



Human Resources
Professionals
Association

A New Deal For Ontario's Changing Workplaces

A Review and Recommendations by the
HRPA on the Employment Standards Act
and *Labour Relations Act*

A NEW DEAL FOR ONTARIO'S CHANGING WORKPLACES

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EXECUTIVE SUMMARY

Ontario is at a critical turning point. The foundational pieces of legislation that underpin the economy are outdated, and its employment standards are falling behind other jurisdictions. In today's global economy, Ontario's employment standards need to keep pace with the evolving requirements of both employers and employees.

Unless the Employment Standards Act (ESA) and the Labour Relations Act (LRA) are modernized, Ontario risks experiencing a hollowing out of industries and a loss of current and potential highly trained workers to other jurisdictions.

To contextualize the issues and provide meaningful solutions, this paper uses multiple research methods including a survey of 410 of the HRPA's Members, a series of interviews with high-level HR professionals from a range of sectors, as well as, an investigation into what other jurisdictions are doing with their own employment standards.

Based on the findings of its research, the Human Resources Professional Association (HRPA) argues the time has come for Ontario to establish a "new deal" for its employers and workers. By updating the ESA and LRA, the province will make Ontario a more competitive and profitable jurisdiction for businesses to operate in, and workers will be happier and healthier by achieving a better work-life balance.

This paper contains 30 different recommendations that would establish a new deal for Ontario businesses and workers. These are grouped in five different areas for change.





LIST OF RECOMMENDATIONS

CREATING A COMPETITIVE BUSINESS ENVIRONMENT

ESA LANGUAGE

- 1) Definitions of what constitutes a contractor, a subcontractor, and temporary workers should be expanded. The relationship between the employer, the client and these various types of workers should be clarified.
- 2) An official online ESA portal should be created to act as a single point of access for workers and employers. This portal should provide a customized experience for workers as well as employers, and use plain language to explain each of the rules to its users. It should also include simple to use calculators.
- 3) The ESA should clearly define what constitutes a manager and supervisor.
- 4) The government should consider redefining overtime eligibility using a minimum salary threshold.

SICK DAYS

- 5) The number of sick days provided should be prorated for new employees during their first year of service.
- 6) The government should consider making the rules around providing medical evidence simpler, such as making it always required, but up to the discretion of the employer. In this instance, employers should then follow the HRPAs Practice Guideline on this matter.²³

LEAVES

- 7) The number of leaves available should be consolidated. This could be done around paid and unpaid leaves or tied more closely to issues covered by the federal Employment Insurance definitions.
- 8) Better define "emergency" and "urgent matter".
- 9) Prorate leaves for an employee's first year of work.

VACATION RULES

- 10) An official online ESA portal should be created to act as a single point of access for workers and employers. This portal should provide a customized experience for workers as well as employers, and should include simple to use calculators for vacation time.
- 11) The requirement for Director approval of vacation payout instead of time should be removed.

WHEN OVERTIME MUST BE PAID

- 12) Better define overtime exemptions around professional staff
- 13) Remove the requirement that other kinds of tasks performed by managers and supervisors can only occur on an "irregular or exceptional basis."
- 14) Review how salaried staff are treated in relation to overtime.
- 15) Consider implementing a Manitoba-style pay-based exemption.

CREATING A MORE FLEXIBLE, SUPPORTIVE WORKING ENVIRONMENT

VACATION

- 16) The province should increase the minimum number of weeks vacation from two weeks to three weeks to keep pace with other jurisdictions.
- 17) Prorate vacation time for the first year of employment.

STANDARD WORK HOURS

- 18) Remove daily limit to allow workers to work more flexible hours.
- 19) Remove the requirement for Director approval of Excess Hours.

PROTECTING VULNERABLE WORKERS

- 20) Temporary workers should be treated as permanent employees of the client after a prolonged period with the same company.
- 21) Ensure part-time workers are paid proportionally the same rate as full-time workers in equivalent positions.
- 22) Ensure both workers and employers are aware of their rights.
- 23) More promotion of the standards afforded to temporary workers.

BETTER COMPLIANCE

EDUCATION

- 24) Enhance whistle blower protection for employee complaints.
- 25) Implement a program of proactive educational outreach to companies and workers to ensure they are aware of their rights and obligations.

PROACTIVE ENFORCEMENT

- 26) Do not increase proactive enforcement, particularly proactive inspections.
- 27) Where possible, allow designated senior HR professionals to sign-off on compliance documents.

THOUGHTFUL LABOUR REFORM

EMPLOYER RIGHTS

- 28) Consider easing restrictions on what employers can say to employees when they are considering unionization.
- 29) Mandate that arbitrators consider an employer's "ability to pay", which includes its size, and current and projected financial situation, when making decisions.

WORKER COUNCILS

- 30) Continue to support unions as the approved structure for employee organization.



