

# EXPECTED AND ACTUAL IMPACT OF EMPLOYMENT STANDARDS

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# Executive Summary

This summary builds on the options that were arrived at in the concluding section, with the justification for considering those options provided in more detail in that section and especially in the text itself.

## Hours of Work

The evidence suggests that hours of work regulations (maximum hours, overtime premium, worktime after which the premium applies) do not have substantial effects on health and safety, work-sharing and achieving work-family balance. An explicit right-to-refuse overtime, however, can facilitate child-care and elder-care responsibilities and foster work-life balance.

## Irregular Work-scheduling

Regulating irregular work-scheduling is important to facilitate work-life balance. Potential policy options include: requirements to post work-schedules well in advance; mandatory compensation for last-minute schedule changes or for being “on-call” or for being sent home before a shift ends; requirements for “show up pay” for a minimum number of hours even if there turns out to be no work. Additional policies to consider include: requirements to offer additional hours of work to existing part-time employees before hiring new employees; providing the “right to request” changes in work hours or schedules with the employer required to consider such requests ‘in good faith’ and without any repercussions; and the explicit right-to-refuse overtime.

## Vacation and Holidays Provisions

Additions to the vacation and public holidays are not likely to be very costly to employers because they are known by employers in advance, they apply to all employers so the playing field is leveled, they can pay overtime premiums if it is crucial to have the work done on a public holiday, and most (perhaps 80%) of the costs are shifted back to workers in the form of lower pay in return for such benefits.

This does mean, however, that employees essentially “pay” for such mandated vacation and holiday time, and they may not prefer such a trade-off. Also complications arise with respect to holidays given that many are associated with religious holidays and the increased diversity of the population (especially in Ontario) suggests that accommodating such diversity can be very complicated.

### **Pregnancy and Parental Leaves of Absence**

The evidence on the impact of parental leave on various child and parental outcomes is sufficiently mixed and controversial that it does not provide clear guidance for policy initiatives in the employment standards area. Converting unpaid leave to paid leave requirements for employers can have the unintended consequence that it may make employers reluctant to hire, retain or promote women. This would not be the case if paid leave were financed out of public funds, as is partially the case now under Employment Insurance.

### **Personal Days and Other Leaves of Absence**

Unpaid personal leave days may be of importance for the increasing number of dual-earner families to facilitate child-care and elder-care, and workers who come to work when sick are not likely to be productive and can infect others with that associated cost. But personal leaves may be difficult for employers, and especially small employers, to adjust to because they are not necessarily known or anticipated in advance. As well, workers clearly respond to the incentives of sick leave in that the more generous the leave provisions and the greater the job protection, the longer the sick leave that is taken, with their use increasing to the extent that employees increasingly regard them as a “right” rather than a privilege. Also workers ultimately likely bear most of the cost to the extent that employers shift cost back to workers in the form of paying lower wages in return for this benefit.

It is not clear as to whether the pros of unpaid leaves dominate the cons so as to justify substantial changes. Difficult trade-offs are involved in this area, with the research evidence providing little guidance except to indicate that the more generous the leave provisions, the longer the sick leave that is taken,

## **Termination Provisions**

More stringent termination protection generally leads to reduced employment because the reduction in new hiring (fostered by anticipation of the termination costs) dominates the reduction in layoffs. It leads to segmentation of labour market into protected “insiders” and unprotected “outsiders” especially of contingent workers, youths and new immigrants that can lead to long-duration unemployment with long-run scarring effects. It also reduces the ability of employers to adjust to demand shocks.

These generalisations based mainly on European evidence may be of limited relevance to Ontario since the job protection policies are not as stringent. The area that could be of relevance to Ontario relates to whether more stringent termination legislation could foster more segmentation between protected “insiders” and precarious “outsiders” especially of youths and new immigrants who are having more difficulty obtaining jobs and who may have long-run scarring effects from their initial negative experiences.

## **Advance Notice Provisions**

Advance notice provisions generally have positive effects by facilitating the job search and reducing unemployment and wage losses for those who are laid off, and facilitating employers filling their job vacancies. There do not appear to be gains to providing notice of more than one-month. Mass layoffs merit additional notice but the literature does not provide guidance as to whether the cut-off of 50 or more employees is appropriate for mass layoff provisions. Nor does it provide guidance on whether pay-in-lieu of notice is appropriate, although it provides some flexibility to employers and it would enable laid-off workers to use the pay to support themselves while engaging in job search while unemployed. Limited evidence suggests that longer notice do not lead to the best employees leaving and the remaining employees “slacking off.” The evidence suggest that notice requirements appear to have more positive and fewer negative effects than termination provisions.

## **Statutory Protection from Unjust Dismissal**

Statutory protection from unjust dismissal for non-union employees may deter new hiring especially of immigrants and youths as employers factor-in such unjust dismissal costs into their hiring decision. It increases the pay of protected "insider" employees as they are also subject to less competition from potential new hires, and a reduction in the pay for new hires as they "pay" for the additional protection by accepting a lower compensating wage for that benefit. It fosters the use of temporary-help agencies, limited-term contracts and subcontracting where it is easier to terminate a contract as opposed to an employee. It fosters a decline in firm productivity as firms are more reluctant to dismiss employees who perform poorly, although it may be a less costly option to employers compared to redress through the common law tort liability system. Statutory protection from unjust dismissal can require considerably additional resources to implement properly.

## **Equal Pay for Equal Work Based on Employment Status**

Equal pay for equal work based on employment status (e.g., part-time, limited-term contract work, temporary-agency work) is complicated by the fact that lower pay in these situations may occur to compensate for higher employers costs in other dimensions of the work. These include the quasi-fixed costs of recruiting, hiring and training; the evaluation of workers who are on limited-term contracts that serve as probationary periods; and compensating the temporary-help agency for its matching function. Employers may also be able to pay less because sufficient workers want those jobs perhaps to facilitate work-family balance or to co-ordinate with working while in school, or to "test the waters" or provide experience (in the case of limited-term contracts). Legislatively requiring equal pay for equal work based on employment status would lead to administrative complexities similar to those in the evolution from equal pay to pay equity in the case of males and females.

# 1. **Background and Objectives**

The purpose of this report is to outline the *theoretically expected* effect of various core standards under the *Employment Standards Act, 2000* (“ESA”) and to provide *evidence on their actual effects* where such evidence exists. The Canadian evidence will be emphasised where it exists, but evidence from the United States and Europe will also be brought in, especially where the Canadian evidence is scant. Given the extensive literature that exists in many of these areas, references to the literature will often be illustrative, citing studies that are most relevant to illustrate the points, and especially studies that also review the existing literature.

For evidence-based policy making it is important to have an understanding of the *theoretically expected* impact of possible policy changes to the different features of Employment Standards, as well as evidence on the *actual* impact based on the research literature that has evaluated the impacts. It is also important to have an understanding as to whether there a reasonable consensus on the actual impact and the extent of the agreement or disagreement, as well as whether the differences can be settled by the quality of the studies.

The perspective here will often be that of the “dismal science” of economics because that perspective emphasises the importance of understanding the underlying causal relationships between policies and outcomes, and because the evidence of those effects generally is based on rigorous econometric evaluations. The economics perspective also emphasises the law of “unintended consequences” in that well-intended policy initiatives often have unintended effects that often harm the very groups that they are designed to assist. As well, that perspective emphasises that the actions of market participants will often “undo” at least part of the effects of regulatory constraints through their behavioural responses to the regulatory initiatives.

The intent is not to argue that regulatory initiatives can have no effect in the face of market forces and that the “revenge of the market” will replace the “law of the land” so that there is no point in providing legislative protections especially to the most vulnerable. Even if they worked perfectly, market forces would not guarantee equitable

or fair outcomes – in fact the opposite may be the case. Markets have yielded child labour, unsafe and hazardous working conditions, prolonged periods of mass unemployment, financial crises, conspicuous consumption co-existing with poverty, and market forces are now yielding massive earnings and income inequality with their attendant social consequences. Legislative initiatives have mitigated many of these socially undesirable outcomes. In such circumstances, imperfect market solutions must be compared to what are likely to be imperfect legislative solutions. Costs imposed by legislative initiatives must be compared to the social costs of not imposing such initiatives.

The economic perspective advanced here is intended to highlight that in recommending labour policy changes it is important to ask: How will private market participants respond to the new initiatives, especially in ways that may have unintended consequences or undo the effect of the regulations? Can market forces be harnessed in ways to facilitate achieving the objectives of regulatory reforms – to be part of the solution rather than part of the problem?

As indicated in my other report on the *Changing Pressures Affecting the Workplace and their Implications for ES and LR*, it is important to have a *causal* (i.e., cause-and-effect) understanding of the theoretical mechanisms through which policy interventions affect ES and LR. This is so for a number of 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.

The provisions of ES that will be examined are based on those that best illustrate the theoretically expected impact of the provision and for which there is empirical evidence on the actual impact.

## ***2. Hours of Work Provisions***

### **2.1 Foster Health and Safety for Both Workers and Customers**

Hours of work restrictions such as the maximum 8 hour day and 48 hour week are rationalized in part to protect workers from the health and safety risks associated with long hours of work. The risks can prevail for both the workers themselves and for customers of the service if long hours on the part of workers lead to risks for the recipients of their service (e.g. train wrecks).

The theoretically expected relationship between long hours of work, whether daily or weekly, and such health and safety risks is complicated. Long hours can lead to fatigue and hence accidents, although the underlying causal relationship is complicated by the fact that when long hours are required, other conditions of work are also likely changing, such as the speed-up, postponing of maintenance on machinery and equipment, and introducing new machinery and equipment for which workers are unfamiliar with the safety procedures. If these are the underlying causal factors of accidents then restricting long hours of work will do little or nothing to improve health and safety. Restricting long hours can also lead to the introduction of a second or even third shift, with the health and safety risks associated with shift work. Importantly, restricting long hours on the part of the existing workforce may lead to hiring new workers who may be inexperienced and lack training and hence be accident prone. The same may apply to hiring temporary-contract workers<sup>1</sup> or subcontracting where strong competitive pressures and difficulties of monitoring may foster health and safety risks, especially if in the underground economy.

