those who feel they are paid unfairly.

- Flexible worktime arrangements (e.g., work sharing, job sharing, compressed workweeks, flexitime, telecommuting and irregular work schedules) can conflict with hours of work regulations under ES and give rise to difficulties in interpreting equal pay for equal work based on job status. They can have positive effects for both employers and employees, however, so that accommodating such arrangements makes sense. Exceptions are when they are involuntarily imposed, especially on vulnerable workers, as can be the case with irregular work scheduling and involuntary overtime without the explicit right-to-refuse.
- Increased workforce diversity (e.g., with respect to gender, immigrant status, disability status, Aboriginal status and sexual orientation) requires Labour Boards to adhere to human rights and pay and employment equity legislation in their decisions, adding complexity in terms of their knowledge and information requirements. For employment standards, compliance and enforcement can be more complex because of language and cultural differences. New immigrants (both as employees and employers) may have language and cultural barriers that inhibit them from knowing and exercising their rights and responsibilities, highlighting the potential importance of information dissemination. Increased diversity may also make unionization and other forms of voice at the workplace more difficult since there is less likely to be a common set of homogeneous needs as well as willingness to present a common front. The research literature indicates that a strong business case can be made for diversity management and eliminating inefficient discriminatory practices, suggesting that providing education and information to that effect may have some mileage.

# CHANGING PRESSURES AFFECTING THE WORKPLACE AND IMPLICATIONS FOR ES AND LR

It is well-known that the current Employment Standards and Labour Relations Legislation laws were largely designed for the Old World of Work with its generally large fixed-worksites, male-dominated blue-collar work especially in manufacturing, where large employers were protected by tariffs and limited competition, and workers often had life-time jobs protected by a union or the viable threat of unionization. The New World of Work is vastly different for both employers and workers, implying a need to re-evaluate labour laws and regulations that were designed for the Old World of Work.

All stakeholders are under pressure to adjust to the new realities. *Employers* must adjust to sustain productivity and competitiveness. *Employees* must adjust to the pressures placed on them by employers as well as the demands for work-life balance given the dominance of the two-earner family. *Unions* must adjust their organizing strategies to stem their declining influence. And *governments* must adjust their laws and regulations to fit the new realities. It is important, however to not “throw out the baby with the bathwater” – but to strike a balance between sustaining policies (perhaps with minor adjustments) that are still relevant to today’s workplace, and to expand and contract policies that are in need of change.

This report will document these inter-related pressures, indicating whether they are likely to continue as well as their implications for different features of both Employment Standards (ES) and Labour Relations (LR). Those features include coverage, exemptions, exclusions and enforcement. They may even include “big picture” issues such as the continued relevance of the Wagner Model for LR.

In dealing with the effect of these changing pressures it is important to have a *causal* (i.e., cause-and-effect) understanding of the theoretical mechanisms through which these pressures affect ES and LR. For example, the growth of precarious non-standard employment has obvious implications for the coverage and enforcement of ES and LR. But some of that growth in non-standard employment may have been induced in part by ES and LR regulations. In such circumstances, it is important to understand the consequences of extending coverage to non-standard workers or enhancing

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enforcement. Similarly, extensive regulations with respect to the termination of employees can be anticipated by employers in their hiring decisions and cause them to work their existing workforce longer hours and reduce their hiring of new workers, shifting to alternative work arrangements including temporary-help agencies and limited-term contracts where it is easier to terminate a contract as opposed to an employee.

This does not make such policies undesirable; but it highlights the importance of understanding the underlying causal relationships for various reasons: (1) to facilitate policies to affect the underlying causes rather than just the symptoms; (2) to understand how these relationships may change in the future as the underlying causal relationships change, and (3) to understand how the stakeholders may respond, often in ways that may “undo” the effect of the policy initiatives or have other unintended consequences.

Given the vast array of changing pressures and trends, it is desirable to group them in some fashion. While the pressures and trends are grouped here for purposes of exposition, it is important to emphasize that they are inter-related in that many of the trends feed off of other pressures. That also means that the separate independent impact of each trend is not always easy to establish. The inter-related groupings are:

- A. Pressures affecting *employers* and their *workplace* and *demand* for labour
- B. Changes in the *nature of the workforce* on the supply side of the labour market
- C. Changing *institutional* pressures (many associated with the previous pressures)
- D. Manifestations of the changing pressures in the *external labour market*
- E. Manifestations of the changing pressures in the *internal workplace* of firms

For each of these pressures, illustrative information is provided on such factors as:

- Why they arose
- Whether they are likely to continue
- Their potential or theoretical implications for different features of both ES and LR such as coverage, exemptions, exclusions and enforcement
- Illustrative evidence on these pressures or trends and their expected effects and actual evidence on their effects. Given the vast extent of the pressures and trends, the evidence is selective, provided for those issues for which it is most relevant for evidence-based policy making.

# **1. Pressures Affecting Employers and Hence their Workplace and Demand for Labour**

## **1.1 Globalization and Trade Liberalization**

Markets for the products and services of firms are increasingly *globalized*, fostered by such factors as tariff reductions, free-trade agreements and reductions in transportation and communication costs.<sup>1</sup> Such pressure on employers filter down to workers and the workplace since the demand for labour is derived from the demand for the products and services of the firm. Firms whose product markets, especially in manufacturing, were once protected by tariffs are now subject to intense international competition, especially from imports from low-wage developing countries that have moved up the value-added chain from being low-wage with low-productivity to being low-wage and medium to high productivity.

This pressure is likely to continue, although much of its impact on manufacturing in Ontario has already played out through the system with mass layoffs and plant closings in earlier periods. Some of the competitive pressure may dissipate as wages and labour costs in countries like China are increasing rapidly; nevertheless, there seems to be an almost endless supply of low wage labour in other developing countries that also have minimal protection from employment standards or unions.

Competitive global pressures have led to a number of outcomes that have implications for employment standards in Ontario. They have led to a “hollowing out” or “declining middle” of the skill and wage distribution, often involving job losses of older workers in reasonably well-paid, blue-collar jobs in manufacturing. Such displaced workers generally do not have the skills to move up the occupational skill distribution to the

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<sup>1</sup> Reviews of the extensive literature on the impact of globalization and trade liberalization are contained, for example, in Cline (1997), Collins (1996), Craig and Lynk (2006), Richardson (1996), Rodrik (1997), Wood (1996), and Yan (2006).

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growing number of higher-end jobs in business, financial and professional services. Their skills are often industry specific (steel, auto manufacturing, pulp-and-paper) and not transferable to other industries. Many are middle-age workers often regarded as too old to retrain or relocate, but too young to retire. They are often displaced to the low-wage non-union jobs in personal services where their supply influx lowers their already low wages even further. The “disappearing middle” of the occupational distribution also means that it is more difficult for persons at the bottom of the distribution to train and move up the occupational ladder since those “middle steps” are now missing. They are often trapped at the bottom with little or no opportunity for upward occupational mobility.

This polarization into well-paid (often extremely well-paid) professional, managerial and administrative jobs at the high end of the occupational distribution, stagnant wages in the middle of the job distribution, and low-paid personal service jobs at the low end is contributing to the well-established and growing wage and income inequality that is occurring in Canada and internationally.<sup>2</sup>

### 1.2 Offshore Outsourcing of Manufacturing and Business Services

A related pressure has been the increase in *offshore outsourcing*, again to low-wage countries and especially in manufacturing. Increasingly, however, the trend has been to offshore outsourcing of *business services*, facilitated by the internet, computer technology, software for global networking, and time-zone differences that enable businesses to send their requests at the end of their business day and have the results on their desk (more accurately, their computer) by the start of their next business day. Within business services, the trend has been from simple “back-office” functions like

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<sup>2</sup> Wage polarization and growing income inequality in Canada is documented and discussed in Fortin, Lemieux, Milligan and Riddell (2012). Fortin and Lemieux (forthcoming), Green and Sand (forthcoming) and Lemieux and Riddell (forthcoming). They also refer to the international literature in this area.

accounting and payroll, to software development and call-centres, to more sophisticated functions such as the reading of x-rays.<sup>3</sup>

The limited empirical evidence on the impact of business offshoring suggests that it has generally positive effects in areas such as lower consumer and input prices and higher productivity<sup>4</sup> and that the labour market effects are generally minimal.<sup>5</sup> There is also some consolation in the fact that business offshoring tends to affect more educated and advantaged workers, as opposed to disadvantaged, vulnerable workers. The area of potential concern, however, is many of the jobs affected are in entry-level positions in sectors like IT. Such jobs could otherwise be “stepping-stones” for younger workers to get a start in IT and to eventually move up the occupational ladder in that sector. This can be particularly harmful to the extent that IT and knowledge work are generally regarded as “good jobs” and crucial for innovation, productivity and competitiveness.

### 1.3 Technological Change, Computer Revolution and the Information Economy

As indicated previously, technological change and the transformation to the knowledge economy has facilitated many of the other trends including global networking and trade and offshore outsourcing including that of business services. Such change, associated with the computer and internet, is also facilitating robotics, 3-D manufacturing, movie streaming, just-in-time-delivery systems, bar-code scanning

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<sup>3</sup> Evidence pertaining to the magnitude and nature of the offshore outsourcing of business services is given in Blinder (2006); Friedman (2000), Gomez and Gunderson (2010), McKinsey (2004), Morissette and Johnson (2010), and Scott and Ticoll (2004).

