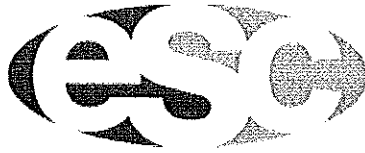


London



**Employment
Sector Council**
London-Middlesex

ESCLM participation in the Ontario Public Consultations to Strengthen Labour Laws—Consultation on
Employment Standards Act

8 July 2015, 11:30-40am

Written Submission

We are grateful for the opportunity to participate in this consultation, which comes at the heels of recent positive changes through Bill 18 (*Stronger Workplace for a Stronger Economic Act, 2014*) to expand employment protection, and in light of a rapidly changing workforce with new and complex challenges. Today we will describe three key opportunities to reform the *Employment Standards Act* (ESA) to be as equitable, efficient and representative as possible, particularly for groups of workers that have been detrimentally affected by gaps in employment standards.

About Employment Sector Council London-Middlesex

In 1992, ESCLM emerged as London-Middlesex’s response to the need for a more coordinated approach to labour market planning. Our members represent more than 40 public and nonprofit employment and training service providers, educators and representatives from all three levels of government. ESCLM’s collaborative approach to employment and training sector planning has resulted in a seamless, “no wrong door” service delivery system for more than twenty years. We are deeply committed to consistent, high quality service across the London-Middlesex region.

ESCLM’s membership represents the experiences of frontline staff working in non-profit community employment agencies that collectively serve 80,000 job seekers and thousands of employers in London-Middlesex. Our clients are typically under-represented in the workforce and are disproportionately affected by gaps in employment standards. ESCLM’s voice is critical to this consultation given the diversity of our membership and our collective experience working with many demographics of job seekers and workers.

ESCLM is a key partner within London-Middlesex’s employment sector as critical interveners who connect with both employers and workers. We support employers in the community by providing no-fee human resources expertise and by working with them to find individuals that are the best match for their hiring needs. We are well attuned to challenges they face, particularly for small companies and our comments today reflect this understanding.

Reforming the Employment Standards Act

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Over the last decade, our member organizations have seen an increase the diversity of the workforce seeking employment—the last decade has seen the highest period of immigration in London and area¹ —as well as an in precarious or non-standard employment in Ontario (involuntary part-time employment, and multiple jobs with earnings below median wage, on-call work etc.²). The effects are felt most acutely for youth, older workers, women, newcomers and racialized individuals.³ We have witnessed the challenges that employees face in the workforce and we are pleased that such a consultative process is being taken to address the changing needs of both employers and workers. We have reviewed the material in the supplied Guide to Consultations document and today we have focused on three themes that resonate with our members, as they pertain to the ESA.

(i) Exceptions and exclusions

While it is difficult to determine a precise number of clients who are not protected under the ESA, we believe there has been an increase given the growth in forms of flexible work. These cases are common for our frontline staff, however they remain “hidden” to the government and general public because of underreporting of complaints and because they are not covered under the ESA.

Exceptions and special rules disproportionality affect low-income employees and already marginalized groups. Our frontline staff regularly witness the effects this has on an employees’ mental health, their families, and the community. To address this, we must work to raise the basic floor of rights and their enforcement through the ESA. Specifically, we would like to see the following:

as per project #5

- An expanded definition of employee. There is a need to broaden the definition of employee to capture new and increasing forms of flexible work with the goal of protecting more workers, for example, that used in Ontario’s Health and Safety Act, which defines a worker as “a person who is paid to perform work or supply services for monetary compensation.”⁴ This would mean, for example, that under the ESA, all employers who enter into contracts with subcontractors should be liable for wages owed and other entitlements.
- No overtime exceptions and special rules as they apply to particular categories of workers.
- Adoption of the “equal pay for equal work” principle. There should be no difference in pay, working conditions and benefits for workers who are classified as part-time, or on a contract, temporary or casual basis, if they are doing the same work as their full-time counterparts.⁵ In the same vein, all workers must receive same benefits, compensation,

¹ Statistics Canada, London, CY, Ontario, National Household Survey (NHS) Profile, 2011 National Household Survey, 2013.

² Ministry of Labour, “Guideline Workplaces Review, Guide to Consultations,” May 2015.

³ Mary Gellatly, “Still Working on the Edge: Building decent jobs from the ground up,” *Worker’s Action Centre*, March 2015, 11, http://www.workersactioncentre.org/wp-content/uploads/dlm_uploads/2015/03/StillWorkingOnTheEdge-WorkersActionCentre.pdf. See also, Leah F. Vosko, Andrea Noack, John Grundy, Azar Masoumi and Jennifer Mussell, “Who’s Covered by Ontario’s Employment Standards Act? Assessing the Relationships between Workers’ Characteristics and Levels of Protection,” Paper presented at Canadian Association for Work and Labour Studies, 29 May 2014.

⁴ Gellatly, “Still Working on the Edge: Building decent jobs from the ground up,” 9.

⁵ *Ibid.*, 14.

conditions etc. regardless of employment relationship i.e., whether hired directly by employer or through a staffing agency.

- A set number of job-protected sick days and personal emergency days for every employee regardless of employer size.

(ii) Inclusion of youth and students

London and area is home to around 45,000 students from Western and Fanshawe, and students are an important demographic served by many of our employment service providers. It is our experience there should be basic protections for students under the ESA. For example, the three hour minimum paid to workers if called in and sent home should be applied to students as they are equally valuable as workers of another age. Or, for example, there must be a mechanism for students to access their rights if they have been wrongfully dismissed.

(iii) Accessibility of the ESA legislation

Our experience is that workers can be unclear whether issues can be addressed through ESA. Greater awareness of the ESA can mitigate this confusion. There must be clear guidelines on how to navigate the process if an employer has violated their rights or owes them compensation. This must be paired with a meaningful and timely mechanism to respond to questions and concerns from employees.

Resources produced by the Ministry to make the ESA more accessible to workers should be widely distributed.⁶ A shorter resource guide should be written in clear language and translated in non-official languages (in addition to English and French), as the current guide to the ESA is 167 pages and is not available in other languages. The most common non-official language mother-tongues in Ontario include Italian, Chinese, Cantonese and Spanish.⁷

Productability

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⁶ We recognize that all employers are required to post the ESA poster; however, distribution of the guide would also be helpful. This guide by The People's Law School in British Columbia ("Working in BC, Your Legal Rights and Responsibilities," 5th edition, March 2009, http://claremont.sd63.bc.ca/pluginfile.php/20149/mod_page/content/4/Unit_Four_Workplace_Safety/Working_in_BC_Final.pdf) is written in accessible and plain language, and might serve as a useful model for Ontario's ESA.

⁷ Statistics Canada, Visual Census, 2011 Census, Ottawa, 24 October 2012, http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/vc-rv/index.cfm?Lang=ENG&TOPIC_ID=4&GEOCODE=35.