01 INTRODUCTION

Ontario's economy is dramatically different than it was even a few short years ago, and today we find ourselves at a turning point in workplace management.

We live in a global marketplace. Capital is mobile, and businesses looking to expand their operations now can turn to markets all around the world. At the same time, today's workforce has become mobile as well. With a few clicks of a button workers can commute electronically all around the world, while others take advantage of friendlier working environments and move to new jurisdictions all together. As migration has become easier, competition between jurisdictions is fierce. The "War for Talent" is still raging on.

In this new global economy, Canada has been identified as one of the most desired destinations to move to for potential migrants around the world.² However, within Canada, Ontario must compete against the other provinces and territories to attract workers and keep them here.

In the face of these external pressures, Ontario's population is aging and the number of retiring baby boomers is increasing every year. While our population is projected to grow over the coming years, 89% of that growth will come from net migration by 2041.³

Ontario must adapt to stay competitive. It is imperative that the province foster an environment that helps businesses compete, and encourages them to grow and expand here, over any other jurisdiction in the world. At the same time, it must create the working conditions that will continue to attract and retain workers.

In this paper, the Human Resources Professional Association (HRPA) asserts that the time has come for the government to establish a "new deal" for Ontario employers and workers.⁴ We encourage the province to remove existing barriers to growth and create policies that allow employers and employees to *both* share the benefits of improved flexibility. Under this new deal employers will find Ontario to be a more competitive and profitable jurisdiction to operate in, and employees will be happier and healthier with a better work-life balance.

The paper focuses on two pieces of legislation that form part of the foundation of Ontario's economy: the *Employment Standards Act* ("ESA"), and the *Labour Relations Act* ("LRA"). These two pivotal Acts outline the rules, rights, and principles of how workers and employers interact.

This report highlights the findings of various different research inputs, including a survey of 410 of the HRPAs Members, conducted online from July 15-21, 2015, a series of interviews with high-level HR professionals from a range of sectors, as well as an investigation into what other jurisdictions are doing with their own employment standards.

According to this research, 68% of the HR professionals surveyed believe Ontario's employment standards should be updated to support businesses, protect workers, and reflect the changing workplace.

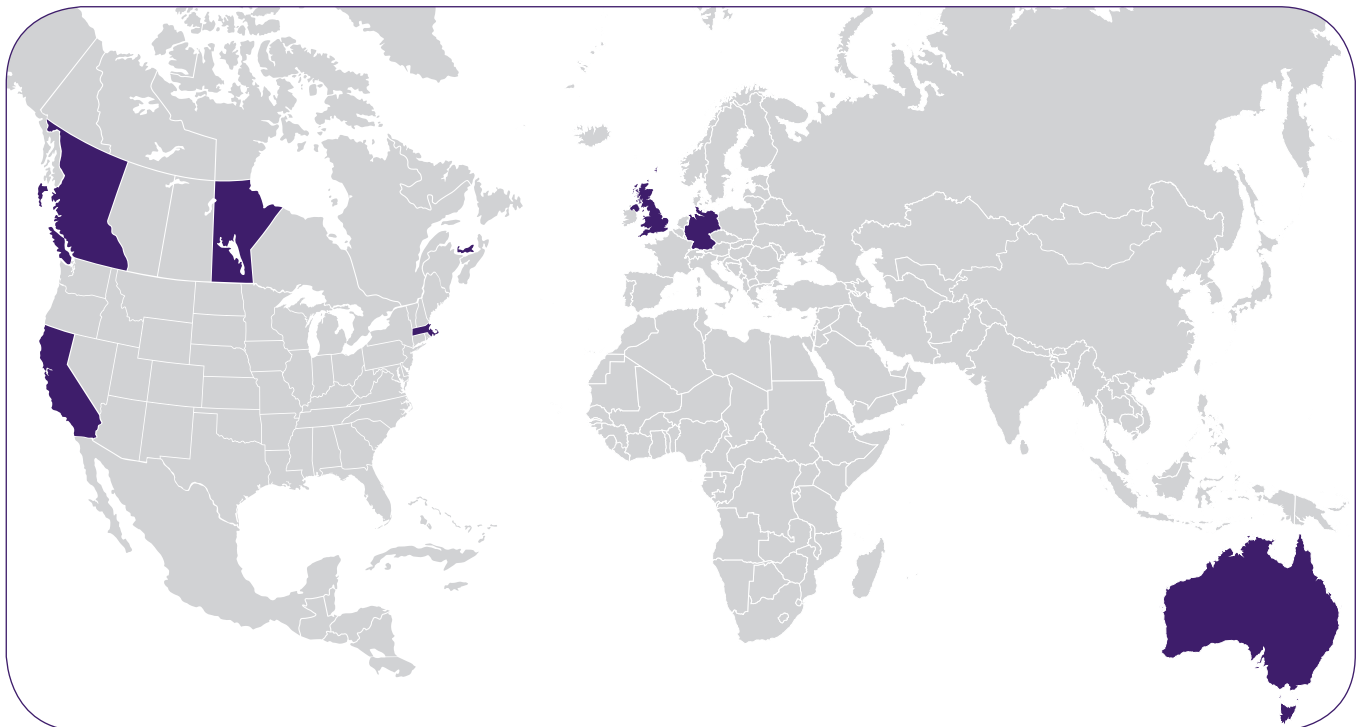
This paper highlights the concerns that were raised about employment standards in Ontario, and proposes a series of amendments to the LRA and ESA, which will modernize the economic environment, and help encourage investment, job creation, and innovation in the province. It also reveals areas of reform that may improve compliance, as well as labour relations.

