

# **Changing Workplaces Review Submission**

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## Introduction

The ETFO Niagara Occasional Teachers' Local represents over 600 occasional teachers who work for the District School Board of Niagara.

Occasional Teachers (the term is defined in the Education Act) are fully qualified teachers certified by the Ontario College of Teachers.

In 2014-15, the teacher membership of the Elementary Teachers' Federation of Ontario totalled 77,519.

- 20,311 of those members are employed as Occasional Teachers (OTs).
- More than 1 in 4 (26.2%) public elementary teachers are OTs.

Unfortunately, within the teaching profession, occasional teaching is often precarious at best. While a portion of OTs are in "long-term occasional" (LTO) positions which are better paid during part of the year, for the majority of occasional teachers daily per diem work is the reality.

### **Daily OTs face a number of harsh realities:**

- They are paid less than their full-time peers; province-wide the daily rate is *less* than the lowest rung on the salary grid (made worse by the fact that even on their first day of work as teachers, the overwhelming majority of OTs qualify for a higher spot on the salary grid due to their education).
- Their education and years of experience are not recognized.
- They have no benefits unless in a LTO position, and even then they usually do not receive the same benefits (no long-term disability, for instance) or there are restrictions on qualifying for those benefits.
- OTs have no guarantee of work, but are expected to be available for work every day.
- In many (perhaps most) school boards daily work is at least partially assigned on the basis of favouritism.
- In many cases, rather than properly deal with any perceived or real issues with a teacher, a Principal will simply cut off a teacher from working in their school entirely.

- A “good year” for a daily occasional teacher is one in which they earn more than \$20,000 through teaching (many earn far less). As a result, many occasional teachers rely on other jobs to provide a steady stream of income.

## Exemptions for Teachers Need to be Differentiated

Not all teachers have the same working conditions, and there is a vast gulf between the working conditions of full-time teachers compared to those of occasional teachers.

- **Regulation 285/01, s.2(1)(d) needs to be amended such that occasional teachers are not included in the broad exemption from the Employment Standards Act that applies to teachers.**

## Hours of Work

Rates of pay mean little if there is not enough work offered to make a living. To that end, the Employment Standards Act needs to address not only maximum hours of work, but also minimum hours of work.

- s.141 of the ESA provides for a minimum of three hours pay with the proviso that the employee normally works more than three hours per day.

**This limitation should be removed, and the minimum hours of pay should be raised to four.**

For an employee to attend work and be paid for less than four hours, they have lost the opportunity to work a half day elsewhere. Also, by removing the proviso that they normally work more than three hours per day this would essentially set a minimum shift length of four hours for any time an employee works.

In the occasional teacher context, this would essentially make the minimum assignment a half day of work, rather than the 1/10th of a day some school boards use as their minimum assignment duration.

- **The ESA should be amended to require employers to provide employees a schedule of work two weeks in advance if possible. Similarly, employees should be protected from reprisal if they are unavailable for**

**work when they have not been given at least two weeks notice of the shift.** With the growth of low-paid part-time precarious work, employers need to take responsibility for demanding such “flexible” work conditions by being organized in their scheduling such that employees are able to manage the second or third jobs that they often have to take to make ends meet.

In the occasional teacher context, this would encourage school boards to be more organized in the management of their occasional teacher resources, and would protect occasional teachers from reprisal (such as having the calls they receive reduced, or having their employment terminated if they were unable to work a certain number of days per year because they didn't have enough notice to be able to accept jobs).

- **The ESA needs to address workers who are considered “on call” (those who are not scheduled in advance but instead carry a cell phone and may be called in to work on short notice).** The costs of workplace flexibility should not be borne entirely by workers.
  - **There needs to be a provision to compensate the worker for time on call (not just the time worked when called in),** as otherwise the worker pays a large opportunity cost in lost alternative work and/or restricted personal time in order to be available to the employer at a moment's notice.

## Personal Emergency Leave

- **Emergency leave should be a paid leave.** Currently, having the right to emergency leave is meaningless to most workers, because exercising that right will put them in a precarious financial situation. For emergency leave to be meaningful, s.50(1) of the ESA must be amended so that emergency leave is with pay.
- **Emergency leave should be increased from 10 to 15 days** (s.50(5)), as it is a broad category including not only things such as bereavement leave but also personal illness.