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<sup>1</sup> Amuedo-Dorantes (2002) reviews the literature on accident rates of temporary-contract workers and find that they tend to have higher accident rates than permanent workers doing the same work. Part of this reflects that they have little training in health and safety.

Clearly, the theoretically expected effect on health and safety of restricting long hours of work is ambiguous. It could increase or decrease health and safety risks or have no net effect. The empirical evidence, however, generally finds that long hours and overtime are associated with increased accidents and injuries (studies reviewed in Schuster and Rhodes 1985). That evidence, however, does not establish whether the underlying causal mechanism is long hours or whether it is other workplace changes that tend to occur when long hours are worked such as a speed-up in the pace of work or reduced maintenance of machinery and equipment. The studies are also not able to compare the risks from longer hours and overtime with any higher risk associated with hiring temporary workers or subcontracting.

## **2.2 Work-sharing with the Unemployed and Underemployed**

Another rationale for restricting overtime and long hours of work is to reallocate that work to the unemployed and underemployed. This is especially appealing if the long hours are involuntarily worked by persons who would prefer to work fewer hours to achieve work-life balance, and the unemployed or underemployed would prefer to work more hours, even if it were part-time.

The potential for such work-sharing depends in part on the reasons for the long hours in the first place. Basic economic theory outlines that employers work their core workforce long hours in large part because there are quasi-fixed costs associated with the recruitment, hiring and training of workers. Expected termination costs also become factored in at the hiring decision, making employers reluctant to hire new workers if the demand for their products and services is uncertain. If employers hire new workers they experience those quasi-fixed costs (or they anticipate them in the case of expected terminations); if they work their existing workforce long hours they amortize those costs over the longer hours. Payroll taxes for items like unemployment insurance and workers compensation also have ceilings beyond which no further taxes are paid. Workers who are at that ceiling and who work longer hours would have no further payroll taxes, but hiring new workers would lead to payroll taxes for them (Reid 1985).

This further illustrates the “law of unintended consequences” in that many of the quasi-fixed costs are the unintentional by-product of other legislative initiatives such as termination legislation and payroll taxes that have increased over time.

Other factors that have increased over time also contribute to employers working their core workforce longer hours and being reluctant to hire new workers. Globalization, increased competition and financial crises have subjected employers to greater uncertainty over the sustained demand for their products and services, making them reluctant to hire new workers unless their product market conditions stabilize. Employers also face greater uncertainty associated with parental leaves as well as when their older employees will retire given the legislative bans on mandatory retirement. Advanced technology and communications systems have fostered just-in-time delivery systems so that inventories are less available to buffer demand changes. Subcontracting and temporary-help agencies are also increasingly available to absorb demand fluctuations, although these can be substitutes for both new hires and working the existing workforce overtime or long hours.

Employers have also worked their core workforce long hours rather than hire additional workers because a substantial number of workers voluntarily want the long hours of work, especially if they come with an overtime premium. This can be the case especially for single-earner families where only one party works in the labour market while the other does household tasks. In order to move towards the total income of the increasing proportion of dual-earner families, the single earner may have to work long hours. Many workers may also want the longer daily hours in return for a shorter work week (i.e., compressed workweeks) so as to amortize the increasing commute times over longer days and to avoid the increasingly long commutes on the day off. Others on remote work sites may prefer the long daily and even weekly hours in return for larger blocks of time off given the fixed costs of getting to the work sites. This can also be the case for seasonal workers who have large blocks of time off in the “off-season.”

The case for reducing long hours and overtime, however, is buttressed by the fact that substantial numbers of dual earner families want to reduce their hours of work to facilitate work-family balance. Survey evidence from Statistics Canada indicates that

a substantial portion of the workforce would prefer to work fewer hours and they are willing to “pay” for such a reduction by accepting a proportionate reduction in their pay, while others would prefer to work longer hours for a proportionate increase in pay (Benimadhu 1987). Yet employers appear reluctant to reduce long hours of their core workforce for reasons discussed previously, and those who want the additional hours often do not have the requisite skill.

The Donner Commission thoroughly examined the potential to create new jobs by restricting long hours and overtime in Ontario, and concluded that this potential was very minimal for a variety of reasons.<sup>2</sup> Employers often want their core workforce to work long hours to amortize their quasi-fixed costs and hence they may not be deterred by overtime premiums.<sup>3</sup> Overtime premiums and maximum hours restrictions impose costs on employers and this may reduce their demand for labour altogether (output effect) or induce them to substitute into using more capital or other inputs (substitution effect) such as temporary help agencies or subcontracting or using freelancers where monitoring is more difficult. This is especially the case if the potential new recruits lack the skills to be good substitutes for those whose hours are reduced. Enforcement of regulations in this area is difficult because both employers and employees often want the long hours. Ironically, any reduced hours may lead to productivity gains which means fewer new workers need to be hired.<sup>4</sup> As well, those whose hours are reduced involuntarily may moonlight elsewhere reducing the job opportunities for others. As a result of these various unintended consequences of restricting overtime and long hours of work, Donner (1987, p. 94) concluded that about half of the job creation potential

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<sup>2</sup> Donner (1987, p. 91), Robb and Robb (1987) and references cited therein for evidence.

<sup>3</sup> Empirical evidence from Ehrenberg and Schumann (1981) as well as other studies cited therein, suggests that a 10 percent increase in the overtime premium would give rise to a 6 percent reduction in overtime hours.

<sup>4</sup> Evidence on the productivity effects is discussed in Cuvillier (1984, p. 108), Donner (1994, p. 75) and Reid (1985, p. 160). That evidence suggests that about half of the job creation potential of reduced hours would be offset by productivity increases, an effect that Donner (1986, p. 94) appropriately argued was implausibly large.

from reduced hours would be offset by these other adjustments, and perhaps all of it would be offset if the implausibly large productivity effects were factored in.

Maximum hours regulations also have the disadvantage of not providing the flexibility that is often needed in the modern workplace given such pressures as just-in-time delivery systems. Some flexibility can be obtained through exemptions and exclusions but these can be complicated and belie the notion that maximum hours regulations are needed for the health and safety of workers. Maximum hours regulations also can give rise to inequities between single-earner and dual-earner families since the hours restrictions obviously apply to individuals and not families. For example, the single-earner in a single-earner family may want to work a 60 hour workweek to approximate the earnings of a dual-earner family where, say, one earner works a 40 hour week and the other a 20 hour week. Both families work 60 hours, but only the single-earner family is restricted so as to foster work-sharing with the unemployed or underemployed. This inequity would not have applied in the Old World of Work which was dominated by single-earner families, but it certainly applies to the New World of Work where the dual-earner family is the norm.

Overtime premiums have the virtue of being more flexible than hours restrictions in that they *allow* the employer to utilize long hours but they *discourage* them by effectively “taxing” the employer, with the tax revenue going to the worker doing the overtime. Unfortunately, as is so often the case with regulations, the intended effect can be “undone” by employers lowering the straight-time component of the compensation such that when the overtime premium is applied to that lower straight amount it yields a similar weekly pay that earlier enabled the employer to adequately retain and recruit its workforce.<sup>5</sup> Obviously, this will not be done instantaneously, but the straight-time

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<sup>5</sup> For example, if workers were willing to work a 50-hour week for \$20 per hour to earn \$1000 per week, and an overtime premium of time-and-one were applied after 40 hours, they would initially earn \$1100 per week (40 hours at \$20 and 10 hours at \$30). These jobs would now be more attractive to the incumbent workers as well as potential new recruits. As such, the employer could lower the straight-time component to, say, \$18.18 per hour which would yield \$727 for the 40 hour week and \$273 for the 10 hours at the time-and-one-half overtime rate of \$27.27, for a total of \$1000 per week. To the

component can be lowered slowly over time especially in real terms. Evidence that this response does occur is provided in Trejo (1991).

A further unintended consequence can occur if the policy response to reduce long hours is to lower the standard workweek after which the overtime premium is to apply, say from 44 to 40 hours per week. Ironically, this does not change the extra cost of adding more hours to an existing worker who is already working overtime beyond the 44 hours – it remains at the overtime premium. However, it does change the cost of hiring a new worker if they work long hours because they must be paid an overtime premium beyond 40 hours rather than the former 44 hours. This can encourage employers to work their existing overtime workers even longer hours rather than hiring new workers (Hart 1986). Empirical evidence does not exist on the prominence of this response. It is unlikely to be large, however, since it would require substantial numbers to already be working beyond the standard workweek after which the overtime premium applies. As well, the additional anticipated overtime cost associated with hiring new workers who may work beyond the standard workweek is likely to be small relative to other quasi-fixed costs of hiring new workers. As such, this potential response is likely to be more of a theoretical curiosity than a practical reality.

A potential policy initiative that merits consideration given the changing workplace is an explicit right-to-refuse overtime – akin to the right-to-refuse unsafe work in the health and safety area. This right can be especially important for dual-earner families who are trying to balance work-and-family obligations, especially when children are involved. This is the case, for example, if someone has to pick up children from daycare, or be home when children are coming home from school, or if elder-care responsibilities are involved at specific times. These were not crucial issues in the Old World of Work with single-earner families since one of the partners could deal with the

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extent that the former weekly pay of \$1000 for 50 hours enabled the employer to retain and recruit an adequate workforce, it should also be able to do so under the new compensation structure even though it involves a lower-straight time component and an overtime premium.

family responsibilities. But in the New World of Work when there is not a partner at home to deal with the issues, the explicit right-to-refuse overtime can be crucial. If the right is not there, the burden of such family responsibilities will likely fall on women, perhaps in the form of restricting their job opportunities to ones where overtime issues do not arise.