THE PAPER FOCUSES ON FIVE MAIN AREAS OF REFORM:

- 1) Reforms to help Ontario businesses compete in a global economy;
- 2) Reforms to help employees by providing flexibility and a better work-life balance;
- 3) Reforms to help protect vulnerable workers;
- 4) Ideas on how the Ministry of Labour can help improve compliance; and,
- 5) Concerns around expanding employee representation to new forms such as Worker Councils.



JURISDICTIONS WE REVIEWED



Australia
British Columbia
California

Germany
Manitoba
Massachusetts

Prince Edward Island
United Kingdom

02 CREATING A COMPETITIVE BUSINESS ENVIRONMENT

In today's global economy, it is critical that businesses have access to a talented labour pool, and are supported by rules that are competitive with other jurisdictions. With the advent of the internet, smartphones and email, many businesses now operate 24 hours a day, 365 days a year.

Ontario's LRA and ESA are falling behind the realities of the modern workplace. Employers need more flexible arrangements to ensure the necessary work gets done. Ontario must ensure these Acts are up to date, streamlined, and competitive in order to support businesses, and foster a climate for investment and innovation. As one senior Human Resources professional put it, the Acts "need to keep pace with today's modern age."

WHAT WE FOUND

The majority of HRPAs members surveyed said they felt the ESA was business-friendly, however, we received consistent feedback on various different areas that could be improved in order to create a more competitive business environment. This included changes to:

- ESA language;
- Sick days;
- Leaves;
- Vacation pay; and,
- Overtime.

ESA LANGUAGE

Having clear, concise and understandable laws is fundamental to good governance. Without clear laws, the public can become frustrated, and rules can be misunderstood or not followed. It is a challenge for all lawmakers to draft laws that are detailed enough that they capture everything required, while at the same time communicate these rules simply.

By their very nature, bills and regulations are written in legal language that can be difficult to follow for the average person.

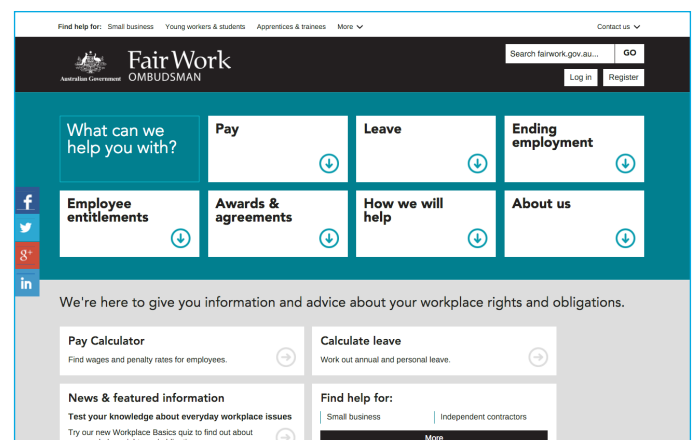
This is especially true for employment standards, where employers and workers are the audiences involved. Many jurisdictions are attempting to overcome this problem by harnessing the accessibility of the Internet, and developing easy to use online portals.

WHAT OTHER JURISDICTIONS ARE DOING



Jurisdictions like Australia have developed simple, easy to use interfaces. The Fair Work Ombudsman Website www.fairwork.gov.au acts as a one-stop shop for workers and employers to find out all the workplace information they require and easily calculate things like wages, penalty rates, and leaves. This portal is mobile optimized, and makes it very simple to find answers to any entitlement questions.

Portals use back-end operations to make calculations easy for users, and translate laws into laymen's terms so that the average person can understand what the rules are. While Ontario has some of these features, they are not easily found, and those that exist are not particularly user friendly.



WHAT WE HEARD ABOUT ONTARIO

Employers, even very senior and seasoned Human Resource professionals with decades of experience often said they found the ESA to be complicated and hard to understand.

Specifically, the various definitions used throughout the Act are seen to be confusing, and often open to interpretation. Areas that were highlighted include the language that describes the relationships between clients and their contractors/subcontractors/temporary workers. Additionally, employers requested more clear definitions and explanations on rules and responsibilities within those relationships.

