

Submission to the Ministry of Labour

On

Changing Workplaces Review

Labour Committee
Chinese Interagency Network (CIN) of Greater Toronto
September 17, 2015

Contact: Yi Man Ng
Health Promoter
Central Toronto Community Health Centre
yng@ctchc.com
(416) 703-8482 ext. 235

Chinese Inter-agency Network (CIN) Labour Committee

Submission on Changing Workplaces Review

The CIN Labour Committee was formed in 2001. During that time, it was recognized that more and more settlement workers were dealing with labour issues brought on by Chinese immigrant and refugee workers. Apart from some specialized workers, such as community legal workers, people in the professions of helping immigrants and refugees may find it challenging to help these workers with labour issues. In order to best serve them, and provide support for each other as settlement workers in dealing with labour issues and doing advocacy, this committee was formed.

Currently, the committee is comprised of the following agencies: Centre for Immigrants & Community Services (CICS), Central Toronto Community Health Centre (CTCHC), Chinese Canadian National Council Toronto Chapter (CCNCTO), Injured Workers' Consultants, Labour Community Services, Labour Council, Metro Toronto Chinese & Southeast Asian Legal Clinic, St. Stephen's Community House, WoodGreen Community Services, Working Women Community Centre, and Workers' Action Centre. Our mandates are to build resources and capacity among agencies serving Chinese immigrant and refugee workers on workplace related issues, and to establish a network among agency workers and community partners for professional support and advocacy.

Introduction

The last major update of the Employment Standards Act (ESA) was in year 2000. A labour law review is needed to reflect the on-going changes in the workplace. Nowadays, there is increasingly more casual and part time work than permanent ones. The updated ESA provisions should reflect these changes by treating workers in an equitable way.

The CIN Labour Committee had put together a list of recommendations for this ESA review. The committee members have a wealth of experiences working with immigrant and refugees workers at the individual, community and advocacy levels. These workers faced a lot more challenges in dealing with labour issues. The current ESA doesn't adequately protect them from various exploitations.

The committee applauds the initiation of an ESA review. This is a great opportunity for it to keep pace with the ever changing workplace. This submission is based on our experiences and insights in working with Chinese immigrant and refugee workers on various labour related issues.

Recommendations

1. Minimum Wage

The minimum wage had risen to \$11 per hour in 2014. At this hourly rate, the total of yearly earning of working full time still falls below the poverty line of about \$23,000 in Ontario for a single person. The amount is even lower after tax deduction. The hard earned money still won't give workers a livable quality of life.

Immigrant and refugee workers have many challenges in finding employment. The lack of language proficiency and recognition for their credentials/oversea experiences leads them to lower paying jobs. This is even worst for working parents/single parents as they have another mouth to feed. Therefore, the current amount of minimum wage not only affects just the workers themselves, but also their families as well. Also, minimum wage workers tend to work in workplaces with no benefits, such as extended health benefits. This will only further their financial burden, especially when they are sick.

Recommendation: **Raise the minimum wage to \$15 per hour in order to improve the standard of living for the working poor.**

2. Overtime

Since the total of work hour of a regular work week is 40, it doesn't really make sense to have workers to work more than 44 hours before receiving overtime pay. Workers should be recognized for their effort to help their employers. Once they pass the maximum of 40 work hours, they should be paid overtime accordingly.

Not all workers have full time jobs. Many do precarious work. It is very unlikely that they will get any overtime pay even if they had worked more than 8 hours in one day. This is very inequitable for part time, temporary and on call workers. Most of the

provinces across Canada have both choices of calculating overtime over hours worked in one day or one week.

Recommendation: **Workers should receive overtime pay after working for more than 40 hours weekly or more than 8 hours in one day.**

3. Severance Pay

Nowadays, there are more casual and part time jobs due to global competition and cost cutting. Long time workers contribute to the stability of the workplace. Workers who have been working in the same workplace for a long time should be recognized for their lengthy service. This recognition should not be tied to company size or the number of people who get laid off within 3 months.

Recommendation: **Workers who have been working at the same company for 5 years and over are entitled to severance pay.**

4. Meal Time and Break Time

Currently, workers have a half an hour meal time for every 5 work hours. The hours required to work before getting the meal time is too long. Since the ESA states the daily maximum work hours is eight, it will make more sense to have a meal time after 4 hours which is half way of a work day. If the shift is only 6 hours, there is no point of scheduling a meal time half an hour before it is over. This is especially important for workers whose jobs involve physical exertion. They need to eat/rest in order to replenish their energy for their work.