Such a right-to-refuse overtime should not be a substantial burden to employers since it would only be exercised by a minority of workers and only some of the time. In general, workers tend to welcome the opportunity for overtime. Any burden on employers could also be mitigated by requiring workers to state in advance that they cannot work overtime, in which case the employers can arrange for alternatives.

## **2.3 Irregular Work-scheduling**

The increased pressure on employers for just-in-time delivery of products and services has led to an increased need on their part for a just-in-time workforce, in effect shifting risk from employers to employees (Kalleberg 2009, 2011; Lambert 2008). This has been further fostered by the increased importance of the service economy and retail sector with its need to accommodate peak-loads of customers, many of whom are dual-earner families who want the services at irregular hours when they are not working. (Henly, Shaefer and Waxman, 2006). Employers also use flexible staffing arrangements to fill in for absenteeism and to screen potential recruits as well as to save on benefit costs (Houseman 2001). Flexible staffing has also been facilitated by the use of new software technology that can be used to match customer demand with worker availability (Lambert. Haley-Lock and Henly 2012).

As reviewed in Golden (2015), this has led to an increase in irregular work scheduling in various forms including on-call work, split-shifts, rotating shifts and required overtime work. The negative consequences of such irregular scheduling are well-documented and include stress, health issues, income volatility and work-family conflict (reviews in Fagan et al., 2012; Fenwick and Tausig, 2005; Golden 2015; Henley

and Lambert 2014; ILO, 2012; and Pocock and Clarke, 2005). Work-family balance can be particularly important for the growing number of dual-earner families with childcare and/or eldercare responsibilities. The issue is of particular concern because irregular work schedules are most prominent for workers who are already more vulnerable and low-income (Golden 2015, p.12; Henly and Lambert 2014) and for part-time workers many of whom would prefer full-time work (Zeytinoglu et al. 2004). The negative consequences can be particularly severe when the scheduling is not predictable for the employee, or given in only short notice and when the employee has little or no input into the scheduling (Henly and Lambert, 2014). These conditions can occur, for example, if it is necessary to fill-in for co-workers who are absent or weather conditions affect customer usage.

Clearly, such irregular work scheduling can be important for employers to meet their need for flexibility especially when the demands they face are unpredictable and it is costly for them to maintain a surplus of permanent workers to buffer the unanticipated demands. Nevertheless, the software technology that enables them to design irregular work schedules to match customer demand with worker availability can also be harnessed to better predict the changing demands and to provide more advanced notice as well as to match the changing demands with workers who voluntarily accept the irregular schedules. Also, the increased availability of temporary-help agencies can help fill the unpredictable demands. As well, there can be a “business case” for reducing irregular work scheduling so as to facilitate recruitment, retention and job satisfaction (Golden 2012 and numerous studies cited in Golden 2015, p. 4) and to reduce the need to pay compensating wage premiums for the irregular work schedules (Heywood et. al. 2007).

Policy options to deal with irregular work schedules are outlined in Golden (2015). They include: requirements to post work-schedules well in advance; mandatory compensation for last-minute schedule changes or for being “on-call” or for being sent home before a shift ends; requirements for “show up pay” for a minimum number of hours even if there turns out to be no work; and requirements to offer additional hours of work to existing part-time employees before hiring new employees; providing the “right

to request” changes in work hours or schedules with the employer required to consider such requests ‘in good faith’ and without any repercussions; and the right-to-refuse overtime.<sup>6</sup> Golden (2015) provides examples of where these requirements exist both across countries and across jurisdictions within countries.

## ***3. Vacations, Holidays and Leave Provisions***

### **3.1 Vacation and Holidays Provisions**

The *ESA* requires 2 weeks minimum of vacation time and 9 days of public holidays. These are not issues that have complicated expected or actual effects. Extending them would pose some costs to employers but this would be mitigated by the fact that they are anticipated by employers in advance with adjustments made in advance. In today’s competitive environment, the costs cannot likely be shifted forward to customers nor can be easily absorbed by employers who were formerly protected by tariffs or monopolies in their product markets or who could not relocate any of their activities to other jurisdictions. Any costs will likely be shifted backward to workers (the immobile factor of production) in the form of lower wages (more realistically lower wage growth) in return for the benefit of longer vacations or more public holidays.

Although there is no direct evidence on this for legislated vacations and public holidays, the empirical evidence indicates that about 80 percent of payroll taxes to finance programs like employment insurance and workers’ compensation are shifted backwards to workers in the form of lower compensating wages for the benefits financed by such payroll taxes (Dahlby 1993; Kesselman 1996). Whether this cost shifting would be any different for the cost of employers required to provide longer vacations or more public holidays is an open question. In essence, the ultimate

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<sup>6</sup> Goldin (2015, p. 25) indicates that within Canada, only Saskatchewan, Quebec and the Yukon provide the right-to-refuse overtime.

incidence of a tax or imposed cost is not necessarily where it is first levied. It may appear that employers would bear the cost of such payroll taxes or mandated vacations and holidays, but in today's competitive environment, most of the costs are likely shifted back to workers. As with all regulations that tend to apply to the core workforce, employers may also respond by employing fewer core employees and shifting to subcontracting and other forms of non-standard employment where the regulations either do not apply or are difficult to enforce.

This does not imply that mandated vacations and holiday should not exist even if they were partially or even fully "paid" for by employees. Employees may well prefer some degree of mandatory requirements because of the co-ordination problems associated with such practices. Public holidays allow all members of families (including school children) to have those same days off for family time. If the same days were not mandated, it would be extremely difficult for families to co-ordinate such common times.

Employers are also likely to accept such mandated vacations and holidays since they apply to all employers and hence they level the playing field. All employers have to provide them and hence there is no competitive advantage in not providing them as would be the case if they were to be provided voluntarily. As well, flexibility is provided in that employers can offer paying an overtime premium for work on such days if it is crucial to have the work covered.

A complication arises, however, with respect to public holidays. Many exist for religious purposes. But with immigration giving rise to an increasing diversity of the workforce, religious practices vary considerably. Extending holidays to match that diversity does not seem feasible; there will always be group at the margin whose practices are not recognized by holidays. This can especially be an issue for Ontario given the large and growing diversity of the workforce of this province. This is not an issue with respect to vacation time.

## 3.2 Pregnancy and Parental Leaves of Absence

The Ontario ESA provides for unpaid leaves of absence that are job protected in a number of areas. The leaves that are by far that are most extensively analysed are pregnancy and parental leave that are discussed in the section. The other leaves are analysed in the subsequent section. The Ontario ESA provides for unpaid but job-protected pregnancy leave of 17 weeks, and parental leave for both parents of 35 weeks. When added to the pregnancy leave, this implies a total of one year for the birth mother. Although unpaid, the leaves are financially supported by the parental provisions under the federal Employment Insurance program which generally provide for a 55% earnings replacement rate. In that sense, the unpaid leaves are unpaid from the employers' perspective but partially paid from the perspective of the recipient. To the extent that many vulnerable workers do not work sufficient hours (600) to qualify for EI, they would not receive any earnings replacement (Kay undated, p. 1).

These pregnancy and parental leaves (hereafter generally referred to as parental leaves) pose less of a cost on employers compared to vacations and holidays because they are unpaid from the employers' perspective, but they impose greater costs to employers to the extent that there is greater uncertainty over when many of the leaves are taken, making it more difficult for employers to adjust to the leaves. This may be mitigated by the increased prevalence of temporary help agencies.

The *theoretically expected* impact of unpaid but job protected parental leaves can be quite complicated in part because so many direct and indirect outcomes can be involved (e.g., health of the mother; time spent with the child at home; early child development; later child schooling and even their labour market outcomes; use of informal and formal child care; and subsequent labour market outcomes of the parents who take the leaves) In general, extending parental leaves is expected to increase the time out of the labour market before parents return to work (i.e., reduce their

employment) and increase the time they spend at home with their children, with attendant consequences associated with those behaviours. The job protection aspects, however, may increase the employment of those who otherwise may have dropped out of the labour market completely, and it may facilitate individuals returning to their jobs if their partner loses theirs. Those responses, and their consequences, will likely be different for mothers and fathers. Any additional time spent at home with their children will also likely mean the parents would substitute parental care for informal and formal childcare arrangements, with those attendant consequences.

Employers may also respond to any longer period away from work, perhaps differently for men and women. A potential concern is that employers may be reluctant to hire women or to hire them in positions of responsibility if they may be expected to have work and career interruptions because of leave taken for childbearing and childrearing responsibilities. Providing parental leave for fathers can somewhat offset this, or at least make it more balanced between men and women and therefore foster gender equity, although that depends in part on the extent to which men take parental leaves. Employer responses to parental leaves are mitigated by the fact that they are unpaid from their perspective, with payment coming from the EI system (55% earnings replacement). When employers pay by “topping up” the EI payment it is likely a business decision to foster recruiting and retention or their image as a good employer. The cost to employers are generally associated with having to replace the individual while their job is held or to re-arrange the tasks amongst existing workers – adjustments that are more difficult for small employers. These costs are mitigated somewhat by the increased availability of temporary-help agencies and by the fact that employers are able to shift at least some of the costs back to workers who take the leaves in the form of lower compensating wages.