Supervisor and manager definitions are seen to be too vague in relation to eligibility for overtime. Employers found these exclusions difficult to properly apply and explain to workers, and some wonder if tying overtime eligibility to something such as salary limits might be a more straightforward solution.



OUR RECOMMENDATIONS

- Definitions of what constitutes a contractor, a subcontractor, and temporary workers should be expanded. The relationship between the employer, the client and these various types of workers should be clarified.
- An official online ESA portal should be created to serve as a single point of access for workers and employers. This portal should provide a customized experience for workers as well as employers, and use plain language to explain each of the rules. It should also include simple to use calculators.
- The ESA should clearly define what constitutes a manager and supervisor.
- The government should consider redefining overtime eligibility using a minimum salary threshold.

SICK DAYS

Protected sick days have become a basic standard of an advanced economy. By giving workers time off to recover from illnesses, you ensure a happier, healthier worker, but also protect the rest of the workforce from potentially catching the same illness. However, absenteeism is a cost to businesses and Ontario's rules around sick days need make sense, and be competitive with other jurisdictions.

WHAT OTHER JURISDICTIONS ARE DOING

Unlike Ontario's unpaid Personal Emergency Leave, many jurisdictions we reviewed outside Canada provide some level of paid sick leave, and workers are required to provide a medical note.



The United Kingdom provides a flat sum of £88.45 per week of Statutory Sick Pay for up to 28 weeks. This pay has a few conditions that may be confusing to some employees, and it is not prorated. A doctor's note is required if an employee is off for more than 7 days.



German workers are entitled to at least six weeks of sick leave at their full salary paid by the employer. After six weeks employees with statutory health insurance are paid by the insurance at a rate of approximately 70% of their salary. A medical note is required after three days, and an employee must have worked for at least four weeks before becoming eligible.

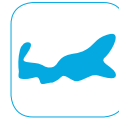


Australia's Sick and Carer's leave provides both paid and unpaid entitlements. Paid sick leave is provided for 10 days each year, and is prorated. Employers can ask for evidence at any time. Additional unpaid entitlements are also available.



The State of California has implemented paid sick leave beginning in 2015. One hour of paid leave is accrued by employees for every 30 hours worked at the employee's regular wage, and can be capped at 24 hours, or three days. This includes temporary, and part-time employees. Paid leave carries over to the following year, and can be capped at 48 hours, or six days. New employees can access this leave after 90 days, and the leave can be used if the employee or family member becomes sick.

Within Canada, sick leave entitlements are somewhat different.



According to research done by the Institute for Research on Public Policy, Prince Edward Island is the only jurisdiction that has a paid sick leave entitlement, offering one day of paid leave plus three days of unpaid leave. While Alberta, British Columbia and Nunavut do not offer any sort of sick leave entitlement at all. Most sick leaves offered by the other provinces and territories are protected for less than ten days.

WHAT WE HEARD ABOUT ONTARIO

Giving new employees 10 sick days immediately can be burdensome to business. While protected sick leave is important, the government should consider prorating this for a new employee's first year. Senior HR professionals that also operate in other jurisdictions found this to be the fairest arrangement.

The rules around when a doctor's note does or does not have to be provided to an employer can be confusing.

OUR RECOMMENDATIONS

- The number of sick days provided should be prorated for new employees during their first year of service.
- The government should consider making the rules around providing medical evidence simpler, such as making it always required, but up to the discretion of the employer. In this instance, employers should then follow the HRPAs Practice Guideline on this matter.

LEAVES

Much like sick days, job protection for paid and unpaid leaves is a key component of a modern economy. As family structures have evolved there has been an increase in the number of dual-income families who require protected leaves to manage family emergencies. Ensuring a safety net to allow these types of families to function should be paramount.

WHAT OTHER JURISDICTIONS ARE DOING



Australia has a number of different leaves that employees can access. These include paid sick and carer's leave, unpaid carer's leave, compassionate leave, maternity and parental leave, long service leave and community service leave. A number of these leaves can be calculated simply using an online tool.



The United Kingdom also has several different classifications of leaves including maternity and paternity leave, parental leave, adoption leave, emergency leave, and compassionate leave. As an employee in the U.K. you are also entitled to time off to deal with a dependent's emergency. This type of leave has no set limit and depends on the situation.



In the United States, employees are entitled of up to 12 weeks of unpaid job-protected leave through the *Family and Medical Leave Act*. This federal Act allows a leave for birth and care of a newborn or adoption, to care for an immediate family member with a serious health condition, or if the employee is unable to work because of a serious health condition.

In addition, some States have additional leaves such as Massachusetts, which has a Small Necessities Leave that allows 24 hours of unpaid leave over 12 months for employees to attend to certain family obligations. To be eligible, the employer must have 50 or more employees and must have worked for a certain amount of time.

California has a Paid Family Leave, which does not provide job protection, but does compensate workers for up to six weeks within a 12-month period. It is funded through employee contributions to the State Disability Program.

