

Labour Law Review Deputation from 15 and Fairness Guelph

To begin, the 15 and Fairness campaign wants to emphasize that we support the Workers Action Centre's "Still working on the edge" report, the Migrant Worker's Alliance for Change (MWAC) submission, and the OFL's submission to your review. We support their demands.

For our presentation, we would like to emphasize key areas of the Workers Action Centre's report.

1. Minimum Wage

(a) Raising the minimum Wage

Many Ontario workers are struggling to get by. More and more decent jobs are being replaced by low-wage work. The fastest growing jobs in Ontario are in the service sector, where wages are the lowest. Even before the recession, our economy was shifting to lower-wage work. In 2014, 33 percent of workers had low wages, compared to only 22 percent in 2004.

The current minimum wage leaves workers 16 percent below the poverty line. It is unacceptable that full-time workers live in poverty. Many of us are being squeezed to make tough decisions around rent, food, and childcare.

Demand: The minimum wage should be 15 dollars per hour.

(B) Differential Minimum Wage

There are still many groups of workers that are exempted from this minimum wage, and are forced to try to make ends meet on even lower wages. Students, liquor servers, farmworkers (including migrant farm workers), to name just a few, are all allowed to be paid a lower minimum wage. This makes Ontario one of the few provinces in the country, which has lower minimum wages for certain groups of workers, and that is unacceptable. Basic minimum standards should protect everyone equally.

Demand: There should be no exemptions to the minimum wage.

2. Hours at Work

(a) Decent hours, Decent work

The ESA gives employers substantial control over hours of work and scheduling. Some people work too many hours and some workers do not get enough hours.

Violations of overtime and hours of work standards cut a wide swath across many industries. Over one million Ontario workers worked overtime in 2014 and 59 percent of these workers did so without overtime pay. Ontario's hours of work standards allow for longer work days and work weeks than many other jurisdictions and need to be updated to support job development. There is also a confusing myriad of industry and occupational exemptions and special rules for hours of work and overtime – there is no real ceiling on maximum work hours.

Demand: The ESA should provide for an eight-hour day and a 40-hour workweek. Employees should have the right to refuse work beyond 40 hours. Overtime at time and a half should be paid (or taken as paid time off in lieu) after 40 hours. No overtime exemptions or special rules.

Repeal overtime averaging provisions in the ESA.

Require employers to offer available hours of work to those working less than full time before new workers performing similar work are hired.

(b) Fair Scheduling

For many service workers, the employer expects workers to be available for 5 days but will only schedule them for 2 or 3 days. There is no ESA requirement to provide schedules. The expectation that workers will be available for erratic shifts creates underemployment as workers are prevented from taking on other work due to scheduling conflicts. Workers bear the costs of unpredictable hours of work through underemployment, having to finance employers' "just-in-time" scheduling by carrying debt through weeks of insufficient hours or relying on friends and family for financial support.

Demands: Require two weeks' advance posting of work schedules (including when work begins, ends, shifts, meal breaks).

Require that employees receive the equivalent of one hour's pay if the schedule is changed with less than a week's notice, and four hours' pay for schedule changes made with less than 24 hours' notice.

Workers must be able to ask employers to change schedules without penalty (i.e., protection from reprisals).

3. Equal Pay for Equal Work

The ESA has a role in establishing a framework for equality among workers doing comparable work. Precarious work has increased immensely, with part-time jobs increasing 25 percent and temporary employment growing 40 percent since 2000.

Demand: There should be no differential treatment in pay, benefits, and working conditions for workers who are doing the same work but are classified differently, such as part-time, contract, temporary, or casual.

3. Migrant Workers

(A) Right to Unionize

The *Agricultural Employees Protection Act* established in 2002 is so ineffective that no collective bargaining relationship has ever been established.

Demand: This *Act* should be repealed and farmworkers (many of whom are Migrant farmworkers) should have the same right to general collective bargaining under the *Ontario Relations Act* that other workers have.

Domestic workers, or caregivers, employed in a private home are excluded from the OLRA.

Demand: Repeal the exclusion of domestic workers (many of whom are migrant workers) and allow such workers to unionize and bargain sectorally.

(b) No ESA exemptions for Migrant Workers

The ESA exemptions for agricultural workers (including Farm Employees, Harvesters, Flower Growers, and those engaged in processing, packing or distribution of fresh fruit or vegetables) should be removed. These exemptions result in a confusing patchwork of rights and entitlements and a lack of protection for migrant agricultural workers under basic ESA standards. This contravenes the purpose of the ESA to establish a floor of minimum standards for all workers.

Demand: Agricultural workers should be entitled to all of the following ESA provisions: minimum wage, overtime, vacation and holiday pay, hours of work, daily and weekly/bi-weekly rest periods, eating periods and, time off between shifts.

(c) Right and Protection to refuse unsafe work

There are key elements in the Temporary Foreign Worker Program (TFWP) program that structure and constrain working lives, creating conditions ripe for the abuse of minimum employment standards. Workers under the TFWP are tied to one employer and are restricted from moving from one job to the next when violations occur. That is because workers are required to get a new work permit tied to another employer who has been approved under the TFWP. Recruiters target migrant workers and charge exorbitant fees, creating huge debt bondage for many workers, which act as a further disincentive to workers asserting their rights. When workers under the TFWP lose their jobs, they lose their residency status in Ontario and can be subject to deportation.

Demands: Amend the ESA to include a process for expediting complaints of reprisals and, in the case of migrant workers, ensure that such complaints are heard before repatriation. Where there is a finding of reprisal, provision would be made for transfer to another employer, or where appropriate, reinstatement. The ESA should explicitly prohibit an employer from forcing “repatriation” on an employee who has filed an ESA complaint. Migrant workers should be able to make claims under the ESA when conditions of the employment contract has been reduced or not complied with.