There is extensive empirical evidence on many of these responses and the associated consequences but only a smaller number are *causal* studies in that they use methods to establish a cause-and-effect relationship (rather than just correlations or associations) between parental leaves and various outcomes. The perceptions that

prevail in this area are often based on reports of correlations and associations, and not causal relationships. The causal studies control for the effect of other factors besides leave-taking that can affect the various outcomes. The causal studies are the ones emphasized in this discussion of the effects of extending parental leave. The empirical evidence in this area gives rise to a number of generalizations:

- Extended maternity leave provisions in Canada tend to have their intended effect of *increasing the length of time before mothers return to work (i.e., reducing their employment around the time of the birth)* (Baker and Milligan 2008a, 2008b, 2010, Hanratty and Trzcinski 2009).
- Extended leaves also *increase the amount of time mothers spend with their children at home*, by about 50% in the first year of the child's life (Baker and Milligan 2008b, 2010, 2015).
- Perhaps surprisingly, and of controversy, such time spent at home with a new child induced by additional maternity leaves tends *not* to have any *causal* effect on early child development outcomes in Canada, either for short-run outcomes up to 24 months (Baker and Milligan 2010) or longer-run later outcomes by the time children reach ages 3-5 (Baker and Milligan 2015).
- A similar lack of any *very long-run effects* on children into their teen years is also found in European studies that are able to examine such long-run effects because of the availability of longitudinal administrative data that is able to follow the same individuals over long periods of time (studies reviewed in Baker 2011). This is the case for wages of teens in Germany (Dustman and Schonberg 2011), high school grades in Denmark (Wurtz- Rasmussen 2010), and high-school grades and test scores in Sweden (Liu and Skaus 2010). The exception is Carneiro et. al. (2010) who find positive effects on reducing high school dropout rates in Norway. However, a subsequent study by Dahl, Liken, Mogstad and Salvanes (forthcoming) for Norway finds no effect on

children's school and other outcomes in spite of the substantial increase in time spent at home. The relevance to Ontario of the European studies could be questioned, however, given the variety of other factors that could intervene between time spent with a new child induced by extended maternity leaves, as well as the variety of other institutions (e.g., universal child care) that could be at play. The perception that maternal time spent with the child has positive effects on child development outcomes likely reflects the fact that mothers who spend more time with their child at home likely have other unobserved characteristics that foster positive child development outcomes. Additional time induced by longer leave periods does not seem to have an independent impact, although as indicated, this is a controversial conclusion.

- Longer leave times also *facilitate breast feeding* (Baker and Milligan 2008a). Again, perhaps surprisingly and of even more controversy, this does not appear to have any causal effect on early child development, at least in developed countries. Again, the common perception that breast feeding has positive effects on child development outcomes likely reflects the fact that mothers who breastfeed likely have other unobserved characteristics that foster positive child development outcomes. The additional time breastfeeding induced by longer leave periods does not seem to have an independent impact on early child development. Baker and Milligan (2008a, p. 873) indicate that lack of any substantial effect is also found in the few studies that provide causal estimates of the effect of breastfeeding.
- The additional mother's time spent at home tends to *displace non-licensed care provided by a non-relative in someone else's home*. Since such care is generally regarded as of lower quality care, then the substitution of mother's care at home for such non-relative care in someone else's home is likely a desirable substitution (Baker and Milligan, 2010, p.2).

- Even when it *displaces more formal universal childcare*, this substitution may have desirable effects in other areas of early child development. Based on the expansion of universal childcare in Quebec, for example, Baker, Gruber and Milligan (2008) find negative effects in areas such as aggressive behaviour and disobedience, and Lefebvre et. al. (2008) find negative effects on cognitive vocabulary scores. Kottelenberg and Lehrer (2014), however, find positive effects prevail for more disadvantaged single-parent families while negative effects for higher-income families. Similar positive long-run effects for children of low-income families and negative effects for higher income families have been documented for Norway by Havnes and Mogstad (2011, forthcoming) for subsequent education, labour force participation and earnings of the children. The positive effect of childcare for low-income families and negative effect for higher-income families likely reflects the fact that such basic universal care is better than the low quality informal or home-based care in low-income families. This again is an area of considerable controversy.
- The take-up of maternity leave and slower return-to-work leads to *reductions in full-time employment* around the time of birth. The evidence suggests that this has desirable effects on the early cognitive development of children since maternal employment during the first year of the child's life generally has negative effects on the child's cognitive and behavioural development, although it varies by individuals and there is considerable controversy in this area (reviews of the literature are provided in Belsky 2006, Bernal 2008, Lucas-Thompson et. al, 2010 and Waldfogel 2007)
- Longer maternity leaves, however, can lead to other negative consequences for those who take them:
  - increased difficulty in re-entering the labour force (Hewlett, Forster, Sherbin, Shiller and Sumberg, 2010).

- Wage penalties associated with the career interruptions and erosion of skills for women who take leave (numerous studies reviewed in SRDC 2010).
  - Discriminatory practices in such forms as dismissals, reduced recruitment, and pressure to resign (Addati, Cassirer and Gilchrist 2014, p. 74).
  - Negative effects on career success of managers who take extended leaves of absence (Judiesch and Lyness, 1999)
  
- The relationship between maternity leaves and *maternal physical and mental health as well as family well-being* is complicated and the evidence is inconclusive (Lero 2003; SRDC 2010). Longer leaves are associated with positive effects for mothers lacking other supports, no effects in other cases, and negative effects for mothers who preferred to return to work. Cause and effect is extremely difficult to sort out in this area, and there is extreme heterogeneity in the circumstances of individual parents. Having the *options* for extended leaves should obviously help, but the effect depends on the circumstances of different individuals and those circumstances vary considerably.
  
- The job protection aspect of maternity leaves can facilitate women returning to the labour force and therefore provide “*insurance*” from a *negative shock* to paternal employment (US evidence provided in Tominey 2013).
  
- Fathers tend not to take parental leave and when they do it is for a shorter period of time than mothers, but their tendency to take such leave is increasing (Addati, Cassirer and Gilchrist 2014, p. 52, 67; Hegewisch and Gornick, 2011; Marshall 2008; SRDC 2010, p. 49;). When they take such leave it is not always dedicated to child-raising. There is some evidence from Sweden, for example, that fathers take such leave to supplement summer and holiday time (Seward, Yeatts and Zottarelli 2002). Fathers are often

reluctant to take leave because of the financial implications, concern over career interruptions and their image, as well as concerns that it may “signal” a lack of commitment to their job and career (OECD 2007).

- Employer responses to parental leaves are mitigated by the fact that they are unpaid from their perspective, with payment coming from the EI system (55% earnings replacement). When they pay by “topping up” the EI payment it is likely a business decision to foster recruiting and retention or their image as a good employer. The cost to employers are generally associated with having to replace the individual while their job is held or to re-arrange the tasks amongst existing workers – adjustments that can be more difficult for small employers (Lewis et al. 2014, p. 2). These costs are mitigated somewhat by the increased availability of temporary-help agencies and by the fact that employers are able to shift at least some of the costs back to workers who take the leaves. As indicated previously, about 80% of the cost of payroll taxes are shifted back to workers in the form of lower compensating wages in return for the benefits associated with the programs that are being financed. Similar cost shifting is likely to exist for persons taking parental leave. Evidence that this occurs was outlined previously based on wage penalties associated with the career interruptions for women who take leave (numerous studies reviewed in SRDC 2010). As well, evidence exists that much of the costs of family-friendly work practices in general are shifted back to workers in the form of lower earnings (Heywood et al., 2007) while negative work time arrangements such as seasonal work elicit a wage premium (Del Bono and Weber, 2008).
- Requiring employers to pay for parental leave (as opposed to allowing them to top-up any public payment as part of their human resource strategy) ultimately would have negative effects on those taking parental leave. As stated in an ILO report by Addati, Cassirer and Gilchrist (2014, p. 22): “According to ILO experience and available research, employer liability

schemes work against the interests of women workers, as employers may be reluctant to hire, retain or promote pregnant workers or women with family responsibilities or may seek to find reasons to discharge pregnant employees in order to avoid paying the costs of wage replacement during maternity leave as well as other (potential or actual) direct and indirect costs linked to their replacement. In many cases, this simply means not hiring women of childbearing age at all (Lewis et al., 2014). This is also the reason why ILO maternity protection instruments traditionally excluded this option in their provisions covering the financing of benefits.” As stated in another ILO report (Lewis et al. 2014, p.2): “Regulation that does not mandate employers shouldering the full cost of maternity leave cash benefits .... Is fundamental for maximizing the benefits. Paid leave, funded by compulsory social insurance or public funds, is important in this respect.”

- With respect to the impact on firm productivity, competitiveness and profitability, in their comprehensive review of the literature, SRDC (2010, p. 43) conclude: “The current literature review found few if any studies that directly address the question of whether and how maternity, paternity or parental leave taking by employees (whether paid or not) impacts employers in terms of productivity, costs, profitability etc.”
- Extensions of unpaid leaves are likely to be regressive in that wealthier families are likely to be able to afford the unpaid leave (SRDC 2010, p. 4 in their review of the literature). Extensions of leave paid out of public funds are also likely to be regressive in that persons from low-income or childless families are less likely to be eligible. As strongly stated by Dahl, Liken, Mogstad and Salvanes (forthcoming, p.1): “Our findings suggest that generous extensions to paid leave were costly, had no measurable effect on outcomes and [had] regressive redistribution properties. In a time of harsh budget realities, our findings have important implications for countries that are considering future expansions or contractions in the duration of paid leave.”

### 3.3 Personal Days and Other Leaves of Absence

In addition to pregnancy and parental leaves, the Ontario ESA also provides for other unpaid leaves of absence that are job protected in the following areas:

- Personal emergency leave of 10 days for personal illness, illness of a family member, bereavement time or time to deal with an urgent matter concerning a family member (for employees in firms of 50 or more employees)
- Family caregiver leave of 8 weeks per calendar year per specific family member to an employee whose family member who has a serious medical condition that requires care or support
- Family medical leave of 8 weeks in a 26 week period to provide care or support to a family member who faces a significant risk of death
- Leave for events such as organ donor, critically-ill child, death or disappearance of a child
- Reservist leave for the Armed Forces.