WHAT WE HEARD ABOUT ONTARIO

Over the years a number of new types of leaves have been granted to Ontario workers.

As a result of this evolution, Ontario has a long list of available leaves including the personal emergency leave, family caregiver leave, family medical leave and parental and pregnancy leave.

The sheer number of leaves in Ontario is seen to be confusing for both employers and employees and they are also seen as burdensome. Many survey respondents believed the system would benefit if some of these leaves were consolidated. As one senior HR professional said there are just too many leaves, and they could "absolutely be simplified."

Such a simplification would not only help businesses, but also those employees that are requesting them. Many leaves such as the family caregiver leave and the personal emergency leave are only accessed during times of hardship. The goal should be to make the system easy to navigate during these difficult times, not confusing.

Additionally, there was a strong feeling that leaves should be pro-rated for the first year an employee is with a company. As one senior HR professional said, to hold a position for an extended period of time can be "tough", especially if that employee is relatively new.

Personal emergency leaves were understood by most to be necessary, but still felt to be burdensome. More clear definitions could improve this type of leave. Specifically, many HR professionals said they found it challenging to help employees understand what an "emergency" was, as well as what an "urgent matter" was. Clear definitions could make this process easier.

OUR RECOMMENDATIONS

- The number of leaves available should be consolidated. This could be done around paid and unpaid leaves or tied more closely to issues covered by the federal Employment Insurance definitions.
- Better define "emergency" and "urgent matter".
- Prorate leaves for an employee's first year of work.



VACATION RULES

Providing paid vacation time to employees is a necessary responsibility for employers, but the government should ensure the process is clear and easy to implement.

WHAT OTHER JURISDICTIONS ARE DOING

While various jurisdictions each calculate vacation pay and times slightly differently, many offer employers and employees access to simple to use online calculators. These include the United Kingdom, and Australia.

Additionally, vacation pay is often calculated on regular base-pay rates, and does not include extra payments such as bonuses or overtime, as is the case in Australia.

WHAT WE HEARD ABOUT ONTARIO

Issues with vacation rules were also highlighted throughout our research. Calculation of vacation pay was often seen as confusing, especially having to use total earnings, which includes bonuses, commissions, etc. rather than just base pay. Calculations for those who work part time, or a non-traditional

schedule was also seen as difficult. One senior HR professional said calculating vacation time is “a nightmare.” As a result, this employer offers a higher standard so they do not have to attempt to deal with it.

The necessity to get approvals from the Director of Employment Standards in order for an employee to forego some of their vacation was seen as unnecessary red tape. Senior HR professionals believed the government should trust the relationship between the employee and their employer.

WHEN OVERTIME MUST BE PAID

Overtime rules are intertwined with the issues of standard hours of work and flexible working arrangements. It is important that some workers are paid for working extra hours, but not all workers should necessarily be entitled to those additional benefits. In Ontario, exemptions exist for some categories of employees, but such exemptions must be clear.

OUR RECOMMENDATIONS

- An official online ESA portal should be created to act as a single point of access for workers and employers. This portal should provide a customized experience for workers as well as employers, and should include simple to use calculators for vacation time.
- The requirement for Director approval of vacation payout instead of time should be removed.



WHAT OTHER JURISDICTIONS ARE DOING



Daily overtime in British Columbia kicks in after eight hours, and weekly overtime after 40-hours. An employer and an employee can agree to averaging over a period of up to four weeks. B.C. has a number of exemptions including 'manager'. Managers are defined in the regulations as:

- a) a person whose principal employment duties consist of supervising or directing, or both supervising and directing, human or other resources,
- b) or, a person employed in an executive capacity.⁷



Manitoba also enjoys an eight-hour daily and 40-hour weekly limit on regular work hours. However, in Manitoba workers that "substantiality control their own hours of work and earn a regular annual income of at least two times the Manitoba average industrial wage are exempt from overtime"⁸ pay.



In the United Kingdom, employees do not have an entitlement to overtime, however, normal working hours are set out in employment contracts. There is no requirement for employers to pay overtime, but total pay must not fall below the National Minimum Wage.



In Australia, the details about when overtime applies vary for each registered agreement or award. Full-time employees are entitled to overtime when they work more than the maximum number of ordinary hours of work either per week or per day, or if they work outside the spread of ordinary hours. Part-time, and casual employees have similar conditions.



In the United States, the federal Fair Labor Standards Act provides overtime pay entitlements for employees who work over 40 hours in a week. This provision contains exemptions for 'white collar' workers that are established in-part by using a calculation based on salary level. At the time of writing, the Department of Labor is consulting on a Notice of Proposed Rulemaking, which aims to update these exemptions, specifically the salary levels used, as well as possible changes to the duties tests used to ensure they continue to reflect the intention of the exemption.⁹

In addition, some States also offer their own additional entitlements, such as Massachusetts, which has a firm 40-hour standard workweek. Professional, executive and administrative employees are exempt from overtime, as are roughly 20 other classifications of workers.