As for break time, the current ESA states that it is up to the employers to grant this. Small breaks serve to rejuvenate the energy levels for workers. This is especially important for workers who are doing physical work or repetitive movements, working with chemicals and high stress work. These breaks help to give their bodies a break in order to lessen the harm to workers' well-being. Additionally, these breaks will lower the risk of potential injuries and developing mental health issues. The work performance is closely tied to the well-being of the workers.

This provision of meal time and break are especially important for workers who are older, have special needs and pregnant women. For example, a pregnant woman who

works as a waitress needs to have adequate meal time and breaks scheduled appropriately for her shift.

Recommendation: **A meal break for every four work hours and a 15 minute for every two work hours.**

5. Emergency Leaves

All workers should be treated with equity. Workers should not be denied of emergency leaves just because their workplaces have less than 50 workers.

Most workers work in smaller workplaces. A lot of the time, it is difficult for them to take a day off due to sickness or emergency. As for immigrant workers, it is doubly hard for them to get someone to look after a sick family member because they lack social support here. Health conditions vary at different stages of life that may require time to rest/recover and accessing health services. This is a reality for vulnerable workers who have chronic illness, pregnant women and the elderly. Whether they can take time off or not is at the mercy of their employers.

For example, pregnant women need to visit their doctors and have lab tests more often than the average persons. There have been cases in which pregnant workers were sick and forced themselves to go to work because they don't want to lose their jobs. This is extremely detrimental to both their and babies' health, and put a lot of stress on them. If they lose their jobs, some of them may not qualify for Employment Insurance maternity and parental benefits because they didn't have enough work hours. Hence, there is pressure for them to accumulate the needed 600 work hours.

These vulnerable workers are more likely to be the subjects of wrongful dismissals. Workers should not be forced to choose between taking care of their health and work.

Recommendation: **All workers should be entitled to emergency leaves regardless of the size of the workplace.**

6. Paid Sick Leave

Workers want to work and no one wants to get sick. Getting sick in general is out of one's control. Most of them who work for low wages don't have paid sick days or drug

benefits. Missing work days means no pay. This is more detrimental for low wage earners aside from no pay. They may also need to pay for their prescriptions which are not cheap. Hence, they will go to work even when they are sick. This will further jeopardize their well-being. Healthy workers will bring better work performance.

Recommendation: Workers should be entitled to have 6 paid sick day leaves every 12 months.

7. Vacation and Vacation Pay

Ontario and Yukon are the only two provinces without an increase for vacation time and pay in recognition of long time services for workers.

The increase for both vacation time and pay in accordance to length of service varies across Canada. Four provinces (B.C., Alberta, Manitoba, Northwest Territories) have the same provisions:

Holiday pay:	4% for the first 5 years 6% under 5 years
Vacation time:	after 1 year – 2 weeks After 5 years – 3 weeks

Workers in Ontario should be on par with these provinces in areas of vacation time and vacation pay.

Recommendation: Workers should be entitled to the following:

Holiday pay:	4% for the first 5 years 6% after 5 years
Vacation time:	after 1 year – 2 weeks after 5 years – 3 weeks

8. Status of Employment

In some workplace, workers are forced to identify as self-employed. This way, the employers don't need to contribute to CPP and EI among other needed contributions.

They can easily manipulate the employment records. But it affects the workers greatly.

There needs to be a clear definition of the term “self-employment”. Since workers are the ones who got manipulated, it is the onus of the employers to prove whether the workers are self-employed or not in accordance to the definition.

A lot of the time, workers who are doing piece work or being paid commission are classified as self-employed. In general, they don’t have any control over the hours of work, entitlement of profits/loss, and ownership of equipment used. This prescribed status impacts their EI application, filing for income tax returns, family sponsorship, decrease in CPP amount and other related benefits. While the employers save money, the workers are losing out.

Lastly, by re-classifying the employment status, employers don’t need to abide with ESA. This allows employers to pay workers of various employment status different wages for doing the same jobs within the same companies. Hence, workers are further being exploited and can’t do anything about it.

Recommendation: **The terms: contractor, self-employment and employer must be clearly defined so that employers cannot manipulate the workers’ employment status.**

It is the employer’s responsibility to prove whether the workers are employees or not.

9. Enforcement

- a) It is hard for immigrant workers to file claims. Most of them are not even aware of the ESA. Even if they do, there are many barriers in doing so, such as language, where to seek help, fear of losing their jobs / harassment from employers/management, and other reprisals. The enforcement of the ESA is mainly relied on the onus of the workers to file claims on violations. The imbalance of power between employers and workers is a major reason for not filing claims.