Since these leaves are unpaid but job protected they can be expected to have similar effects in many of the relevant dimensions as the unpaid pregnancy or parental leaves. But there are differences. On the one hand, such personal leaves are less likely to be abused by employees and taken for “leisure time” because there is generally no earnings replacement from EI.<sup>7</sup> As well, employers can ask for reasonable proof of the need, although such “proof” is generally easy to come by. On the other hand, personal leaves may be more likely to be abused by employees because there is generally not a well-documented event like pregnancy that justifies their leave, and they may increasingly regard them as a “right” rather than a privilege, especially if co-workers commonly take the leaves.

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<sup>7</sup> The exception is for family medical leave and critically ill child-care leave. As well, there is a federal grant program for crime related child death or disappearance leave.

Whether abused or not, they can be more difficult for employers to adjust to because they are not necessarily known or anticipated in advance. This can especially be a problem for smaller employers who cannot easily reallocate the work amongst the existing workforce or who are not large enough to have an internal buffer of substitutes. The increase of temporary-help agencies, however, may provide such a buffer, although many small employers may not be familiar with procedures for accessing such agencies.

The need for such leaves on the part of workers has likely increased because of the rise of dual-earner families where one parent is not at home to care for a child or to provide elder-care – an increasingly important phenomenon given the aging population. As well, the cost of such leaves is mitigated somewhat for employers by the fact that workers who come to work when sick are not likely to be productive and can infect others with that associated cost. This can be the case especially in the Winter months or “flu season”. As well, if employers are required to pay for the sick leave, they are likely to shift at least some of the cost back to workers in the form of paying lower wages in return for this benefit.

Unlike parental leaves, there is not an abundance of research documenting the extent to which personal and other leaves are taken, and their effects on health and other outcomes. Certainly, converting the unpaid sick days to paid sick days, as prevails in almost all other developed countries in the world except the US and Japan (Heymann et al., 2010) would be more costly to employers, especially given the ease with which “doctors notes” can be obtained. This would also add a cost to the public medical system for providing such examinations and documentation. Many employees would likely begin to regard such paid days as entitlements to use. Complications can also arise if workers are allowed to carry over such days, and perhaps “cash them out” at retirement.

The limited empirical evidence in this area basically relates to sick leave and suggests the following:

- Workers clearly respond to the incentives of sick leave in that the more generous the leave provisions and the greater the job protection, the longer the sick leave that is *taken*. Osterkamp and Rohn (2007), for example, provide such econometric evidence across 20 developed countries, and they review such evidence from other studies. They conclude (p. 107): “Both the level of generosity of granting sick leave as well as the strictness of employment protection are positively and significantly related to the number of sick leave days taken in our regressions.” As an illustration, they indicate that the average number of sick leave taken in the US which has no paid sick leave is 5 days, while the average number in Sweden is 20 days and in Poland 26 – both countries that have generous paid sick leaves.
- Responding to such incentives, however, should not be regarded as always negative. Not taking a sick day when truly sick can infecting others and foster a longer healing period, Neglecting sick children or parents can lead to longer-run subsequent health problems (Heymann et al., 2010; Skaten 2003).
- Having only unpaid as opposed to paid sick leave is likely to be regressive in the low-income families cannot afford to take an unpaid day off (Heymann et al., 2010, p. 18).
- There does not appear to be any systematic research on the effect of unpaid leave provisions on productivity, competitiveness and business investment decisions. Presentations to the Advisors indicated that unpaid sick leave was a concern in part because the days taken were increasing and were regarded as a right to be utilized. As indicated, however, the costs to employers would seem to be mitigated, at least somewhat, by the fact that truly sick persons who showed up for work would not likely be that productive and they can have negative effects by infecting others, fostering a longer healing period that could lead to longer absenteeism. With respect to investment, Canada’s main competitor, the US, also mandates few unpaid leaves. Most other developed countries, with the exception of the US and Japan, actually mandate *paid* sick days so Canada’s competitive position with respect to this dimension should not be jeopardized by comparisons to the rest of the world.

## 4. Termination and Notice Provisions

The *ESA* has termination, advance notice and severance pay provisions.

- Advance notice of 1 week per year of service up to 8 weeks
- Severance pay of approximately 1 week per year of service after 5 weeks and up to 26 weeks.
- It does not provide statutory protection for unjust dismissal

### 4.1 Termination Provisions

The expected impact of termination and advance notice provisions on employment is theoretically ambiguous.<sup>8</sup> On the one hand, they should have their intended effect of sustaining the employment of *incumbent* workers by making it more costly for firms to terminate them. On the other hand, they may have the (likely) unintended effect of reducing the hiring of *new workers* since expected termination and severance pay requirements are anticipated by employers when they hire new workers. In such circumstances employers may work their existing workforce long hours rather than hire new workers where they may incur future termination and severance costs. As such, overall employment may increase or decrease depending upon the net effect of these two opposing forces of reduced layoffs but reduced new hires.

Whatever the net effect, the reduction in new hiring is likely to fall on new job seekers such as youths, new immigrants and women returning to the labour force from periods of absence from the labour force. They may have to search longer in the labour

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<sup>8</sup> The theoretical expectations were outlined early by Lazear (1990) with subsequent work by Addison and Grosso (1996), Bentolila and Bertola (1990), Bertola (1990, 1992), Blanchard and Wolfers (2000), Blau and Kahn (1999, 2002), Grubb and Wells (1993) and Nickell and Layard (1999).

market leading to longer-term unemployment or to disguised unemployment if they drop out of the labour force altogether because they do not feel jobs are available. The labour force will be more segmented into “insiders” of core incumbent workers who are protected by the job protection legislation and “outsiders” who are less likely to obtain jobs because of such protection. In order to avoid expected termination and severance costs employers may also use more temporary-help agencies and limited-term contract employees as well as contracting to independent contractors, with those attendant consequences.

The termination policies may also slow the process by which employers adjust to economic shocks, fostering greater rigidity in their labour markets. When a negative shock occurs employers may retain some redundant employees to minimize the termination and severance costs; when the shock dissipates they may still be slow to hire new workers because of concern over termination and severance costs should they have to be laid off in the future. Given the increasing uncertainty that prevails in markets, employers may choose to absorb shocks through the use of contingent workforces in such forms as temporary help agencies, limited-term contracts and subcontracting to independent contractors, at least until their markets stabilize.

The empirical evidence on the effect of termination policies comes mainly from Europe since that is where the policies are most stringent. The absence of evidence from Canada and the US likely reflects that the fact that such termination restrictions are not as stringent and hence the adjustments not as consequential.

The European evidence on the effect of termination legislation is quite extensive and tends to confirm the theoretical expectations.<sup>9</sup> It generally finds that the reduction in new hiring is greater than the reduction in layoffs so the net effect is a reduction in

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<sup>9</sup> Empirical studies and reviews of the effect of termination policies include Addison and Grosso (1996), Addison and Teixeira (2001, 2005), Addison, Teixeira and Grosso (2000), Bentolila and Bertola (1990), Bertola (1990), Bertola and Ichino (1995), Blanchard and Wolfers (2000), DiTella and MacCulloch (forthcoming), Grubb and Wells (1993), Lazear (1990), Nickell (1997), Nickell and Layard (1999) and OECD (1999a, 1999b). DiTella and MacCulloch (forthcoming) is based on interview evidence from business managers from 21 OECD countries.

*employment.* The restrictive termination policies also foster the bifurcation of the labour market into protected “insiders” and more precarious “outsiders” especially immigrants and youths who have long-term unemployment problems. It also fosters the use of more contingent workers to absorb the fluctuations and negative economic shocks, and it fosters “disguised unemployment” as the “outsiders” who do not obtain jobs often give up searching and drop out of the labour force altogether.

The slower adjustment process associated with the rigidities of European labour markets has given rise to what is often termed “Eurosclerosis.” The initial difficulties in obtaining jobs on the part of “outsiders” leads to more permanent longer run negative “scarring” effects or “hysteresis.” This has fostered a substantial increase in long-duration unemployment in Europe, especially for youths who are “outsiders” and not protected by the regulations.<sup>10</sup>

In summary, the European evidence suggests that job protection policies have the following effects: reduced employment (because the reduction in new hiring dominates that reduction in layoffs); increases in contingent work to absorb the shocks; increases in disguised unemployment and long-duration unemployment especially of youths; segmentation of their labour market into protected “insiders” and unprotected “outsiders”; and a reduced ability of employers to adjust to demand shocks. These generalisations may be of limited relevance to Canada and Ontario, however, since the job protection policies are not as stringent so the effects are likely small.

The area that could be of relevance to Ontario relates to whether more stringent job protection through termination legislation could foster more segmentation between protected “insiders” and precarious “outsiders.” The concern can be particularly relevant to the extent that youths and new immigrants are “outsiders” as they search for jobs. Young males in Canada, for example, are experiencing dramatic declines in their initial

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<sup>10</sup> The extensive European literature on the interaction of the demand shocks and labour market rigidities includes Bertola, Blau and Kahn (2002), Blanchard and Wolfers (2000), Coe and Snower (1997), Nickell (1997), and Nickell and Layard (1999).

earnings when they first enter the labour market and this is having long-run scarring effects since this initial negative effect is not being offset by more rapid earnings growth (Beaudry and Green 2000). Evidence of a longer-run more permanent scarring effect associated with negative experiences when Canadian youths first enter the labour market is also found in McDonald and Worswick (1999). Similar evidence of slower assimilation into the labour market is found for recent cohorts of immigrants especially if they enter in periods of high unemployment (Aydemir and Skuterud 2005).

## **4.2 Advance Notice Provisions**

*Advance notice requirements* can also have additional expected effects. Plant closings and mass layoffs (e.g., 50 or more employees) can have particularly large negative effects in smaller and more isolated communities and especially if there already is high unemployment. In such circumstances, large numbers of laid-off workers would flood the labour market at the same time, competing for the few scarce jobs that are available, making it difficult for any one individual to obtain a job. This can provide a theoretical rationale for longer notice requirements in the case of mass layoffs and plant closings (Gunderson 1986, p. 125). A further rationale for such advance notice is that it compels employers to reveal in advance the information they (and likely only they) possess about an impending mass layoff or plant closing, enabling employees to engage in job search during the notice period. Employers otherwise may be reluctant to reveal such information for fear that they may lose their best employees who have alternatives elsewhere (Kuhn 1992). Advance notice enables laid off employees to engage in earlier job search and this can mitigate their wage losses from the layoff and enable other employers to fill positions from those who are laid off. A potential concern with longer advance notice is that the best employees may leave early since they have more job opportunities elsewhere (the adverse selection problem) and the remaining employees may “slack off” since they know they have already been terminated.