WHAT WE HEARD ABOUT ONTARIO

The exemptions to Ontario's 44-hour weekly overtime limit are seen by some as difficult to work with. Some senior HR professionals explained that Manager and Supervisor exemptions are not inclusive or specific enough. The requirement that extra duties be irregular or exceptional is unrealistic, as many managers and supervisors also have other duties.

OUR RECOMMENDATIONS

- Better define overtime exemptions around professional staff.
- Remove the requirement that other kinds of tasks performed by managers and supervisors can only occur on an "irregular or exceptional basis."
- Review how salaried staff are treated in relation to overtime.
- Consider implementing a Manitoba-style pay-based exemption.



03 CREATING A MORE FLEXIBLE, SUPPORTIVE WORKING ENVIRONMENT

Today's work schedule has become prolonged. The advent of email and mobile communications has created a culture where much of the workforce is expected to be accessible outside of regular work hours. Additionally, the rise of dual income families in Canada, and those taking care of aging dependents has caused an increase demand on the part of the worker to have more flexibility. According to Statistics Canada, the number of dual-income families in Ontario rose from 42% in 1976 to 68% in 2014.¹⁰

Without the necessary supports, employees face the risk of burnout, which will have a direct impact on the economy.

Even in supportive jurisdictions like Germany, stress in the workforce is great, and has an impact on the economy. In 2013 the former German Labour Minister reported workplace stress cost the country's economy approximately 6 billion euros. While a Gallup study shows that employee engagement is a key method to reduce burnout,¹¹ having more supportive structures is critical as well.

Indeed, there already appears to be a rise in demand for a more flexible system from workers with young families as well as those with elder care responsibilities. As one senior HR professional explained, their company was witnessing what was described as a "clash between the younger generation, and their flexible way of working, versus the older employees, and their preference for more traditional environment." This time of transition is "becoming very challenging" to manage.

Today many companies offer workplace flexibility as a retention tool and recruitment strategy. HR professionals tell us that if flexible work arrangements are setup properly, individual workers are more productive.

A study conducted by the Action and Research Centre for Vodafone UK found that flexible working environments could lead to increased productivity and have substantial financial savings to companies. It estimated that there were flexible environments established for 13 percent of the U.K.'s workforce, it would result in £6.9 billion in productive hours gained and £1.25 billion in corporate savings.¹²

Some jurisdictions have already embraced this concept. In the United Kingdom, it is now a right for workers to request flexible work options, and employers can only refuse requests for legal reasons.

According to a study by the Families and Work Institute, from 2008 to 2014 there has been a steady increase in employers allowing employees to have more control over where and when they work.¹³

Flexible arrangements come typically in three different forms – changes to hours of work, changes to location for work, and changes to work patterns. By ensuring employment standards allow this type of flexibility, jurisdictions can ensure they are supportive, and at the forefront of workplace changes.

WHAT WE FOUND

The HRP asked its Members what amendments should be made to the ESA in light of the changing workplace. The top changes were:

- a) Minimum number of weeks of vacation; and,
- b) Standard work hours in a day or week;

Additionally, the HRP asked its Members what were the best ways to both improve economic security for workers, especially vulnerable workers, and to succeed and prosper in the 21st economy. The top selected changes were:

- 1) Allow workers to work more flexible hours;
- 2) Ensure part-time workers are paid proportionally the same rate as full-time workers in equivalent positions; and,
- 3) Ensure that both workers and employers are aware of their rights and obligations.

As one senior HR professional put it, the ESA "has not been built to do flexible work environments." Changes to these areas would help establish more flexible working environments in Ontario, would help our companies stay competitive with other jurisdictions, and would help protect vulnerable workers in our province.

VACATION

Vacation time is important to the mental health of workers, and according to a study prepared by the Society for Human Resources Management in collaboration with the U.S. Travel Association, the majority of HR professionals think that taking vacation is extremely or very important to business.

Benefits cited include:

- Performance (94%);
- Morale (92%);
- Wellness (92%);
- Positive Culture (92%); and,
- Productivity (90%).¹⁴

WHAT OTHER JURISDICTIONS ARE DOING

Ontario's mandatory two-weeks vacation pay is far behind other jurisdictions.



In the United Kingdom workers are entitled to 5.6 weeks of paid annual leave, equating to 28 days for a full-time worker working a 5-day week.

This time includes eight bank holidays which employers do not have to give as paid leave. Annual leave is accrued, and workers can carry over a maximum of eight days to the next year, or 20 if they could not take leave because of illness.



In Australia workers have an annual leave of 4 weeks, based on their hours of work. This leave is prorated, and carries over from year-to-year.