<sup>4</sup> Evidence of the positive effects of business off-shoring is provided in Amiti and Wei (2005), GAO (2005), Mann (2005), and Trefler (2005).

<sup>5</sup> Minimal labour market effects based on Canadian data are found in Morissette and Johnson (2010) in part because the phenomenon is still small. Minimal effects for the US are found in Amiti and Wei (2005) and Jensen and Kletzer (2005) and Liu and Trefler (2010). In part these minimal effects reflect the fact that the phenomenon is still small; whether this will change as the extent of business offshoring increases is unknown.

systems and the rise of the “sharing economy” in such forms as Uber car services and AirB&B. The current technological change is skill-biased in the sense of increasing the demand for skilled and knowledge workers as brain has replaced brawn in the new knowledge economy.<sup>6</sup> Technological change does not have to be skill-biased as evidenced by the fact that the earlier technological change associated with routine jobs of the factory system replaced the earlier skilled crafts and trades. But the current technological change just happens to be skill-biased.

### 1.4 Industrial Restructuring Mainly from Manufacturing to Polarized Services

Many of the previously discussed forces have led to industrial restructuring mainly away from manufacturing and towards services, with such restructuring especially prominent in Ontario. Such manufacturing jobs tended to be in the middle of the pay distribution, often providing stable life-time jobs in large fixed-worksites and protected by tariffs, limited competition and unions or the credible threat of unionization. In contrast, the service jobs are at the polar ends of the pay distribution – high-paying professional, business, and managerial services, and low-paying retail and personal services. Both high-end and low-end jobs may involve elements of precariousness, but the high-end jobs tend to be compensated for their precarity and they often involve considerable individual bargaining power and may be protected by occupational licensing arrangements that restrict competition. In contrast, the low-end jobs are often occupied by vulnerable, disadvantaged workers who have little or no individual or collective bargaining power. In Canada, the trend away from manufacturing, which has particularly affected Ontario, has been accompanied by a restructuring towards a commodity boom generally in well-paying jobs in energy and natural resources in the Western provinces as well as Newfoundland and Labrador. Whether the recent reversal into a commodity bust is a temporary or permanent phenomenon is an open question.

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<sup>6</sup> Skill-biased technological change is emphasized in Acemoglu (1998, 2002), Acemoglu and Autor (2011), Autor, Katz and Kearney (2008) and Beaudry and Green (2005) and their references cited therein.

### 1.5 De-Regulation and Privatization

De-regulation and privatization have also led to increased competitive pressures on formerly relatively high-wage regulated and publicly-provided services that were formerly insulated somewhat from competitive pressures. These have led to labour market adjustments that are similar to those from the greater competitive pressures resulting from globalization, trade liberalization and outsourcing. Specifically, privatization and de-regulation tend to lead to reductions in wages and employment in the formerly relatively high wage regulated and publicly provided sectors (Benjamin, Gunderson, Lemieux and Riddell 2012, p. 297). The reduction in employment is somewhat offset by the shift in demand to the private and unregulated sectors that now provide the former publicly provided and regulated services.

### 1.6 Unanticipated Demand Fluctuations

Although business cycle fluctuations have been a long-standing feature of developed economies, recent unanticipated demand shocks have affected employers and this has filtered back to the labour markets in which they hire workers. These shocks include: the prolonged and deep recessions of the early 1980s and 1990s; the dot.com bust of 2000; and the more current commodity-bust in energy. Even if these are temporary shocks, the labour market adjustment consequences can be prolonged and lead to a legacy of longer-run permanent scarring effects especially for youths and new immigrants who often bear the brunt of such adjustments.<sup>7</sup> As well, employers may make more permanent adjustments in the form of risk-shifting to workers by having a smaller core of more permanent workers and a more flexible group of peripheral non-standard workers in forms that are outlined subsequently.

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<sup>7</sup> Canadian evidence indicating that initial negative experiences for youths when they first enter the labour market can have a legacy of more permanent long-lasting scarring effects is provided in Beaudry and Green (2000), McDonald and Worswick (1995) and . Oreopoulos, von Wachter and Heisz (2012) and references cited therein.



## ***2. Changes in the Nature of the Workforce on the Supply Side of the Labour Market***

### **2.1 Workforce Diversity and Vulnerability to Persistent Poverty**

Substantial changes have also occurred with respect to the nature of the workforce on the supply side of the labour market. Some of these have been in response to the changing pressures from the demand side of the market, but others have been more exogenously determined associated with such factors as demographic trends.

The workforce has become more diverse with respect to dimensions such as gender, visible minority status (generally associated with being a recent immigrant), Aboriginal status and disability status. Many in these groups are subject to discrimination and likely to be vulnerable, defined as being in persistent poverty over a five-year period even after receiving transfer payments and after-taxes (Hatfield 2004, p. 25; Kapsalis and Tourigny 2002, 2007; Morissette and Zhang 2001). For example, over the period 1996-2001, the percentage of each group that was vulnerable to persistent poverty was: unattached individuals age 45-64 (29.2%), disabled persons (26.1%), recent immigrants (25.6%), lone parents (21.8%), and Aboriginal persons living off-reserve (15.7%)<sup>8</sup> compared to an average of 3.4% for the non-vulnerable groups (Hatfield 2004, p. 19). Persons in at least one of these groups accounted for less than one-quarter of the population (23.8%) but over two-thirds (67.6%) of those experiencing persistent poverty (Hatfield 2004, p. 20). The most important factor associated with persistent poverty was not having attachment to paid work, with the poverty rate for each group being approximately three to six times higher for those who had no paid work (Hatfield 2004, p. 22; Kapsalis and Tourigny 2007).

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<sup>8</sup> Statistics Canada does not estimate low-income cut-offs for reserves where low-income rates are even higher than off-reserves (Hatfield, 2004, p. 20).

### 2.2 Ageing and Longer-Lived Workforce

The workforce in Canada is both *ageing and living longer* and the trend towards earlier retirement has reversed itself in the later 1990s, especially for males.<sup>9</sup> This means that larger portions of the workforce will be older, with higher cost associated with seniority-based wage increases, pension obligations and disability and health related benefits as well as difficulties in retraining older workers for new jobs if their old jobs become obsolete.

Since mandatory retirement is now effectively banned in Canada, terminations of older workers will be more prominent, leading to increased unjust dismissal procedures for older workers. Many older workers who return to the labour force after retiring from their primary job will return to non-standard jobs, some out of choice because they want the flexibility especially if they already have a pension, and some out of necessity because that is all that is available to them.

### 2.3 Immigration

Canada is a nation of immigrants, with immigration being a crucial source of filling labour shortages and expected to account for virtually all net labour force growth in the very near future (Kustek, 2012). Immigration is especially important to Ontario where the majority of immigrants settle.

Unfortunately, immigrants are having problems economically assimilating into the Canadian labour market in the sense of catching up to the earnings of domestic-born workers who otherwise have similar wage determining characteristics. Also, the problem is getting worse in that the assimilation is slower for the more recent cohorts of immigrants who may never expect to fully catch up to the earnings of comparable domestic-born workers.<sup>10</sup> This has contributed to the increasing poverty rate amongst

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<sup>9</sup> Cheal (2000) documents and discusses the ageing workforce, and Schirle (2008) document and discuss reasons for the reversal of the trend towards earlier retirement in Canada.

<sup>10</sup> Beach, Green and Worswick (2011), review the extensive Canadian literature on how the assimilation of immigrants into the Canadian labour market has worsened over

immigrants who have been in Canada for 5 years or less, increasing from 24.6% in 1980 to 34.2% in 1985 to 31.3% in 1990 to an astonishing 47% in 1995, falling to 35.8% in 2000 and 36% by 2005 (Picot, Yugian and Hou 2010, p. 14). This has occurred at the same time as poverty rates for the non-immigrant population were generally falling. About one-quarter of such immigrants are likely to be in persistent poverty, compared to an average of 3.4% for non-risk groups (Hatfield 2004, p. 19). This has led to concern amongst immigrants that they have been deceptively attracted into Canada by an immigration policy that gives points for skills and education but such credentials are often not recognized (Grant and Nadin 2007; Wald and Fang 2008).

New immigrants are also particularly likely to be vulnerable with respect to a lack of protection from employment standards for a variety of reasons. Language barriers may inhibit them knowing their rights, and they may be employed by immigrant employers in smaller businesses who do not know their obligations. New immigrants may be less likely to complain, fearing reprisals that they may feel could jeopardize their immigrant status, especially if they come from countries with repressive regimes. They are also less likely to have the protection and assistance of unions (Verma, Reitz and Banerjee, forthcoming)

### **2.4 Labour Force Participation of Women, Dominance of Two-Earner Family and Issues of Work-Life Balance**

Although it has levelled off in recent years, the dramatic increase in the labour force participation of women, and particularly married women including those with children, has continued such it is now close to that of men. This has given rise to the dominance of the two-earner family which is now the norm and not the exception. This, in turn, has given rise to issues of work-life balance (e.g, Duxbury and Higgins, 2001; Higgins, Huxbury and Lyons, 2012).

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time. Campolieti et al. (2013), however, provide more recent evidence based on the 2006 Census suggesting that this negative trend may have halted. More research is necessary, however, to determine if this is a temporary or more permanent change.