The empirical evidence generally confirms these positive expected effects from advance notice provisions and indicates that the negative effects are unlikely to occur. Advance notice facilitates job search and reduces unemployment and wage losses for those who are laid off, and it facilitates new employers filling their job vacancies (early evidence reviewed in Gunderson 1986, p. 148, 149). Jones and Kuhn (1995) confirm those earlier findings and find that even small amounts of advance notice are helpful in reducing the length of unemployment associated with job search after a plant closing, albeit they find that there are no gains to providing notice of more than one-month, and there may even be negative effects from longer notice periods. Evidence from the U.S. also generally finds positive effects of advance notice (Kuhn 1993, Nord and Ting 1991, Swaim and Podgorsky 1990, and Ruhm 1992, 1994, but not Ehrenberg and Jacobson 1988). Addison and Portugal (1992) find that there is no evidence of the potential concern with longer advance notice that the best employees may leave early and the remaining employees may “slack off.”

In essence, the research evidence suggests that advance notice periods serve their intended effect of enabling laid-off workers to engage in job search. Furthermore, longer periods are merited in the case of mass layoffs because of the greater difficulty of obtaining a new job when large numbers are laid off in a community. It does not provide specific guidance as to the optimal degree of notice with respect to the employee's tenure, except for some limited evidence that there are no gains to providing notice of more than one-month, and there may even be negative effects from longer notice periods. The research indicates that mass layoffs merit additional notice but it does not provide guidance as to whether the cut-off of 50 or more employees is appropriate for mass layoff provisions. Nor does it provide guidance on whether pay-in-lieu of notice is appropriate, although there seems little reason to question its viability. It provides some flexibility to employers and it would enable laid off workers to use the pay to support themselves in engaging in job search while unemployed.

### 4.3 Statutory Protection from Unjust Dismissal

Related to terminations, a few jurisdictions in Canada (federal, Quebec and Nova Scotia) provide statutory protection from unjust dismissal for non-union employees as part of their employment standards legislation. Such statutory protection is intended to fill the gap between the two other regimes designed to provide such protection: unjust dismissal procedures for unionized workers through the collective agreement and grievance procedure; and wrongful dismissal procedures through the courts. The former procedure is available only to workers covered by a collective agreement. The latter procedure is theoretically available to any worker but in practice is used by higher-level personnel given the costs and long delays. The viability of statutory protection, however, must be considered in light of the recent 2015 decision by the federal court of appeals in *Wilson v Atomic Energy of Canada Ltd*, however, effectively indicating that dismissal without cause is not automatically unjust.

The theoretically expected impact of such statutory protection is that it would provide unjust dismissal protection to non-union employees who would not likely use the expensive and time consuming common law proceedings. As with conventional unjust dismissal proceedings for unionized employees, this is expected to reduce unjust dismissals and pressure employers to follow proper progressive discipline procedures (warnings etc.) and document their procedures before dismissals.

There are a number of possible unintended consequences that can emanate from such initiatives. As discussed previously, employers will factor-in such anticipated termination costs (including the possibility of an unjust dismissal procedure) into their hiring decision and this can deter new hiring including that of youths and new immigrants. Employers may utilize more temporary-help agencies, limited-term contracts and subcontracting where it is easier to terminate a contract as opposed to an employee. Firm productivity may decline as firms may be more reluctant to dismiss employees who perform poorly.

On a more positive note, employers may be more selective in their recruiting and hiring decisions so as to reduce the likelihood of a dismissal. And they may follow more defensive practices of documenting employee behaviour and applying progressive discipline. Although these are generally considered as desirable practices, they can have negative repercussions as behaviour modification theory outlines that some employees can react negatively to them rather than alter their behaviour in a corrective fashion (Eden 1992).

There does not appear to be a literature on evaluating whether these theoretical expectations are confirmed in practice for statutory protection. An evaluation of the federal statutory protection indicated that federal adjudicators tend to follow the same procedures as do arbitrators in unionized cases (Eden 1993). In his report for the federal jurisdiction, Arthurs (2006) recommended continuation of the statutory protection as well as additional resources to deal with shortcoming in their procedures. His discussion of those details is extensive and suggests that substantial resources are required to operate the system properly. In his background report for the Arthurs commission, England 2006 highlighted many of those complexities and concluded (p. 7):

“In the light of the foregoing studies, it is submitted that a conservative and cautious approach should be taken when considering expanding the generosity of the federal statutory termination provisions in favour of the employee, because there almost certainly will be a point at which limiting the employer’s flexibility to terminate employees will cause some, or all of the adverse economic effects outlined above. A balance must be struck between enhancing the employer’s economic profitability and safeguarding employee rights in this area of employment law, no less than in any other. Currently, the economic evidence does not support making substantial cut backs to the federal legislated protections.”

In his report on reforming employment standards in British Columbia, Thompson (1994) recommended against adopting statutory protection largely on the grounds of the costs

it would impose on employers, and especially small employers.

There is a more extensive literature that evaluates the impact of the expansion of common law protection that occurred in many US states since the mid -1970s and that somewhat mitigated the “employment at will” doctrine that was previously prominent. Those studies tended to find that the more stringent unjust dismissal procedures had the following effects:

- An increase in the use of temporary-help agencies where it is easier to terminate a contract when it becomes more difficult to terminate an employee (Autor 2003, Miles 2000, and Schanzenbach 2003; Autor 2003, for example, found that the increase in unjust dismissal protection accounted for 20% of the rapid increase in temporary-help workers since the mid-1970s)
- A reduction in employment and increase in unemployment as the reduction in hiring of new workers was greater than the reduction in dismissals of existing workers (Autor, Donohue and Schwab 2004, 2006; Autor, Kerr and Kugler 2007; Dertouzos and Karoly 1992, 1993; but not in Miles 2000)
- Reductions in the hiring of the unemployed, and increases in efforts in the hiring decision to weed out those who potentially may be dismissed (Kugler and Saint-Paul 2004)
- A reduction in productivity since firms will tend to retain less productive workers rather than face unjust dismissal claims (Autor, Kerr and Kugler 2007)
- An increase in the pay of protected “insider” employees as they are also subject to less competition from potential new hires (Frieson 1996; Ruhm 1994; Lindback and Snower 1986 )
- A reduction in the pay for new hires as they “pay” for the additional protection by accepting a lower compensating wage for that benefit (Frieson 1996)
- On the positive side there is some evidence that unjust dismissal protection fosters innovation by
  - protecting employees who engage in risky innovative activities (Acharya et al. 2014)
  - reducing turnover and facilitating long-term employment relationships that

can be beneficial to both employers and employees (MacLeod and Nakavachara 2007).

- Of more direct relevance to statutory protection, there is some evidence that Montana's adoption of such protection increased the profitability of their firms because it decreased the use of the expensive and time consuming redress through the common law tort liability system; in essence, for firms it was the lesser of two evils (Abraham 1998).

The extent to which this evidence based mainly on the extension of common law protection through the courts in the US is relevant to the adoption of statutory protection through employment standards in Canada is an open question. It does suggest the possibility of subtle adjustments, some negative, some positive.

## ***5. Equal Pay for Equal Work Based on Employment Status***

Equal pay for equal work between males and females, or pay equity which involves equal pay between male-dominated and female-dominated jobs, are beyond the scope of this review since they are the subject matter of a separate review. However, equal pay for equal work based on employment status (e.g., part-time, limited-term contract work, temporary-agency work) is within the scope of the review. Given the growth of non-standard employment this topic is especially timely.

Basic principles of economics suggests that at least some of the lower pay in part-time and limited-term contract work reflects the quasi-fixed costs of recruiting, hiring and training workers. Such costs have to be amortized over the hours the individual is expected to work in the organization. If those hours are few (as in the case of part-time and limited-term contract work) then part of the costs are shifted backwards to the part-time and limited-term workers in the form of lower pay. In a competitive equilibrium the employer will equate the marginal cost (not just the wage) of each type

of worker of a given productivity, and this may entail lower pay for part-time and limited-term workers if their quasi-fixed costs are amortized over fewer hours. This will be compounded if there are other quasi-fixed costs such as fringe benefits that are not prorated on an hourly basis. This can result in lower pay for such workers even if they are doing the same work as “standard” workers.

Limited-term contracts are often the new probationary period where employers and employees get to evaluate each other to see if there is a job match. Just as probationary workers were generally paid a lower wage than many of the persons they worked along-side of and who did the same work, so may workers on limited-term contracts be paid a lower-wage. The same issues apply when pay is based in part on seniority or on a grid that is a combination of seniority and paper qualifications. Substantial differences in the pay of equally productive workers, working side-by-side, can prevail in such circumstances.

Temporary help workers may also be paid less than incumbent workers even when they do the same work. Part of this can reflect the cost of the temporary-help agency in serving its matching function. Since that industry is quite competitive, their charges should reflect normal profits. Temporary help workers may also have differences in commitment to their client organization and hence performance depending upon the differences in commitment to their agency and this may depend upon whether they perceive the possibility of a permanent position (Connelly, Gallager and Gilley 2007). Such subtle differences in commitment that can affect performance may compound the difficulty of assessing “equal work.”