In Germany workers are entitled to 24 working days paid annual leave, which is 24 days for workers working six days a week, and 20 days for workers working five days a week. This entitlement is available in full after working for six months, and is prorated for the first six months. Employees can carry over unused entitlements if they were not used because of illness or business reasons, but they must be used by the end of March.¹⁵



Meanwhile various States such as California and Massachusetts do not have a mandatory vacation period. However, these two particular States do have stipulations on how paid vacation policies must be implemented if they are offered by an employer, including the accrual of vacation and payout after termination.

WHAT WE HEARD ABOUT ONTARIO

Ontario's minimum standard of two weeks vacation time is seen to be too little in today's economy. As one senior HR professional said, "in today's world when people are balancing so much, it is a stressful time and two weeks is too little." Another senior HR professional agreed two weeks was too little and estimated that 80% of their employees still worked when they are on vacation, while only 20% fully unplugged. Because of this, they believed employers needed to be more open and reciprocate with better benefits.

In addition to a longer minimum vacation, prorating vacation in the first year of an employee's term was also recommended. Forcing someone to work for a year without vacation was seen as unfair in today's day and age. As one senior HR professional put it, "waiting a year to have a vacation puts a lot of strain on the employee."

OUR RECOMMENDATIONS

- The province should increase the minimum number of vacation weeks from two weeks to three weeks to keep pace with other jurisdictions.
- Prorate vacation time for the first year of employment.



STANDARD WORK HOURS

Establishing a new deal for workers and employers in Ontario is rooted in the ability to allow flexible work schedules. If standard work hours are too prescriptive, Ontario risks preventing employees and employers from creating flexible schedules that work for both parties.

WHAT OTHER JURISDICTIONS ARE DOING



In Australia there is a maximum of 38 ordinary hours in a week. Ordinary hours include daily maximums that are stipulated by agreements. Employers can average an employee's hours over more than one week to allow for more flexible arrangements, and employees can request flexible agreements in writing. Employers can only refuse requests for flexible working arrangement for business reasons.



In the United Kingdom a worker cannot work more than 48 hours a week, but that is averaged over 17 weeks. Employees can also opt-out of the maximum. Workers under 18 years of age have a maximum of eight hours a day, and 40 hours a week.



In British Columbia rules have been added to meet the need for workplace flexibility. Employees and employers can enter into "Averaging Agreements" to work outside the standard work hours for up to four weeks. Employees can agree to work up to 12 hours a day, averaging 40 hours in a week without being paid overtime.

WHAT WE HEARD ABOUT ONTARIO

Ontario's combination of maximum daily and weekly hours is the greatest hindrance to having truly flexible work environments. Businesses and workers both need a system that allows workers to be flexible. Daily limits prevent workers from working longer hours if they desire without incurring overtime. If a worker wanted to work ten hours today in order to work only six tomorrow, the system should allow it. As one senior HR professional put it, workers "definitely get frustrated by (the current rules)." They explained that their employees are almost all adult professionals and they want to give them as much flexibility to manage their own time as they can, but often that is not possible because of the ESA restrictions.

The requirement for pre-approval from the Director in order for an employee to work in excess of the weekly limit is seen as unnecessary red tape, and the 30 day wait period is counter-productive in today's economy. If someone wants to work more hours, they should be able to do so without an employer having to go to a government official for approval.



OUR RECOMMENDATIONS

- Remove daily limit to allow workers to work more flexible hours.
- Remove the requirement for Director approval of Excess Hours.

04 PROTECTING VULNERABLE WORKERS

In addition to creating a more flexible working environment, steps should be taken to update the ESA to better protect vulnerable workers. This includes those working in temporary positions, as well as part-time workers who cannot find full-time employment.

WHAT OTHER JURISDICTIONS ARE DOING



In the United Kingdom, temporary agency workers are supported by many entitlements including access to Statutory Sick Pay, maternity, paternity and adoption pay. After 12 weeks in the same job, qualified temporary workers are entitled to the same basic terms as if they were hired directly, including holiday pay, overtime, and bonuses.



In 2015, California implemented a new law that establishes a shared legal responsibility between temporary agencies and their clients. It also prevents clients from moving any liability or legal duty to a temporary worker or contractor. Through this law, clients would share civil legal responsibility and liability for the payment of wages and failure to secure valid worker's compensation coverage. As a result, some say that clients seeking to use temporary agencies should be "especially cautions in selecting (these firms)".¹⁶

WHAT WE HEARD ABOUT ONTARIO

While there has been an increased prevalence of temporary employment in Ontario, many of these workers work for the same client for multiple years without the protection of many aspects of the ESA. This situation is seen to be unfair to the employee.

Many HR professionals believe more clarity is required about how the ESA is applied to part-time and temporary workers. Concerns were raised that some temporary employment agencies may not be providing the standards set out in the ESA properly, and that workers might be being mistreated.

Some policy makers have recommended to government that it should extend the ESA to those classes of workers that do not currently receive its full protection, such as contractors and temporary workers. Senior HR professionals cautioned on such an extension.