### 2.5 School-to-Work Transitions for Youth: Internships, Part-time Work, Youth Attitudes

Transitioning from school to work is often difficult for students especially when the education curriculum does not prepare them for work, and the scarce number of guidance counsellors are preoccupied with discipline problems as opposed to career development. Many students drop-out with extremely negative labour market consequences by missing the high monetary returns to education reflecting the importance of education for functioning in the knowledge economy.<sup>11</sup> Dropping out is especially a problem for Aboriginal youth. The education and performance in school of young females now exceeds that of young males. The policy concern in education has shifted to concern over limited opportunity for high-school drop-outs and especially boys who are disengaged from education and possibly from work. The problems of the school-to-work transition and dropping out are compounded by the fact that initial negative experiences in not being able to get a job when first leaving school leads to a longer run legacy of permanent “scarring” effects through lower lifetime earnings as outlined previously. Youths turn their back on a labour market that they feel has turned its back on them, and employers turn their back on youth who carry a stigma of having a large gap in employment between their leaving school and their first job.

Implications for employment standards legislation are indirect and somewhat complicated. Establishing high-school apprenticeship, co-op, internship and work-study programs with local partnerships with employers can facilitate the school-to-work transition (Taylor 2007) and this can be particularly important to deal with the growing education problem of boys. Employment standards regulations, therefore, must walk a fine-line between ensuring these jobs are not regulated out of existence (given their potential positive effects for acquiring experience) versus being abused by employers

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<sup>11</sup> The empirical evidence indicates that the monetary returns to education remain extremely high, especially for females, in spite of the large influx of more highly educated persons, and the returns for dropouts if they remained in school are even higher than the average, suggesting that dropping out is an irrational decision on their part (literature summarized in Gunderson and Oreopoulos 2012).

by being recycled and used as a cheap or free source of labour often displacing other workers.

The same fine line must be walked with respect to the trend towards students working while in school. For some, this can provide valuable labour market experience as well as experience in organizing one's time and a foot-in-the-door for a job when they graduate. For others, it can interfere with school-work and provide a quick source of earnings that can lead to a temptation to drop out of school. The Canadian evidence indicates that working while in school is associated with a greater likelihood of dropping out (Parent 2006), and this is especially the case for those who work long hours while in school (Bowlby and McMullen 2002). The U.S. evidence in this area is more mixed (reviewed in Parent 2006). To the extent that working while in school has negative effects, then regulating such jobs out of existence can have positive outcomes. But policies to convert part-time jobs to full-time jobs can have negative effects for students to the extent that long hours of work interfere with school.

### ***3. Changing Institutional Pressures***

In addition to the changing pressures and trends from the employer's demand side and from the changing characteristics of the workforce, there is a wide array of inter-related changing institutional trends, many of which are also emanating from the pressures from the demand side and the supply side of the labour market.

#### **3.1 Decline in Union Representation and in Union Power**

Like most industrialized countries, Canada has experienced a long-term decline in union representation and in union power.<sup>12</sup> Union density has fallen from 37.6% in 1981 to 29.9% in 2012 for the public and private sectors combined. The decline has occurred only for men (from 42.1% in 1981 to 28.5% by 2012); for women it has been stable (at

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<sup>12</sup> This description of the trends is from Galameau and Sohn (2013) and from the July 2015 presentation to the Changing Workplace Review Special Advisors.

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31.4% in 1981 to 31.3% by 2012) so that women now constitute a majority of union members (mainly in the growing health and education sectors). The decline has been especially prominent for young workers age 17-24 where unionization rates have always been lower, falling from 26.4% in 1981 to 14.8% in 2012. It has occurred across all provinces, mainly during the 1980s and 1990s. The decline is largely a private sector phenomenon; unionization is high in the public sector at about 70%, while it has declined to about 16% in the private sector by 2012. It has occurred across all developed economies; in fact, the decline in Canada has been small relative to most other countries. The proportion of the workforce covered by a collective agreement is about 2 percentage points higher than the percent unionized in 2012.

The causes of the decline are varied. Slightly under 40% of the private sector decline between 1986 and 2009 is attributed to compositional changes away from industries and occupations of high union density (e.g., blue-collar work in manufacturing) to ones of low union density such as white-collar work (e.g., professional, technical and administrative) and service jobs. After netting out the effect of compositional changes, about 60% of the decline is attributed to changes in the propensity to be unionized reflecting such inter-related factors as a *decline in the demand* or desire for unionization on the part of workers, an *increase in employer resistance* to unions, and *legislative and policy initiatives* that fostered the decline. There is less agreement about the precise contribution of these different factors in part because of their inter-related nature. For example, some of the decline in demand for unionization on the part of workers may reflect increased employer resistance, and increased employer resistance may be fostered if they perceive a decline in demand for unions on the part of workers. Legislative initiatives may also be influenced by any decline in demand by workers or increased resistance by employers.

The *decline in demand* for unionization on the part of workers may have been fostered by the fact that the union wage premium has declined, from about a 15% premium to 8%, likely because such premiums are difficult to sustain given the increased competitive pressures from globalization, free trade, outsourcing,

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deregulation and privatization.<sup>13</sup> A contributing factor to the decline in demand for unions could also be the decline in *public* approval of unions, from 72% in 1936 to a low of 49% in 2009 (a year of recession), recovering slightly to 54% in 2013.<sup>14</sup>

The competitive pressures from globalization and free trade may also increase *employer resistance* to unions to the extent that unions impose costs in terms of functions that may be desired by employees but costly to employers such as grievances, restrictive work rules, and enforcement of laws and regulations especially against employer reprisals. Such employer resistance can be manifest in anti-union suppression activities, many of which constitute unfair labour practices, such as the dismissal of union organizers and supporters. Perhaps surprisingly, managerial hostility towards unions appears slightly stronger in Canada than in the US and Canadian managers appear more likely to use extreme methods to oppose organizing drives (Campolieti, Gomez and Gunderson, 2013). This likely reflects the perceived greater power of unions in Canada, given the unionization rate in Canada is about double that of the US.

The extent of unionization can also be affected by *legislative and policy initiatives* such as the shift from a card regime to a voting regime, first-contract arbitration, treatment of unfair labour practices during the certification process including remedial certification powers given to the Board, and extending the right to organize to groups that were previously excluded.

Union decline can also be fostered by the rise of *union substitutes* such as non-union grievance procedures, employee involvement schemes and profit sharing. In Canada, tripartite Sector Councils could be a substitute for unions to the extent that they are to represent the interests of both employees and employers in areas such as training, layoffs, skill development, apprenticeship and trade certification, co-op programs and internships. The intent was to foster labour-management co-operation, in contrast to the conventional adversarial model of unions. The Councils were formed starting in the 1990s, with about half of the Canadian workforce ultimately working in

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<sup>13</sup> This declining union wage premium in Canada is documented in Fang and Verma (2002) and Gunderson, Hyatt and Riddell (2000).

<sup>14</sup> US Gallup poll.

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jobs where there was a Sector Council. Federal core funding for such Councils, however, ended in 2013.

The increase in occupational certification and licensing in the trades and professions could also serve as a substitute for unions to the extent that such tradespeople and professionals identify with their profession and occupation group rather than a union. Although they do not attribute a direct cause-and-effect relationship, Kleiner and Kruger (2013) indicate that the rise of occupational licensing in the US was the mirror image of the decline of unionization, suggesting that such licensing and certification may provide much of the protection conventionally provided by unions. The increase in occupational licensing has not been substantial in Canada, but nor has the decline in unionization (Gomez, Gunderson, Huang and Zhang, 2015).

Legislative initiatives such as employment standards, pay equity and human rights policies could be substitutes to unions to the extent that they reduce the need for unions to obtain their objectives. However, they are also likely to be complements to the extent that unions facilitate compliance with the legislation, especially by protecting employees from reprisals by management. As well, they reduce the need for unions to give up wages or other benefits in return for the benefits provided by such legislative initiatives.

To the extent that it is deemed desirable to foster unionization, or at least stem the decline, a variety of policy initiatives merit consideration. These include: card-based certification; remedial certification; first-contract arbitration; ensuring successor rights; stemming unfair labour practices during the certification process; and facilitating the certification process by requiring access to employee lists and allowing off-site and electronic voting.

### 3.2 Disappearance of Labour as a Movement and Class

A development related to the decline of unions and their power, is what Harry Arthurs (2010) refers to as the decline of labour as a movement and class. Workers tend less and less to identify themselves as workers or with the labour movement that was once a prime determinant of political and social affairs. There are many possible reasons for the “disappearance of labour”: programs designed to woo workers from



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their traditional loyalties; bad policy choices by labour movements and governments supported by them; competition from and conflict with the consumer and anti-tax movements; the increasing heterogeneity of the workforce; the segmentation and polarization of labour markets; and especially the appeal to workers of their other identities, and especially with the middle and upper-middle class.

The result of the “disappearance of labour” is that labour movements became less able to mobilize workers; political and industrial pressures from the labour movement for reform therefore abated; labour was moved down the agenda of public interest and concern, of government policy-making, and of academic attention; and employers came to feel less inhibited in adopting policies and practices that adversely affect workers.