While basic principles of economics can explain why pay differences based on employment status can prevail even when the same work is done in the same establishment, the bottom-line driving forces are invariably the market forces of supply and demand. Employers are able to fill their positions in part-time jobs or with limited-term contracts, even if they pay less than standard jobs involving the same work. Sufficient workers want those jobs perhaps to facilitate work-family balance or to coordinate with working while in school (in the case of part-time work) or to “test the waters” or provide experience (in the case of limited-term contracts). Similarly, temp-

help agencies are able to recruit sufficient workers even if they pay them less than incumbent workers and charge the employer more.

The policy concern arises especially when such workers are involuntarily in those positions because they are vulnerable and have little or no individual or collective bargaining power. Even if they voluntarily accept the lower paying part-time work, however, they may be in a precarious situation because they have little individual or collective bargaining power and yet they need the job to make ends meet. This could be the case for some students or retirees or women who have household responsibilities with childcare or eldercare. They may need and deserve protection even if they voluntarily prefer the part-time work because that is the only work they can do in their situation.

Complications can still arise if equal pay between part-time and full-time workers were mandated in those circumstances. This can be illustrated by the evolution of equal pay for equal work between males and females. In Ontario the original equal pay legislation required that the work be *equal* in each and every dimension of the job done by males and females within the same establishment. This was regarded as too restrictive since most jobs had some slight difference, and this would also be the case, for part-time and full-time workers and for contract and temp-help versus regular workers. The equal pay legislation was then expanded to allow small differences by requiring only that the work be “substantially similar”; however, it had to be similar within each of the dimensions of skill, effort, responsibility and working conditions. Differences in one component were not allowed to compensate for differences in another component. This was also deemed too restrictive so a “composite approach” was applied whereby trade-offs across components were allowed so that female jobs that required, say, less effort but more skill were allowed to compare themselves to, say, male jobs that required more effort but less skill. Comparisons were still restricted to be within the same occupation and establishment.

The next extension involved pay equity legislation which expanded the scope of comparisons to allow comparisons across male-dominated and female-dominated occupations within the same establishment provided they were of equal “value” as

determined by a gender-neutral job evaluation scheme. This generally involved four steps. The male and female dominance of the jobs must be established according to some pre-set criteria, such as 70 percent gender dominated. Second, the jobs must be assigned a “value” typically based on assigning points to the criteria of skill, effort, responsibility and working conditions and summing the points. Third, the relationship between pay and points must be established, typically (but not always) by estimating pay lines relating pay and points separately for the male-dominated and female-dominated jobs. Fourth, criteria must be established for how to raise the pay in undervalued female-dominated jobs to the pay of the male-dominated jobs. In situations where there are insufficient male comparator jobs within the same establishment, proxy comparisons are allowed across establishments.

Obviously these same procedures would not *have* to be applied to mandating equal pay between various non-standard and standard jobs when the “same” work is involved. But many of these same issues would arise. Would the same work have to be equal or only substantially similar? Would substantial similarity be required in each and every component of the work, or only in the composite of skill, effort, responsibility and working conditions? Would job evaluation systems have to be put in place to do such assessments? How would any additional costs to employers of not being able to factor-in amortizing the quasi-fixed costs over fewer hours be factored in since they do not seem part of skill, effort, responsibility or working conditions?. Clearly, contesting such evaluations can become complicated as has been the case with the evolution from equal pay to pay equity in Ontario. Substantial resources would likely have to be devoted to enforcing such requirements.

The expected impact of mandating equal pay between part-time and full-time workers, limited-term contract and standard workers, and temp-help and incumbent workers is fairly straight-forward. Firms would substitute away from using part-time, contract and temp-help workers and use other inputs such as capital equipment, offshore outsourcing, and the underground economy. Some of the substitution, however, may go into the comparator groups for the equal pay (e.g., full-time workers and standard incumbent workers) and this may be considered a desirable substitution.

In addition to such substitutions, firms would reduce their output in response to the cost increase and some firms may go out of business. This would reduce the employment not only of the non-standard workers but also of the standard full-time workers. Overall, the employment of the non-standard workers would decrease and the employment of the standard workforce could increase or decrease depending upon the relative strengths of these substitution and output effects.

There does not appear to be a research literature that directly examines the effect of requiring equal pay for equal work based on those different types of employment status. There is little reason, however, to question whether the expected adjustments outlined above would occur.

In spite of the difficulties of determining that work is “equal” in these different forms of employment status, policies have been adopted requiring such equal pay treatment, beyond its application to male and females. WAC (2015, p. 13), for example, indicate that the European Union adopted a Framework Agreement in 1997 that requires part-time workers may not be treated in a less favourable manner than full-time workers solely because they work part-time. This has been adopted by 16 European countries. Australia and Quebec have similar provisions. The extent to which these are applied in practice and their effect has not been dealt with in the research literature.

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

For evidence-based policy making it is important to understand the underlying cause-and-effect relationship between policies and their outcomes:(1) to facilitate affecting 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 policies or have other unintended consequences. This paper outlined the *theoretically expected* effect of various core employment standards and provided rigorous *evidence on their actual effects* where such evidence exists.

## 6.1 Hours of Work

Hours of work regulations have been rationalized on various grounds:

- *Foster health and safety* for both workers and customers (Evidence generally finds that long hours and overtime are associated with increased accidents and injuries, but does not establish whether the underlying causal mechanism is long hours or whether it is other workplace changes that tend to occur when long hours are worked such as a speed-up in the pace of work or reduced maintenance of machinery and equipment. The studies are also not able to compare the risks from longer hours and overtime with any higher risk associated with hiring new inexperienced workers or temporary workers or subcontracting.)
- *Work-sharing* in the hope that reductions on long hours can be picked up by the unemployed or underemployed (Evidence suggests limited possibilities for various reasons: does not deal with the underlying causes of long hours such as employer need to amortize the quasi-fixed recruiting, hiring, training and expected terminations costs of employees; any additional cost on employers will lead them to substitute into other inputs including temp-help workers; unemployed and underemployed are often not good substitutes; enforcement is difficult because both employers and employees often want the long hours; those whose hours are reduced involuntarily may moonlight elsewhere reducing the job opportunities for others; overtime premiums may be “undone” by reducing the straight-time component of pay; reductions in the standard work week after which overtime is paid may actually reduce new hiring because those workers will have to be paid overtime sooner; creates inequities between single-earner families where one party wants long hours in the labour market and the other party focuses on household work, compared to two-earner families whose combined hours are extensive but not restricted.
- *Foster work-family balance* (But some families achieve balance by both parties working fewer hours while others through one party working long hours and the

other focusing on labour market tasks; the additional income from long hours can also facilitate balance; and workers in remote sites may want balance by long hours on the sites and long periods off-site).

- The explicit *right-to-refuse overtime* can be especially important for dual-earner families who are trying to balance work-and-family obligations, especially when children are involved. The burden on employers should be minimal since it would only be exercised by a minority of workers and only some of the time, and other workers tend to welcome the opportunity for overtime.

*Options: An explicit right-to-refuse overtime can be important to foster work-life balance. Other hours of work regulation appear to have more uncertain effects on effects on health and safety, worksharing and achieving work-family balance.*

## **6.2 Irregular Work-scheduling**

Irregular work-scheduling (e.g., on-call work, split-shifts, rotating shifts and required overtime work) has increased for various reasons: increased pressure on employers for just-in-time delivery of products and services; increased importance of the service economy with its need to accommodate peak-loads of customers; fill-in for absenteeism and to screen potential recruits as well as to save on benefit costs; and the use of new software technology that can be used to match customer demand with worker availability. Especially when the negative scheduling is not predictable to the employee, the evidence indicates negative consequences such as stress, health issues, income volatility and work-family conflict, falling mainly on vulnerable, low-income and involuntary part-time workers.

The burden on employers of providing more regular work schedules can be mitigated by the software technology to better predict changing demands and to provide more advanced notice as well as to match the changing demands with workers who voluntarily accept the irregular schedules. Also, there can be a “business case” for

reducing irregular work scheduling so as to facilitate recruitment, retention and job satisfaction and to reduce the need to pay compensating wage premiums for the irregular work schedules.

*Potential policy options to deal with irregular work schedules include: requirements to post work-schedules well in advance; mandatory compensation for last-minute schedule changes or for being “on-call” or for being sent home before a shift ends; requirements for “show up pay” for a minimum number of hours even if there is no work. Policies to consider include: requirements to offer additional hours of work to existing part-time employees before hiring new employees; providing the “right to request” changes in work hours with the employer required to consider such requests ‘in good faith’ and without any repercussions; and the explicit right-to-refuse overtime.*

### **6.3 Vacation and Holidays Provisions**

Additions to the vacation and public holidays are not likely to be very costly to employers because they are known by employers in advance, they apply to all employers so the playing field is leveled, they can pay overtime premiums if it is crucial to have the work done on a public holiday, and most (perhaps 80%) of the costs are shifted back to workers in the form of lower pay in return for such benefits.

This does mean, however, that employees essentially “pay” for such mandated vacation and holiday time, and it is not clear that they prefer such a trade-off. As well, complications arise with respect to holidays given that many are associated with religious holidays and the increased diversity of the population (especially in Ontario) suggests that accommodating such diversity can be very complicated.