## Fairness for Non-Standard Work

For a significant portion of the workforce, “non-standard” work arrangements have

become the norm. Whether they are considered part-time, occasional, “casual”, or have been misclassified by their employer as an independent contractor, the employees in these precarious work situations all have a common denominator in that they are treated differently by their employer from full-time employees doing the same work.

For occasional teachers, being treated differently by our employers because we're not full-time workers is almost a defining characteristic of the job. The ESA needs to be amended so that employers are encouraged to treat part-time workers with the same level of respect as workers who do the same job full-time.

## **Equal Pay for the Same Job**

*"In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds." - EU Directive on Part-Time Work (1997)*

Apart from the number of hours worked, employers often compound the precariousness of jobs by paying lower wages to part-time workers, and by not offering the same (or any) benefits. To address this, we offer the following recommendations:

- **When workers are working a job that is substantially the same, they should receive the same hourly wages and benefits.**
- **Benefits should be offered with the same conditions to part-time and full-time workers.** The types of benefits, eligibility requirements, and waiting periods should not be different.

## **Fair Access to Hours of Work**

When we are talking about workers and employers, we are fundamentally talking about people. There is a duty of care and responsibility that goes in both directions when a worker enters an employment relationship with an employer. However, many employers fall short in that duty by treating their employees as tools to be rented by the hour rather than as people.

In contrast to a consultant who charges a commensurately higher price per hour to compensate for the infrequent use of their services, an employee enters into the employment relationship at a lower rate of pay with the expectation that the employer

will be using their services on a regular basis that will be sufficient to make a living.

- **Employers should be required to offer more hours to part-time workers prior to hiring new workers.** In the occasional teacher context this would help prevent school boards from hiring so many occasional teachers that the available work is diluted amongst so many people that none of them are able to make a living.
- **Reduction of hours worked should be prohibited as an act of reprisal or discipline against an employee.**
- **A worker's refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment.**
- **When work is not typically known in advance and is distributed via an automated system, employers should be required to use systems which are fair, rather than rigged to allow work to be driven to specific people or shortlists of people.**

## Empowering Workers

- **Worker education on their rights under the ESA should be mandatory,** similar to the Occupational Health and Safety Awareness and Training regulation (Regulation 297/13 of the OHSA).
- **It should be made clear to all workers that they cannot waive their rights under the ESA or their collective agreement.** Many employers require employees to sign lengthy forms as a condition of their employment. It should be clearly emphasized that regardless of what an employer requires an employee to sign, they cannot sign away their rights.
- **Instructions on filing a complaint should be added to the "Your Rights at Work" poster in every workplace.**
- **Penalties to employers for reprisals against workers should be increased substantially.**
- **Replacement workers should be expressly prohibited during a work stoppage.** s.78(1) of the Labour Relations Act prohibits strike-breaking behaviour and the use of professional strike-breakers. The definitions need to be

made clearer so that the employment of workers to replace workers engaged in lawful strike action is clearly prohibited.

## Conclusion

Occasional teachers are highly educated members of a regulated profession who shoulder an enormous amount of responsibility. Yet because we are part-time workers, our employers treat us vastly different from our full-time peers.

While the recommendations in this submission have been focused on those that would benefit occasional teachers, any changes to the ESA and LRA that help address the differential treatment of workers based on how many hours they work would be welcome.

## References

EU Directive on Part-Time Work: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31997L0081>

CRA RC4110: Employee or Self-Employed? <http://www.cra-arc.gc.ca/E/pub/tg/rc4110/rc4110-e.html>

Health and Safety Awareness training (as a potential model for ESA training): <http://www.labour.gov.on.ca/english/hs/training/>

Still Working on the Edge, a report from the Workers' Action Centre: <http://www.workersactioncentre.org/press-room/policy-papers/>

A Higher Standard, a report from the Canadian Centre for Policy Alternatives: <https://www.policyalternatives.ca/publications/reports/higher-standard>