Arthurs (2010, p. 20) further argues:

“Without labour solidarity, collective bargaining legislation becomes inoperable, without public support and engagement, labour standards legislation becomes more difficult to implement; and without effective class mobilization, the prospects for worker-friendly labour market policies, legislation and administration diminish considerably.” (p. 20).

Arthurs (2010, p. 20) then cites that a new, optimistic narrative may be emerging in such forms as Supreme Court decisions and legal-scholarly and judicial pronouncements that emphasize the importance of employment not only as a means of financial support but also as providing a sense of identity, self-worth and emotional well-being.

### 3.3 Reorientation from East-West to North South Orientation

Canada has experienced a re-orientation from East-West within Canada towards North-South between Canada and the US as well as Mexico, largely as a result of free trade agreements. (Gunderson 1998 and references cited therein). In a sense, this was a natural re-orientation since the natural barriers tend to run North-South rather than East-West and the majority of the Canadian population lives near the Canada-US border. As Krugman stated (1991, p. 2) "Canada is essentially closer to the United States than it is to itself!"

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While there are elements of the North-South re-orientation being a natural one, it is also the case that it did not just happen – it was made to happen through political pressures and generally over the opposition of organized labour. As indicated in Gunderson (1998, p. 201):

“One of the main rationales for NAFTA, for example, was not so much to get the benefits of free trade, but rather to "lock in" the market-oriented reforms that were occurring in Mexico and to stabilize political relations with the United States (Prestowitz et. al. 1991, p.ii and references cited therein). Similarly, much of the Canadian business support for CAFTA was not so much motivated by the benefits of free trade (tariffs were already low in most cases) but to put pressure on Canadian politicians to move more towards the less regulated less unionized markets of the United States.”

This re-orientation is part of the new regional alliances that are forming throughout the world and in Canada as well. British Columbia is increasingly linked to the growing commerce of the Asia-Pacific Rim and the Pacific Northwest of the US (Goldberg and Levi 1993). Alberta and Quebec are increasingly linked to the US as a market for their energy resources, with Quebec also trying to diversify towards the US if separation occurs. The Atlantic Provinces are forming regional alliances and looking South, especially to protect themselves from isolation from the rest of Canada should Quebec separate. Ontario has shifted from its East-West orientation as a manufacturing hub built up under the earlier protective tariff and subsidized rail lines, towards a more North-South focus (Courchene and Telmar 1998). This is fostered by the fact that Southern Ontario is within one day of trucking distance to three-quarters of Canadian manufacturing and over half of U.S. manufacturing (Courchene and Telmer, 1998, p. 297). Toronto and its surrounding "Golden Horseshoe" are within 10 hours driving time from major U.S. markets like New York, Boston, Philadelphia, Baltimore, Washington, Pittsburgh, Cincinnati, Cleveland, Detroit and Chicago.

The redirection in Canada from an East-West to a North-South orientation is illustrated by the fact that after the Canada-US FTA of 1989, internal trade flows within Canada fell from being 20 times more prominent than external trade flows with the US, to only 12 times more prominent by 1993 (Helliwell 1998, p. 14, 21).

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This North-South reorientation implies that Canadian businesses are increasingly competing with US businesses that tend to have fewer labour regulations and restrictions (Block 2005, Block, Clark and Roberts 2003 and Block and Roberts 2002). With the earlier East-West orientation, Ontario looked to other provinces to benchmark their labour regulations, and the costs of their regulations were buffered somewhat by protective tariffs and subsidized East-West rail links. With a greater North-South orientation, Ontario now competes more with the US and compares its regulations more with the generally lesser regulations of the US.

### 3.4 Inter-jurisdictional Pressures to Harmonize Legislative Initiatives

The North-South reorientation, as well as the pressures that are fostering the decline of unions and their power, are also pressuring governments in various jurisdictions to reduce their costly legislative and regulatory initiatives so as to compete for business investment and the jobs associated with that investment. Given the greater mobility of capital, firms have a credible threat to relocate their plants and investments into countries and jurisdictions within countries that have lower regulatory costs, and then export back into countries with higher regulatory costs. Not all organizations, of course, will follow this strategy. All that is required for governments to feel pressured to respond is that *some* organizations do so at the *margin of decision* when new investments are being made. Losing such investments or having plants relocate out of the province can have substantial effects on workers and their communities. The concern is that this will lead to a “race to the bottom” or “harmonization to the lowest common denominator.”

As stated by Betcherman (1993, p. 14): "Where 'footloose' capital can change its landing spot, does an individual country realistically have the room to manoeuvre to implement a policy regime that is more costly than those of its neighbours and competitors?" As stated by Schott (1992, p. 240): "Countries are now competing in a global beauty contest to see which have the most desirable economic policies. The judging is being done by investors -- both domestic and foreign -- who vote with their capital."

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Such downward harmonization in the labour area can be inhibited by a number of factors (Gunderson 1998). The laws and regulations may not be enforced especially those aspects that are most costly to employers. Some of the costs may be offset by benefits to employers, perhaps in such forms as easier recruiting and reduced turnover. Some of the initial costs to employers may be shifted back to workers in the form of lower compensating wages for the benefits associated with the policies. Some may also be shifted forward to customers in the form of price increases, although that is increasingly difficult in a world of increasingly competitive markets. Employers may not alter their investment and plant location decisions in response to costly policies, especially to the extent that the costs of labour regulations are small relative to other costs of doing business. Lastly, governments may choose not to compete for business investment and the associated jobs, not wanting to retain or attract business that depends on few labour regulations. As well, governments can be constrained by the Charter and Supreme Court decisions pertaining to employee rights.

While many of these conditions prevail, they do not likely offset the pressure on governments to compete for business and the associated jobs by paying attention to the costs associated with labour regulations as well as other regulations. As such, it is likely that there will be a *tendency* towards harmonization and the harmonization will be downwards *towards* the lowest common denominator, but complete harmonization to the lowest common denominator is unlikely.

The evidence on this issue tends to be controversial, somewhat dividing on disciplinary grounds, with economists tending to find downward convergence (as economic theory would suggest) and with political scientists and lawyers tending to suggest that there has been little convergence (emphasizing the sustained power of the state).<sup>15</sup> Gomez and Gunderson (2005b) review that evidence and provide their own evidence indicating downward harmonization in areas like unionisation and collective

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<sup>15</sup> The conclusion that there is little or no convergence in labour and social policies between Canada and the US tends to be found by Banks (2013), Banting, Hoberg and Simeon (1997), Cameron and Stein (2000), and Simeon, Hoberg and Banting (1997), and across OECD countries by McBride and Williams (2001), and Garrett (1998). Banks (2013) provides a particularly thorough review of the literature.

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bargaining regulations, strikes, minimum wages, unemployment insurance, equal pay for work of equal value, and pensions and welfare. Their evidence is more inconclusive in areas like workers' compensation, health and safety, and labour standards, and they find upward harmonization in the area of age discrimination. They indicate, however, that others tend to conclude that convergence of policies has not occurred.

With respect to union organizing, Bronfenbrenner (2000) provides a compelling analysis of the effect of capital mobility based on surveys, interviews, documentary evidence and electronic data bases. She concludes: "... the recent acceleration in capital mobility has had a devastating impact on the extent and nature of union organizing campaigns. Where employers can credibly threaten to shut down and/or move their operations in response to union activity, they do so in large numbers." (p. v) She finds that this threat is almost twice as high in mobile industries such as manufacturing, communication and wholesale distribution, compared to immobile industries such as construction, health care, education, retail and other services. Reflecting her perception of the effect of Canadian laws in facilitating certification, she recommends (p. vii) the adoption of Canadian-style laws such as card signing vs. votes, stricter enforcement of unfair labour practices and first-contract arbitration.

### ***4. Manifestation of the Changing Pressures in the External Labour Market***

The previously discussed institutional pressures as well as those from the demand side and supply side of the labour market have led to a wide range of adjustments consequences in the external labour market. Many of these have also affected the internal labour markets and workplace practices of firms, but they will be discussed here with obvious carry over to the discussion of changes in the internal labour markets of firms.

### 4.1 Increase in Non-Standard Employment

Prime amongst these changes has been the increase in non-standard employment designed to provide flexibility for employers to meet their competitive challenges arising from globalization, deregulation and privatization.<sup>16</sup> Much (but not all) of this is *precarious* employment and *contingent* upon the work being available -- a just-in-time workforce to fit the just-in-time production needs of employers, with risks often shifted from employers to employees. It is often (but not always) occupied by vulnerable, disadvantaged groups with little or no individual or collective bargaining power provided through a union. These vulnerable groups include the recently unemployed, some women, members of minority groups and youths, especially school drop-outs. There are various ways of defining non-standard employment, although it generally includes: permanent part-time work; seasonal work; casual, temporary work on limited-term contracts; freelancing; self-employment; temporary-help agencies; on-call work; telecommuting and home working.