In order to uphold the enforcement of ESA, random or unscheduled inspections on employers are needed. This will help to ensure further ESA compliance and

discovery of violations. Anonymous reporting from workers or third party via phone calls or emails takes pressure away from workers who are afraid to file claims.

Ultimately, ESA must provide better protection for workers in reporting violations. The bottom line is that workers don't want to lose their jobs and be harassed by their employers. There should be stiffer penalty for employers for (repeat) reprisals against the same workers after filing claims.

Recommendation: In raising the awareness of ESA, it is mandatory for employers to provide ESA information in different languages to newly hired workers. Putting a poster in the workplace is not enough.

Anonymous reporting for ESA violations.

Random or unscheduled inspections of workplaces.

Better protection for workers who have filed claims.

b) If a violation has been found, the employer should be red flagged. The red flag would remain for five years. If there haven't been any violations during that period, it would be taken off.

Recommendation: Employers will be red flagged if they have violated any standards. The red flag will remain for five year probation.

A system of how to penalize the red flagged company should be built.

MOL inspector will be alerted if there are 3 flags or more on non-compliances.

10. Payment of Owed Wages

There should be a reasonable deadline for owed wages paid to workers. The owed wages should include over time, vacation, holiday, termination and severance pays. Since employers have owed workers' wages for some time already, it should be paid as soon as possible. We recommended once the decisions are made by the MOL, the employers should pay the lump sum within 7 business days regardless of bankruptcy or not. In addition, employers should pay the 5% interest of the wage owed from the date it started owing. Since workers have to wait for quite a long time from the beginning till the decisions made by MOL, they should be compensated.

If there is a delay of payment after the MOL decision, there will be a penalty of 5% interest of the owed amount to compensate the workers. Both employers and board of directors are accountable in paying the owed wages. If needed, the owed amount should be garnished from the CRA or the MOL can put a lien on the private property or asset of the employers and board of directors.

Recommendation: **Aside from paying the owed wages, employers should pay an addition of 5% interest of the owed wages from the date it started owing. It is to compensate workers for the waiting period.**

The employers have 7 business days to pay the owed wages to workers once the MOL makes the decisions. If there is a delay in payment after the MOL decision, there will be an addition of 5% interest rate of the owned amount for late payment. This is another compensation for workers for the longer wait time in getting the money.

Both employers and board of directors are held accountable in paying the owed wages. MOL should have the authority to put a lien on their private property or asset.

The owed amount can be garnished from the CRA and any profits made by the employers and board of directors up to 5 years.

11. Penalty

The amount of penalty needs to increase in order to be more effective. Currently, the amount of fine is insignificant to employers or the directors of the business. Therefore, it is more likely for them to continue with the violations.

If the worker is with the employer for 1 year, then the penalty will be 1 month of the worker's salary. The proposed scale will be similar to that of the termination pay. If the workers who had filed claims and received reprisals, the penalty should be double. There will be a 5% interest rate for late payment. Aside from employers, the board of directors should also be accountable for the violations. We highly suggest that the owed amount can be garnished from the CRA and any profits made by the employers and board of directors up to 5 years.

Recommendation: **The penalty paid is based on the scale similar to the termination pay, such as the penalty will be one month of worker's regular salary if s/he had worked there for a year.**

The penalty will be double if the workers faced reprisals after filing claims.

There will be a 5% interest rate applied for late payment.

Both employers and board of directors are held accountable in paying the penalty. MOL should have the authority to put a lien on their private property or asset.

The amount can be garnished from the CRA.

Conclusion

Workers are the cogs of the wheels in running a country's economy. Their rights must be upheld in order to ensure they are treated fairly and equitably. The current ESA review must address the power imbalance between workers and employers for this is the major barrier in enforcing the ESA. It is the employers' onus to abide with the law.

Having rights does not mean one can exercise them because there are many barriers. The above recommendations only addressed some of the issues with ESA. But these

changes are essential to ensure workers can exercise their rights with ease and ensure their well-being. MOL needs to work at different levels to raise awareness of both the workers and employers of their rights and responsibilities under ESA. Having awareness is not enough. ESA is nothing until the enforcement is effective. Tighter monitoring and stiffer penalty are necessary in decreasing violations. In addition, some of the recommendations are to bring the entitlements on par with a number of provinces.

Workers' experiences at the grass root level provide many snapshots of labour related issues they have dealt with. All these point to the direction of needed changes. It is our hope that a more an effective ESA will come out of this review.