*Option: Options in this area all involve trade-offs as indicated above.*

## 6.4 Pregnancy and Parental Leaves of Absence

The costs to employers of job protected but unpaid parental leaves are mitigated by the fact that they are unpaid although they can impose costs associated with having to replace the individual while their job is held or to re-arrange the tasks amongst existing workers – adjustments that can be more difficult for small employers. Empirical evidence on the effect of such leaves suffer from the fact that only a smaller number are *causal* studies in that the use methods to establish a cause-and-effect relationship (rather than just correlations or associations) between parental leaves and various outcomes. The following generalizations emerge from these studies, although many of these are controversial:

- Extended maternity *increases the amount of time mothers spend with their children at home*, but perhaps surprisingly, and of considerable controversy, such time spent at home with a new child tends *not* to have any *causal* effect on short-term or long-term early child development outcomes. The exception is when it *displaces non-licensed care provided by a non-relative in someone else's home* which tends to be of lower quality.
- Longer leave times *facilitate breast feeding* but, again surprisingly, and subject to considerable controversy, this does not appear to have any causal effect on early child development, at least in developed countries.
- The take-up of maternity leave leads to *reductions in full-time employment* around the time of birth and the evidence suggests that this has desirable effects on the early cognitive development of children, although it varies by individuals and there is some controversy in this area.
- Longer maternity leaves lead to other negative consequences:

- increased difficulty in re-entering the labour force
  - Wage penalties associated with career interruptions and erosion of skills
  - Discriminatory practices in such forms as dismissals, reduced recruitment, and pressure to resign.
- The evidence on the effect on *maternal physical and mental health as well as family well-being* is inconclusive, although longer leaves are associated with positive effects for mothers lacking other supports
  - Fathers tend not to take parental leave and when they do it is for a shorter period of time than mothers, but their tendency to take such leave is increasing. When they take such leave it is not always dedicated to child-raising.
  - The cost to employers are generally associated with having to replace the individual while their job is held or to re-arrange the tasks amongst existing workers – adjustments that can be more difficult for small employers. These costs are mitigated somewhat by the increased availability of temporary-help agencies and by the fact that employers are likely able to shift at least some of the costs back to workers in the form of lower compensating wages
  - Requiring employers (as opposed to public funds) to pay for parental leave would likely ultimately have negative effects on those taking parental leave or even likely to take parental leave, as employers may be reluctant to hire, retain or promote such persons.

- There does not appear to be empirical evidence on the effect of parental leave taking by employees (whether paid or not) on productivity, costs and profitability of employers.
- Extensions of unpaid leaves are likely to be regressive in that wealthier families are likely to be able to afford the unpaid leave

*Options: The evidence on the impact of parental leave on various child and parental outcomes, is too limited and controversial to support any clear options. , Converting unpaid leave to paid leave requirements for employers, however, is likely to have negative effects on the hiring and promotion of women. If paid leave is merited, financing it out of public funds would mitigate this potential negative effect..*

## **6.5 Personal Days and Other Leaves of Absence**

Advantages of mandating unpaid personal leave days include:

- They may be of importance for the increasing number of dual-earner families to facilitate child-care and elder-care.
- Workers who come to work when sick are not likely to be productive and can infect others with that associated cost.

Disadvantages include:

- Personal leaves may be difficult for employers, and especially small employers, to adjust to because the leaves are not necessarily known or anticipated in advance.
- Their use may increase to the extent that employees increasingly regard them as a “right” rather than a privilege, especially if co-workers commonly take the leaves.

- Workers ultimately likely bear most of the cost to the extent that employers shift cost back to workers in the form of paying lower wages in return for this benefit.
- Limited empirical evidence suggests that workers clearly respond to the incentives of sick leave in that the more generous the leave provisions and the greater the job protection, the more often sick leave is taken and for a longer period of time. The evidence does not distinguish as to whether the leave is for legitimate reasons related to sickness and child- and elder-care, or possibly abused because it becomes regarded as a right rather than a privilege. Unpaid leave is likely to be regressive in that low-income families cannot afford to take an unpaid day off. There does not appear to be any systematic research evidence on the effect of unpaid leave provisions on productivity, competitiveness and business investment decisions.

*Options: The evidence is too limited in this area to determine whether the pros of unpaid leaves dominate the cons.*

## **6.6 Termination Provisions**

The empirical evidence on the effect of termination policies comes mainly from Europe since that is where the policies are most stringent. The extensive European evidence on terminations generally finds the following:

- reduced employment because the reduction in new hiring (fostered by anticipation of the termination costs) dominates that reduction in layoffs;
- increases use of contingent work to absorb the shocks;
- increases in long-duration unemployment, especially of youths and immigrants, as well as disguised unemployment if they drop out of the labour market altogether;
- segmentation of their labour market into protected “insiders” and unprotected “outsiders” especially of youths and new immigrants that can have long-run scarring effects;

- a reduced ability of employers to adjust to demand shocks

These generalisations may be of limited relevance to Canada and Ontario, however, since the job protection policies are not as stringent so the effects are likely smaller. The area that could be of relevance to Ontario relates to whether more stringent termination legislation could foster more segmentation between protected “insiders” and precarious “outsiders” especially of youths and new immigrants who are having more difficulty obtaining jobs and who may have long-run scarring effects from their initial negative experiences.

*Options: The potential negative effects should be weighted against any positive effects from expanding termination provisions.*

## **6.7 Advance Notice Provisions**

The empirical evidence generally suggests the following positive effects from advance notice provisions.

- They facilitate job search and reduce unemployment and wage losses for those who are laid off, and they facilitate new employers filling their job vacancies
- The literature does not provide specific guidance as to the optimal degree of notice with respect to the employee’s tenure, except for some limited evidence that there are no gains to providing notice of more than one-month, and there may even be negative effects from longer notice periods.
- Mass layoffs merit additional notice but the literature does not provide guidance as to whether the cut-off of 50 or more employees is appropriate for mass layoff provisions.
- Nor does it provide guidance on whether pay-in-lieu of notice is appropriate, although there seems little reason to question its viability. It provides some flexibility to employers and it would enable laid off workers to use the pay to support themselves while engaging in job search while unemployed.
- Limited evidence does not support the potential concern that longer notice will lead to the best employees leaving and the remaining employees “slacking off.”

*Options: If there is a choice between making termination legislation more stringent and increasing the notice requirements, the notice requirements appear to have more positive and fewer negative effects.*

## **6.8 Statutory Protection from Unjust Dismissal**

Statutory protection from unjust dismissal for non-union employees appears appealing to fill the gap between the unjust dismissal procedures for unionized workers and wrongful dismissal procedures through the courts that are used mainly by higher-level personnel given the costs and long delays. There does not appear to be direct empirical evidence on the effect of such statutory protection, but indirect evidence suggests it can also lead to possible unintended negative consequences:

- The application of progressive discipline (a criteria that is generally considered important in unjust dismissal cases) can have some negative repercussions as some employees can react negatively to them rather than alter their behaviour in a corrective fashion.
- Employers factor-in such unjust dismissal costs into their hiring decision and this has deterred new hiring especially that of youths and new immigrants.
- An increase in the pay of protected "insider" employees as they are also subject to less competition from potential new hires, and a reduction in the pay for new hires as they "pay" for the additional protection by accepting a lower compensating wage for that benefit.
- Employers use temp-help agencies, term contracts and subcontracting where it is easier to terminate a contract as opposed to an employee.
- A decline in firm productivity as firms are more reluctant to dismiss employees who perform poorly
- One US study, however, found that Montana's adoption of statutory protection increased the profitability of their firms because it decreased the use of the expensive and time consuming redress through the common law liability system.

In his report for the federal jurisdiction, Arthurs (2006) recommended continuation of the statutory protection but also additional resources to deal with shortcoming in their procedures. In his background report for the Arthurs commission, England 2006 highlighted many of those complexities and concluded that substantial cutbacks to the federal program were not merited, nor were expansions of its generosity given the evidence on adverse economic effects. In his report on reforming employment standards in British Columbia, Thompson (1994) recommended against adopting statutory protection largely on the grounds of the costs it would impose on employers, and especially small employers.

*These possible negative effects, and the need for additional resources required to make the system effective, should be considered in any decision to adopting statutory protection for unjust dismissal.*

## **6.9. Equal Pay for Equal Work Based on Employment Status**

Equal pay for equal work based on employment status (e.g., part-time, limited-term contract work, temporary-agency work) intuitively seems fair and reasonable. It is complicated, however, by the fact that lower pay in these situations may occur to compensate for higher employers costs in other dimensions of the work. Some of the lower pay in part-time and limited-term contract work may reflect the quasi-fixed costs of recruiting, hiring and training workers being amortized over fewer hours. Limited-term contracts are often the new probationary period where employers and employees get to evaluate each other to see if there is a job match. Just as probationary workers were generally paid a lower wage than many of the persons they worked along-side of and who did the same work, so may workers on limited-term contracts be paid a lower-wage. The same differences in pay may arise when pay is based in part on seniority or on a grid that is a combination of seniority and paper qualifications. Temporary help workers may be paid less than incumbent workers even when they do the same work because the employer has to also pay the temporary-help agency in serving its matching function. Part-time and temporary-help workers may have differences in

commitment to their organization compared to regular workers and such differences may affect performance.

It is also the case that employers are able to fill those positions even though they pay less than others doing the same work because sufficient workers want those jobs perhaps to facilitate work-family balance or to co-ordinate with working while in school (in the case of part-time work) or to “test the waters” or provide experience (in the case of limited-term contracts). Such workers, however, also may involuntarily be in those positions because they are vulnerable and have little or no individual or collective bargaining power. The same can be the case, however, for those who voluntarily accept the lower paying part-time work, because they are constrained to do so due to their situation as students or women who have household responsibilities with childcare or eldercare. They may need and deserve protection even if they voluntarily prefer the part-time work because that is the only work they can do in their situation.

Legislatively requiring equal pay for equal work based on employment status would give rise to administrative complexities in enforcing such requirements, similar to those that occurred in the evolution from equal pay to pay equity in the case of males and females. Would the equal work have to be equal or only substantially similar? Would it have to be equal in each and every component of the work, or only in the composite of skill, effort, responsibility and working conditions? Would job evaluation systems have to be put in place to do such assessments? How would subtle differences in worker commitment that can affect performance be accounted for? Clearly, contesting such evaluations can become complicated as has been the case with the evolution from equal pay to pay equity in Ontario. Substantial resources would likely have to be devoted to enforcing such requirements.

*Options: The administrative and enforcement complexities of legislatively mandating equal pay for equal work based on employment status must be considered. Lessons from the evolution of equal pay for equal work to pay equity between males and females are instructive .*

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