The different definitions and concepts of non-standard employment make it difficult to determine the exact extent of the phenomenon and the extent to which it has changed over time (Cappelli and Keller 2013a). Nevertheless, the following generalizations emerge, with variations depending upon the definition: it constitutes a substantial portion of the workforce; it has grown over time, mainly since the 1970s and 1980s, but that growth has slowed considerably since the early 1990s; and it is an extremely heterogeneous

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<sup>16</sup> There has been a virtual explosion of books, reports and articles on the increase in non-standard employment that has occurred in Canada and other Western developed economies. Examples, which also include other references to the extensive literature, include: Cappelli and Keller 2013a, 2013b; European Commission 1999; Gleason 2006; Gagliano 1997; Houseman 1998; Houseman and Osawa 2003; ILO 1998; Kalleberg et al. 1997; Manga 2000; OECD 2008; Rubery 1998; Stone and Arthurs 2013; Supiot 2001; and Weil 2014. Of particular relevance to Canada and Ontario are: Banks 2001; CIBC 2015, Cross 2015; Law Commission of Ontario 2012; Noack and Vosko 2011; PEPSO 2013, 2015; TD Economics 2015; Trudeau 1998; Vosko 2006, 2010; Vosko, Zukewich and Copeland (2003); WAC 2015, Zeytinoglu (1999); and Zeytinoglu and Muteshi 2000).

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phenomenon especially with respect to the extent to which it represents vulnerability and precarity. Its prominence, growth and association with vulnerability and precarity, however, suggest that it merits careful policy attention. Even those who are not vulnerable can be subject to precarious practices such as with scheduling.

The negative aspects of precarious non-standard employment are well-documented in the literature cited above. Such employment is generally characterized by low pay and fringe benefits, little or no job security, limited training, few opportunities for career development and advancement, little control over one's work environment and little if any protection through unions or labor laws and regulations. Not being covered by a collective agreement means not only that they do not get the wage gains and protection of a union through such means as the grievance procedure, but also they do not get the assistance of the union in enforcing labour laws and regulations through various means: informing workers of their rights; representing them in disputes; providing protection from managerial reprisals in the case of complaints; and incorporating regulatory requirements into the collective agreement so that they are subject to the grievance procedures and continuity, should the legislation be rescinded.

Not all non-standard employment, however, is involuntary, precarious and occupied by vulnerable workers. (Gomez and Gunderson 2005a and references therein). Some is voluntary and fits the needs of persons seeking work-life balance (Drago and Hyatt 2003), or to accommodate disabilities (Campolieti, Gomez and Gunderson 2009; Schur 2003), or working-part time while in school, or making transitions from school to work, or from retirement back into the labour force. Some non-standard work is extremely well paid, sometimes to compensate for the uncertainty of the work. Some workers prefer higher cash wages to fringe benefits since they already receive fringe benefits as the children or spouses of other workers. Some non-standard employment like limited-term contracts, for example, may simply be substitutes for the probationary period that was common in the old standard employment contract. Some are temporary stepping stones into more permanent jobs. Cappelli and Keller (2013b, p. 883), for example, provide US survey evidence indicating that "more than 90% of establishments have converted temp agency workers to permanent employees." Autor and Houseman (2006) indicate how such conversion of temporary help agency work into regular employment may be

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particularly effective for disadvantaged workers as a route out of poverty. In effect, employers may be reluctant to take on the risk of hiring such workers directly into employment, but may be willing to hire them into temporary-help work as a screening device for more permanent employment (Davis Blake and Broschak 2000; Houseman et al. 2003).

In essence, some non-standard employment can be “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. Also, some of the rise of non-standard employment reflects the increasing regulation of the standard employment contract (evidence provided in Autor 2003 and Gramm and Schnell 2001). The challenge for employment standards and labour relations legislation is to recognize the diverse nature of non-standard employment and that a “one-size-fits-all” legislative and regulatory policy response is unlikely to be appropriate. And even if the non-standard job is a “bad job” there may be a trade-off between a bad job and no job if the bad job is regulated out of existence.

The exponential rise of the “sharing economy” aided by new communication technology illustrates the difficult trade-off. Examples include Uber car services and AIR&B accommodation services. The employment relationship in such situations is complex and often ill-defined. In Uber, for example, there is contesting over whether drivers of their own cars are independent contractors or dependent contractors and hence employees of Uber, subject to the conventional regulations of employees. Those who provide their services in the sharing economy generally do so on a voluntary basis and they have certain advantages such as tax deductions for their business expenses. Whether they would benefit by being deemed to be dependent contractors is an open question in need of further research.

### 4.2 Small Business and Fissured Workplaces, including Franchises

Small businesses have grown in importance much of it associated with the fissured employment<sup>17</sup> as former large vertically integrated firms increasingly focus on

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<sup>17</sup> In private communications with me, Harry Arthurs, appropriately in my view, indicated



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their core competence, subcontracting and outsourcing many of their peripheral tasks to small firms (Weil 2014, 2015). Such small businesses are generally very cost conscious having to compete for contracts, and they are often operated by entrepreneurs who are averse to regulations. The same applies to many of the IT start-ups. Immigrants also often operate small firms and language barriers may inhibit them from following regulations.

Regulating such small firms is difficult for a variety of reasons. They generally do not have a sophisticated human resource department to be informed of regulations and how to follow them. Their entrepreneurial nature often makes them averse to regulations. Their profit margins are often squeezed such that they are pressured to avoid costly regulations, especially if their competitors do not follow them. As well they can be difficult for enforcement agencies to monitor, and they are sufficiently small that penalties or “public shaming” do not serve a visible precedence that gets the attention of other firms, as would a large, visible employer.

Many small firms are franchisees raising the issue of whether liability for labour regulations should fall on the franchisor or franchisee. Similar issues apply to supply chains. Weil (2014, 2015) makes the point that franchisors are capable of writing and enforcing detailed contracts on franchisees with respect to quality, cleanliness and service delivery and how inputs are to be used. As such, they should be perfectly capable of writing such contracts for how the labour input should comply with labour regulations. Such uniform requirements would also mean that there would be a level playing field across the franchisees with respect to labour regulations so there would be no competitive advantage in not complying with such regulations in order to save costs. Franchisors and firms at the top of the supply chain can provide a one-stop-shop or focal point to develop co-operative comprehensive agreements with enforcement agencies, and they have the resources to inform and educate their franchisees and suppliers about complying with labour regulations (Weil 2005, p. 45; Weil and Mallo 2007). Since they value their brand name they can also be sensitive to public shaming

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that it would be more accurate to speak of “fracked” workplaces. Fissures occur naturally; fracking is the result of a deliberate decision to use technology to create a serious geological disturbance, in order to generate profit (often with minimal attention to the serious systemic harms that may result).

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through the transparent disclosure of information on violations (Weil 2005; Fung, Graham and Weil 2007). Given the concentration of franchise and supply chain arrangements in specific sectors, Weil (2009) also recommends a sector based approach to rank sectors for non-compliance and target enforcement accordingly. He also advocates the use of cargo embargos for supply chains if they are feasible (Weil 2009; Weil and Mallo 2007).

The extensive resources and “deep pockets” of franchisors and organizations at the top of the supply chain, however, also enable them to resist and contest compliance with labour regulations. As well, when they operate across different jurisdictions they can face different regulations. Furthermore, the franchisors and organizations at the top of the supply chain are a step removed from the everyday operation of the business where compliance issues occur (Weil, 2008).

Clearly, there are pros and cons of placing liability for labour regulations on the franchisor as opposed to the franchisee, or on organizations at the top of the supply chain, or for assigning joint responsibility. Enforcement agencies may prefer to put enforcement functions on the franchisor or on organizations at the top of the supply chain, so as to save on enforcement resources. But this also means that they may face the “deep pockets” of the franchisor or organizations at the top of the supply chain, should they have to contest enforcement.

### 4.3 Job Instability and the Decline of Lifetime Jobs

Expected tenure in the workforce is high for incumbent workers who are increasingly made up of older workers who have long tenure (given the ageing workforce) and women who are remaining in the labour force for longer and more continuous periods of time. New entrants to the workforce, however, cannot expect to have “lifetime” long-tenured jobs and a semblance of job stability with the same, often unionized, employer as did earlier generations (Farber 2007, 2010). Younger workers can expect to start off in limited-term contracts or internships or self-employment and change careers across different employers.

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Such workers are more difficult to organize and to protect through labour regulations that focus on the job rather than the individual. They are less likely to have a commitment to their employer just as their employer is less likely to have a commitment to them. Employers have effectively downloaded employment risk to workers even though they are less equipped as individuals to diversify and deal with such risk.

The implications for labour regulations are complex. Alternative forms of representation and employee voice may take on more importance if conventional union coverage under the former standard employment contract is less feasible. More attention may have to be paid to training and equipping workers to take on a variety of changing careers. More attention also may have to be paid to providing income security through the tax-transfer system if it is more difficult to provide through the employment relationship.

### 4.4 Growing Wage Polarization and Income Inequality

As discussed previously, the changing pressures have led to greater wage polarization as the gap between the wages of those at the top and bottom of the wage distribution has increased substantially, while wages in the middle have stagnated. Globalization and technological change have put a premium on the professional, managerial and entrepreneurial skills of those at the top of the pay distribution, while import competition, technological change, non-standard employment and the intense competition of small firms for the outsourced contracts under the fissured employment relationship have lowered wages even further at the bottom of the wage distribution. This has been furthered by the fact that workers displaced from the former well-paying jobs in manufacturing have often sought jobs in the lower paying retail and service sectors, with that supply influx lowering their wages even further. Deregulation and privatization have also often led to the higher-wage protected jobs being displaced by lower wage jobs that compete for the former regulated and public sector jobs.

The growing wage polarization has also been a contributing factor to the growing income inequality that has occurred in Canada and throughout the developed world

(Fortin, Lemieux, Milligan and Riddell, 2015). There is concern over moving towards a world of “haves” and “have nots” and the social instability that this could entail.

### 4.5 Permanent Job Displacement

The decline of well-paid blue-collar often unionized jobs in manufacturing has been prominent in Ontario throughout the 1980s and 1990s, especially in steel, pulp and paper and auto manufacturing. This has led to permanent job displacement especially for older males who have industry-specific skills that are less relevant for the New World of Work (Cohen 2008). They are often too young to retire, but they also have difficulties retraining for the new jobs.<sup>18</sup> The mass layoffs and plant closings mean that they are also competing with large numbers of other unemployed workers for the few scarce jobs that are available in their community and their age and community ties mean that they are often geographically immobile.<sup>19</sup>

Wage losses for such permanently displaced workers, if they are fortunate enough to find a new job, are generally in the neighborhood of 10-30 percent (Benjamin, Gunderson, Lemieux and Riddell, 2012, p. 524). This can be compounded by the reduction in the value of their home when their community faces mass layoffs and plant closings. Their pensions may also be put at risk. The negative consequences on such individuals, their families and their broader community are well documented. They include health problems, child abuse, spousal abuse and increased criminal activity, all of which also increase the cost of social services (Gunderson and Riddell, 2000, p. 26).

The negative consequences of such permanent job loss are certainly a rationale for advance notice protection and additional protection for mass layoffs and plant closings given the generally positive effects of advance notice on job search as discussed previously.

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<sup>18</sup> The difficulties older workers have in absorbing training is documented in (Kubeck et. al. 1996) based on a review of 32 studies.

<sup>19</sup> The increasing proportion of the unemployment rate due to permanent job losses in Canada is discussed and documented in Picot, Lin and Pyper (1998).

## ***5. Manifestation of the Changing Pressures on the Workplace Practices within Firms***

The pressures and trends discussed previously have manifestations not only in the external labour market as outlined, but also in the internal labour market or workplace of the firm. These manifestations include: high-performance work systems, broader-based job classifications, breakdowns in pattern bargaining, flexible compensation and work time arrangements, and an increased emphasis on diversity. Other manifestations like subcontracting and the use of temporary help-agencies were discussed previously in the context of the external labour market.

### **5.1 High-Performance Work Systems**

High-performance work systems tend to involve an integrated bundle of workplace practices involving various features of job design, employee involvement, training, and performance-based compensation. The bundles are not only *integrated* and complementary to each other but are designed to *fit* with the business strategy of the organization. They tend to involve flatter as opposed to hierarchical organizational structures, usually with broader-based job classifications, and with a core of protected “insiders” and a peripheral of “outsiders” in such forms as subcontractors, temporary-help agencies and limited-term contracts as part of the fissured employment relationship. Such high-performance systems are designed in part to elicit the discretionary effort of the core insiders and to align their objectives with the business strategy of the organization.

The literature generally finds favourable effects of high-performance work systems on such outcomes as absenteeism, pay and ultimately on productivity and firm performance,<sup>20</sup> although negative effects especially on worker stress are also found (references cited in Godard and Delaney, 2002, p. 492).

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<sup>20</sup> Reviews of the *effects* of high-performance work systems include Applebaum et al (2000), Becker and Huselid (1998), Bélanger (2000), Guest (1997), Ichniowski et. al.

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High-performance work systems tend to have a number of implications for ES and LR regulations. Their use of peripheral subcontracting, temporary-help agencies and limited-term contracts obviously raise the issue of who is the employer and employee for purposes of ES regulations. Their emphasis on aligning human resource and workplace practices with the business strategy of the organization implies that workplace practices have to be aligned with the profit motive. This can mean evading labour regulations that are costly and that interfere with the business strategy of the organization. There is generally a resistance to unionization since unionization is often adversarial rather than being aligned with the business strategy of the organization. Direct employee involvement can be an alternative to employee involvement through the union. There is also general resistance to bureaucratic and regulatory intervention on the grounds of interfering with the business strategy of the organization.

### 5.2 Broader-Based Job Classifications

As indicated, broader-based job classifications are more common whereby employees are expected to do a wider range of tasks. This is in contrast to the former narrow job classifications often associated with collective agreements that specified the demarcation of specific tasks in a job classification. The broader-based job classifications tend to involve multi-skilled training and job rotation so as equip employees to do the multi-tasking required to perform the wider range of tasks. They also tended to be associated with reduced supervision and workplace teams.

One implication of the multi-tasking is that it may make leave policies easier for employers to accommodate since others can take over tasks of the person on leave. However, team production may make accommodating leaves more difficult if missing team member are crucial to the operation. Having the remaining team members cover for the tasks of the missing member can put additional pressure and stress on existing team members. The requirement for broader-based job classifications can also conflict

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(1996), King (1995), Kopelman (1986), Macy and Izumi (1993), Newton (1996), US Department of Labor (1993), Weber (1994), and Wood (1999).

with collective agreements, and hence foster resistance to unions, with their emphasis on the demarcation of more narrowly-defined job classifications.

### 5.3 Breakdowns in Pattern Bargaining

The changing pressures have also led to a breakdown in pattern bargaining and an increased emphasis on the ability-to-pay of individual organizations (Chaykowski, 2009, p.252). In the Old World of Work, unions would typically negotiate with a major employer in sectors like auto, steel, pulp-and-paper, forestry, railroads and energy, and then negotiate to have that settlement mimicked throughout the sector. Such pattern bargaining has tended to break down as unions have less power to have the terms and conditions extended throughout the sector, and as the survival of individual firms within the sector (and their unions) often depend upon being able to deviate from the conventional pattern.

Although the literature does not deal with this directly, it could imply difficulties in having sectoral agreements, at least in terms of having common terms and conditions extended throughout the industry. The pattern bargaining tended to occur in industries dominated by large firms. Such firms generally provide terms and conditions beyond the minimum standards required by employment standards legislation so the breakdown in pattern bargaining does not likely have major implications for employment standards.

### 5.4 Flexible Compensation and Pay-for-Performance

Compensation arrangements have become more varied and flexible in forms such as pay-for-performance, merit pay, individual and group bonuses, and team-based pay. The research literature generally finds performance-based pay systems to have positive effects on productivity and performance.<sup>21</sup> It also finds, however, that pay dissatisfaction,

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<sup>21</sup> Positive effects of performance-based pay systems on productivity and performance are documented in Abowd (1990), Bandiera, Barankay and Rasul (2005), Booth and Frank (1999) Campbell et. al. (1998), Cauc and Dormont 1997, Delaney and Huselid (1996), Drago and Garvey (1998), Fang and Heywood (2006, 2010), Fernie and Metcalf (1995), Gerhart and Murray (1998), Geilen et al., (2010), Gomez-Mejia (1992), Gomez-

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often arising from the perception of being paid “unfairly,” also tends to have negative effects on employee productivity and performance.<sup>22</sup>

These findings have mixed implications for requiring equal pay for equal work based on employment status (e.g., part-time vs. full-time; limited-term contract workers vs. permanent employees; temporary-agency workers vs. regular employees). On the one hand, requiring equal pay can have negative effects on performance and productivity if there are differences in the nature of the work. This could be the case, for example, if part-time, or limited-term contract or temporary-help workers do not do all of the work typically done by regular, full-time permanent employees. Lautsch (2002), for example, found that contingent workers were generally assigned to positions that involved more narrowly defined tasks compared to those done by regular workers. On the other hand, if they truly do the same work, then they will be dissatisfied with their pay with its negative effects on performance and productivity.

This highlights the importance of ensuring that the work is equal in mandating equal pay for equal work. It also highlights that employers have an incentive to provide equal pay if the work truly is equal so as to avoid the negative consequences of pay dissatisfaction from those who feel they are paid unfairly.

### 5.5 Flexible Worktime Arrangements

Worktime arrangements have also become more flexible in various forms such as work-sharing (e.g., reducing the workweek to avoid layoffs), job-sharing (e.g., two employees sharing the same job each working half-time), compressed workweeks (e.g.,

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Mejia and Balkin (1992), Heywood et. al. (1997), Lazear (2000), Long and Fang (2012), Lucifora and Origo (2015) and Origo (2009).

<sup>22</sup>Heneman and Judge (2000) provide a comprehensive review highlighting the negative effects that pay dissatisfaction have in various dimensions including performance, commitment, trust, employee theft, recruitment, turnover, lateness, and voting for a union. Specific examples of the negative effects of pay dissatisfaction include lateness (Koslowsky, Segic, Krausz and Singer 1997), theft (Greenberg 1990, 1993), and turnover (Bretz and Thomas 1992).



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longer workday in return for a shorter workweek), flexitime (e.g., altering start and end times with some core hours required) telecommuting (working from home) and irregular work scheduling. These more flexible arrangements are designed in part to provide a “just-in-time workforce” to meet the “just-in-time delivery” requirements of employers. However, they also often meet the needs of two-earner families to balance work-family needs and reduce commute times. Irregular work schedules, however, can conflict with work-family balance especially when only short-notice is given.

The empirical literature on the effect of alternative work time arrangements generally finds that employees *prefer* such arrangements when they facilitate work-life balance. Positive effects on outcomes such as absenteeism, productivity and performance are also generally found, although there are exceptions. For example, *compressed workweeks* are found to have positive effects on reducing absenteeism and turnover<sup>23</sup> but also to lead to increases in stress and fatigue.<sup>24</sup> *Flexitime* generally has positive effects on reducing absenteeism and stress as well as increasing productivity, although that latter effect is often weak.<sup>25</sup> Teleworking from home generally has positive effects on cost reductions and enhanced productivity.<sup>26</sup> Work-

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<sup>23</sup> Generally positive effects of compressed workweeks on measures such as absenteeism and turnover are found in Baltes et. al. (1999), Dalton and Mesche (1990), Hung (1996) and Venn (1997).

<sup>24</sup> Stress and fatigue effects of compressed workweeks are documented in Fast and Frederick (1996) as well as earlier studies reviewed therein.

<sup>25</sup> Generally positive effects of flexitime on productivity and reduced absenteeism are found in Adams and Jex (1999), Baltes et. al. (1999), Harrick et. al. (1986), Dalton and Mesch (1990), McCampbell (1996), Perry-Smith and Blum (2000), Scandura and Lankau (1997), Shaw, Delery, Jenkins and Gupta (1998), Shephard Clifton and Kruse (1996), although zero or negligible effects were found in Christensen and Staines (1990) and Thomas and Ganster (1995).

<sup>26</sup> Positive effects of teleworking are found in Fitzer (1997), Hill et. al. (1998), Pratt (1999), Stanworth and Stanworth (1997) and five UK studies summarized in Hamblin (1995), but no productivity effects found in KPMG (1998). Duxbury, Higgins, and Neufeld (1999) also find that telecommuting often conflicts with work-family balance.

sharing and job-sharing are generally found to be favourably *regarded* by employers and especially employees as improvements in moral and retention more than offset the additional administrative and scheduling costs, although rigorous evaluations do not seem available.<sup>27</sup>

Such flexible worktime arrangements can obviously conflict with employment standards regulations on hours of work. Their generally positive effects for both employers and employees, however, suggest that they should be accommodated as much as possible. Exceptions are when they are involuntarily imposed, especially on vulnerable workers, as can be the case with irregular work scheduling and involuntary overtime without the right to refuse.

### 5.6 Increased Diversity

As indicated previously, the workforce is increasingly characterised by diversity with respect to such dimensions as gender, visible minority status (generally associated with recent immigration), disability status, Aboriginal status and sexual orientation. These have implications mainly for human rights legislation as well as pay and employment equity legislation. However, they also have implications for labour relations legislation and employment standards.

Labour Boards are required to adhere to such legislation in their decisions and this adds to complexity in terms of their knowledge and information requirements. For employment standards, compliance and enforcement can be more complex because of language and cultural differences. New immigrants, for example, may have language barriers that inhibit them from knowing their rights, and they may be inhibited from exercising them if they come from countries with repressive regimes and corrupt bureaucracies. New immigrant employers may have similar language barriers that inhibit their knowing their responsibilities, and they ignore their legal requirements if they come from countries where the rule of law is not prominent.

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<sup>27</sup> Favourable effects of worksharing and jobsharing are found in Canada Employment and Immigration Commission (1980), Lanoie et. al. (1996), Larouche and Trudel (1983), Meltz, Reid and Swartz (1981) and Reid (1982).

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Increased diversity may also make unionization and other forms of collective voice at the workplace more difficult since there is less likely to be a common set of needs as well as willingness and ability to present a common front. In the Old World of Work, the preferences of middle-aged male workers were dominant in terms of influencing the actions of unions as well as other forms of collective voice at the workplace. In the New World of Work there is a greater need to reconcile the interest of more diverse groups: the young and old over issues such as job security and pensions; males and females over issues involving human rights, discrimination and pay equity; persons with and without disabilities over issues of reasonable accommodation and seniority; and Aboriginal and non-Aboriginal persons over issues of job access.

The research literature indicates that a strong business case can be made for diversity management on the part of employers since a diverse workforce can interact with a diverse customer base as well as suppliers (including in foreign countries) and bring new ideas to the organization as well as creative and better solutions to workplace teams.<sup>28</sup> The business case is furthered by the fact that organisations that engage in discriminatory practices generally incurred excessive costs by not hiring the most productive or lowest cost employees who are qualified for the job.<sup>29</sup> This does not consider the potential cost of a discrimination lawsuit. The fact that a strong business case can be made for diversity management suggests that providing education and information to that effect may have some mileage.

With respect to anti-discrimination initiatives the policy that imposes the highest administrative costs on employers is pay equity (equal pay for work of equal value), in

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<sup>28</sup> Positive effects of diversity programs are documented in Cox and Blake (1991), Cox, Lobel and McLeod (1991), Lattimer (1995), Lobel (1999), Loden and Rosener (1991), Thomas (1991) and Watson, Kumar and Michaelson (1993).

<sup>29</sup> The costs to employers of such discrimination are documented and discussed in Ashenfelter and Pencavel 1976, Ashenfelter and Hannan, 1996; Black and Brainerd, 2004; Black and Strahan, 2001; Dunnette and Motowidlo 1982; Hellerstein, Neumark and Troske, 2002; and Meng 2004. A number of those studies also find that competitive market forces can help dissipate such costly discrimination, just as they can help dissipate any inefficient workplace practice.

part because of the cost of job evaluation procedures (Gunderson 2002). This may be a consideration to the extent that such procedures would be necessary to enforce equal pay initiatives with respect to employment status.

## **6. Conclusions and Policy Options**

This section will summarize the main pressure and trends that are affecting the various stakeholders (employees, employers and governments) in the workplace, highlighting their implications for employment standards and labour relations legislation.

### **6.1 Inter-related Pressures from Demand Side of the Labour Market**

**Inter-related pressures include:**

- Globalization and trade liberalization
- Offshore outsourcing of manufacturing and business services
- Technological change, computers and information economy
- Industrial restructuring from manufacturing to polarized services
- Deregulation and privatization
- Unanticipated demand shocks

These pressures are likely to continue into the future although many have likely worked their effects through the system since the 1970s.

#### **Effects**

- “Hollowing out” or “declining middle” of the skill and wage distribution, often involving job losses of older workers in reasonably well-paid, unionized blue-collar jobs in manufacturing.
- Polarization into well-paid (often extremely well-paid) professional, managerial and administrative jobs at the high end of the occupational distribution, stagnant wages in the middle of the job distribution, and low-paid personal service jobs at the low

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end, contributing to the growing wage and income inequality that is occurring in Canada and internationally.

- Skill-biased technological change also contributing to the rise of the sharing economy
- All contributing to the decline of unions and their power
- Fostering the rise of the fissured workplace with its non-standard employment, much (but not all) of which is precarious and falling on vulnerable workers
- Labour market adjustment consequences in form of layoffs, terminations

### Implications for ES and LR

- Increased demand for labour regulations to deal with adjustment consequences and new forms of non-standard employment (e.g., who is the employer and coverage of many non-standard employees), and to substitute for declining unionization as a form of providing protection to workers
- However, increased difficulties for governments to provide such protection given the ability of firms to relocate their investment and to outsource

## 6.2 Pressures from Nature of Workforce on the Supply Side of the Labour Market

### Inter-related pressures include:

- Workforce diversity with respect to dimensions such as gender, immigrant, Aboriginal and disability status, often subject to discrimination and likely to be vulnerable and in poverty especially because of not having attachment to paid work
- Ageing and longer-lived workforce
- Immigration and difficult for immigrants to assimilate into the labour market
- Labour force participation of women, dominance of the two-earner family and issues of work-life balance
- School-to-work transition problems for youths

### Implications for ES and LR

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- Increased emphasis on precarity issues common to these groups
- Difficulty of informing workers of their rights and having them exercise their rights given language and cultural differences
- Termination issues for the increasing portion of older workers will be more prominent given the ban on mandatory retirement
- Regulating irregular scheduling and providing an explicit right-to-refuse overtime more important for work-life balance
- Importance to walk a fine-line between ensuring that internships and co-op programs for youths are not regulated out of existence (given their potential positive effects for acquiring experience) versus being abused by employers by being recycled and used as a cheap or free source of labour often displacing other workers.

### 6.3 Changing Institutional Pressures

#### Inter-related Pressures

- Decline in union representation and power, although less in Canada than most other developed countries. The decline is attributed to compositional changes away from industries and occupations of high union density (accounting for about 40% of the decline), as well as a decline in the desire for unionization on the part of workers, a decline in public approval of unions, an increase in employer resistance to unions, and legislative and policy initiatives that foster the decline. The effect of possible union substitutes (e.g., non-union grievance procedures, employee involvement schemes, profit sharing, Sector Councils and occupational licensing) is unknown. The same is the case for legislative initiatives such as employment standards, pay equity and human rights policies.
- The “disappearance of labour” as a movement and social class
- Reorientation from an East-West orientation across Canada to a North-South Orientation with the US and Mexico.
- Inter-jurisdictional competition for business investment and the jobs associated with that investment, potentially fostering harmonization of labour regulations

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downwards towards the lowest common denominator, and especially the less regulated US. The evidence on this tends to be mixed, although most studies suggest minimal downward harmonization and a sustained role for the state.

### Implications for ES and LR

- Pressure to expand ES to fill the gap in worker protection fostered by the decline of unions and their power, although this must confront the forces that have fostered the decline in union power in the first place.
- Pressure to foster LR policies that can facilitate unionization (e.g, card-check regime, remedial certification, first-contract arbitration, ensuring successor rights, strict enforcement of unfair labour practices, and facilitating the process by requiring access to employee lists and allowing off-site and electronic voting) assuming that expanding unionization is considered a desirable objective. These must also confront the forces that have fostered the decline in union power in the first place.
- Consider fostering other or related forms of collective voice or representation at the workplace, including minority unionism or committees akin to health and safety committees with their internal responsibility system.
- Any actions must confront the effect on business costs and competitiveness especially given the increased competitive pressures, the North-South re-orientation and the increased mobility of capital. Governments are under increased pressure to compete for business investment and the jobs associated with that investment, implying a need to avoid a *possible* “race to the bottom” by using “smart regulations” (easier said than done) that can foster achieving equity objectives with minimal interference with efficiency.

## 6.4 Manifestation of Pressures in the External Labour Market

### Inter-related manifestations

- Increase in non-standard employment in various forms including: permanent part-time work; seasonal work; casual, temporary work on limited-term contracts; self-employment; temporary-help agencies; on-call work; telecommuting and home

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working; and (allegedly) independent contractors including those in the “sharing” economy. Much (but not all) of this is *precarious* employment and *contingent* upon the work being available, with risks often shifted from employers to employees. It is often (but not always) occupied by vulnerable, disadvantaged groups with little or no individual or collective bargaining power provided through a union. These vulnerable groups include the recently unemployed, some women, members of minority groups and youths, especially school drop-outs.

- Growth of small business including franchises and providers in supply chains
- Job instability and decline of lifetime jobs
- Growing wage polarization and income inequality and stagnant wages in the middle of the occupational distribution.
- Permanent job displacement and large associated wage losses especially for older workers, as well as associated social costs from health problems, child abuse, spousal abuse and increased criminal activity.

### Implications for ES and LR

- Issue of coverage for non-standard workers, especially for the precarious who are vulnerable, raising issues such as who is the employer
- The variation in the extent to which different aspects of non-standard employment involve precarious work occupied by vulnerable workers highlights suggests that a “one-size-fits-all” solution is neither feasible nor desirable. In many cases, non-standard employment meets the needs of the increasingly diverse workforce, including the need to achieve work-life balance.
- Attention must also be paid to the fact that some of the rise of non-standard employment reflects the increasing regulation of the standard employment contract. As well, even if the non-standard job is a “bad job” there may be a trade-off between a bad job and no job if the bad job is regulated out of existence.
- Small businesses create regulatory challenges for a variety of reasons. They generally do not have a sophisticated human resource department to be informed of regulations and how to follow them. Their entrepreneurial nature often makes them averse to regulations. Their profit margins are often squeezed



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such that they are pressured to avoid costly regulations, especially if their competitors do not follow them. As well they can be difficult for enforcement agencies to monitor, and they are sufficiently small that penalties do not serve a visible precedence that gets the attention of other firms, as would a large employer, and especially one that is sensitive to its public image.

- Franchising also creates regulatory challenges in terms of whether the franchisor or the franchisee or both are responsible for labour regulations. The same applies to firms at the top of the supply chain and supplier firms. Franchisors may facilitate compliance by entering into co-operative agreements with enforcement agencies to require their franchisees to comply with labour regulations just as they require them to follow standards of quality, cleanliness and service delivery and how inputs are to be used. This would also create a level playing field across the franchisees with respect to labour regulations so there would be no competitive advantage in not complying with such regulations in order to save costs. Franchisors are sensitive to their brand name and public image so they can be susceptible to public shaming by transparent posting of non-compliance. They also have “deep pockets” that would enable them to provide resources to inform and educate their franchisees about complying with labour regulations. Such “deep pockets,” however, also enable them to resist and contest compliance with labour regulations. As well, when they 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.
- Increased job instability and the decline of lifetime jobs suggests that alternative forms of representation and employee voice may take on more importance if conventional union coverage under the former standard employment contract is less feasible. More attention may have to be paid to training and equipping workers to take on a variety of changing careers. More attention also may have to be paid to providing income security through the tax-transfer system if it is more difficult to provide through the employment relationship – that is, focus on the individual and not the job.

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- The growing wage polarization and income inequality suggests that ES and LR regulations are viable policy instruments that can deal at least somewhat with these equity oriented issues. The key is to insure that providing a more equitable distribution of the pie does not dramatically reduce the size of the pie (again, easier said than done). As well, it is important that regulations do not foster protected “insiders” at the expense of unprotected “outsiders.” The polarization also raises the issue of whether higher-end occupations (supervisors, managers, professionals) should be covered by ES regulations.
- Permanent job displacement and large associated wage losses especially for older workers highlight the importance of advance notice especially for mass layoffs (which generally have favourable effects on both displaced workers and hiring by subsequent employers) as well as termination protection, albeit the latter can foster protection to “insiders” at the expense of reduced opportunities for “outsiders” as firms anticipate expected termination costs into their hiring decisions.

### 6.5 Manifestation of Pressures on Workplace Practices within Firms

#### Inter-related workplace practices

- High performance work systems
- Broader-based job classifications
- Breakdown in pattern bargaining
- Flexible compensation and pay for performance
- Flexible worktime arrangements
- Increased workforce diversity

#### Implications for ES and LR

- High performance work systems rely on the use of peripheral subcontracting, temporary-help agencies and limited-term contracts, raising the issue of who the employer is for purposes of ES regulations. Their emphasis on aligning human resource and workplace practices with the business strategy of the organization implies that workplace practices have to be aligned with the profit motive; this

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can mean evading labour regulations that are costly and that interfere with the business strategy of the organization. They generally have a resistance to unionization since unionization is often adversarial rather than being aligned with the business strategy of the organization. Direct employee involvement can be an alternative to employee involvement through the union. There is also general resistance to bureaucratic and regulatory intervention on the grounds of interfering with the business strategy of the organization.

- Broader-based job classifications where employees are expected to do a wider range of tasks generally under reduced supervision can make leave policies easier for employers to accommodate since others can take over tasks of the person on leave, although team production may make accommodating leaves more difficult if missing team member are crucial to the operation. The requirement for broader-based job classifications can also conflict with collective agreements, and hence foster resistance to unions, with their emphasis on the demarcation of more narrowly-defined job classifications.
- Breakdowns in pattern bargaining and an increased emphasis on the ability-to-pay of individual organizations could imply difficulties in having sectoral agreements, at least in terms of having common terms and conditions extended throughout the industry. Pattern bargaining tended to occur in industries dominated by large firms which generally provided terms and conditions beyond the minimum standards required by employment standards legislation so the breakdown in pattern bargaining does not likely have major implications for employment standards.
- Flexible compensation and pay-for-performance tend to have positive effects on productivity and performance, but pay dissatisfaction, often arising from the perception of being paid “unfairly,” tends to have negative effects on employee productivity and performance. This has mixed implications for requiring equal pay for equal work based on employment status (e.g., part-time vs. full-time; limited-term contract workers vs. permanent employees; temporary-agency workers vs. regular employees). On the one hand, requiring equal pay can have negative effects on performance and productivity if there are real differences in the nature

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of the work. This could be the case, for example, if part-time, or limited-term contract or temporary-help workers do not do all of the work typically done by regular, full-time permanent employees. On the other hand, if they truly do the same work, then they will be dissatisfied with their pay with its negative effects on performance and productivity. This highlights the importance of ensuring that the work is equal in mandating equal pay for equal work – a difficult task as evidenced by the job evaluation procedures required under pay equity legislation for males and females. It also highlights that employers have some incentive to provide equal pay if the work truly is equal so as to avoid the negative consequences of pay dissatisfaction from those who feel they are paid unfairly.

- Flexible worktime arrangements (e.g., work sharing, job sharing, compressed workweeks, flexitime, telecommuting and irregular work schedules) can conflict with hours of work regulations under ES and give rise to difficulties in interpreting equal pay for equal work based on job status. They can have positive effects for both employers and employees, however, so that accommodating such arrangements makes sense. Exceptions are when they are involuntarily imposed, especially on vulnerable workers, as can be the case with irregular work scheduling and involuntary overtime without the explicit right-to-refuse.
- Increased workforce diversity (e.g., with respect to gender, immigrant status, disability status, Aboriginal status and sexual orientation) requires Labour Boards to adhere to human rights and pay and employment equity legislation in their decisions, adding complexity in terms of their knowledge and information requirements. For employment standards, compliance and enforcement can be more complex because of language and cultural differences. New immigrants (both as employees and employers) may have language and cultural barriers that inhibit them from knowing and exercising their rights and responsibilities, highlighting the potential importance of information dissemination. Increased diversity may also make unionization and other forms of voice at the workplace more difficult since there is less likely to be a common set of homogeneous needs as well as willingness to present a common front. The research literature indicates that a strong business case can be made for diversity management and

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eliminating inefficient discriminatory practices, suggesting that providing education and information to that effect may have some mileage.

These various trends and pressures on the workplace highlight the need for reform of ES and LR legislation and especially to provide protection to vulnerable workers in precarious work situations. But they also highlight the complex trade-offs that are involved and the difficulties in navigating those trade-offs.

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