Businesses require the flexibility to hire temporary workers. Temporary positions are created for various reasons, and companies need the flexibility to fill them. Additionally, there is a growing practice of people choosing to do contract work. Extending the ESA to contract positions could take away flexible employment options from these workers.

OUR RECOMMENDATIONS

- Temporary workers should be treated as permanent employees of the client after a prolonged period with the same company.
- Ensure part-time workers are paid proportionally the same rate as full-time workers in equivalent positions.
- Ensure both workers and employers are aware of their rights.
- More promotion of the standards afforded to temporary workers.



05 BETTER COMPLIANCE

Ontario's system is primarily complaint driven. This system is seen to work relatively well, however, steps need to be taken to ensure workers have the knowledge to know whether they are being provided with the standards they are due, and that they feel safe enough to complain if they are not.

WHAT WE FOUND

In 2010 the HRPAs conducted a research project that HRPAs carried out a small research project into the relationship between HRPAs membership and conviction rates under the Employment Standards Act. What was discovered was out of 489 convictions for violations of the Act, none could be linked to an employer who had a HRPAs member on staff.

Although there are many explanations that might explain the findings, it is clear that the presence of HRPAs members is linked to fewer workplace issues.¹⁷

Of those surveyed, 43% felt that the enforcement activities around the ESA worked well. When asked about what particular measures would help increase compliance, 60% of survey respondents believed taking steps to ensure both workers and employees are aware of their rights and obligations would help increase compliance, while in the same vein, 56% of respondents believed increased proactive education would help.

EDUCATION

For a complaint driven system to work, both employers and employees need to be aware of the standards involved, and the responsibilities of each party.

WHAT WE HEARD ABOUT ONTARIO

With workforces changing, and a greater influx of workers from other jurisdictions, many HR professionals felt additional steps should be taken to ensure employees and employers understand the ESA system and their rights and responsibilities. It was suggested that this would be especially helpful for small and medium sized businesses, where employers may not benefit from having registered HR professionals on staff.

Additionally, some HR professionals worried that workers, particularly vulnerable workers, were not always in a position to complain about their employers, and that a province-wide whistle blower system should be established to ensure workers feel comfortable raising an issue.

OUR RECOMMENDATIONS

- Enhance whistle blower protection for employee complaints.
- Implement a program of proactive educational outreach to companies and workers to ensure they are aware of their rights and obligations.



PROACTIVE ENFORCEMENT

Some policy makers, as well as different organizations, have advocated for an increase in enforcement such as proactive inspections, believing this will help ensure better compliance.¹⁸

WHAT WE HEARD ABOUT ONTARIO

Many senior HR professionals found the notion of increased proactive enforcement unnecessary. One professional said that looking for a problem where none exists “is ridiculous,” and feared that if this practice were to expand, it may drive employers towards other jurisdictions. Many senior HR professionals believed the time and money spent on proactive investigations would be too burdensome. Another senior professional said that proactive enforcement was a very expensive way to do business, while another said that spot audits were very “traumatic.”

If the Ministry of Labour felt proactive steps are necessary, one senior HR professional suggested that the best thing the government could do would be to focus on proactive education.

OUR RECOMMENDATIONS

- Do not increase proactive enforcement, particularly proactive inspections.
- Where possible, allow designated senior HR professionals to sign-off on compliance documents.



06 THOUGHTFUL LABOUR REFORM

According to the Workplace Information and Research Division of the Ministry of Labour Canada, union coverage in Canada has shrunk from 34.6% in 1997 to 30% in 2013.¹⁹

This decline has led some policy advisors to question whether other forms of worker representation such as the worker councils found in Germany could be implemented in Ontario.

WHAT WE FOUND

The majority of survey respondents felt that new models of worker representation were not needed, with a large number saying they were unsure. Of the 16% who felt new models are needed, it was often because of an uneven relationship between employers and employees, especially for temporary/contract workers.

EMPLOYER RIGHTS

Today's reality is much different than in the 1950s and 60s when the current labour laws were largely written.²⁰ With modern employment standards and measures to support and protect workers, some senior HR professionals wonder if the time has come to re-examine the role of unions, and whether steps could be taken to make negotiations more sensitive to the economic conditions of the day. Some groups are calling for changes that would require arbitrators to factor financial realities into their awards and decisions.²¹

WHAT WE HEARD ABOUT ONTARIO

Employers facing potential unionization felt they faced an uneven environment, as they are very restricted as to how they can speak to their employees about unionization, while union representatives do not have the same restrictions.

One senior HR professional raised a concern that arbitrated decisions, particularly during times of economic instability, do not factor in the financial realities of the companies involved. This can have a serious negative impact on the future growth and competitiveness of businesses.

OUR RECOMMENDATIONS

- Consider easing restrictions on what employers can say to employees when they are considering unionization.
- Mandate that arbitrators consider an employer's "ability to pay", which includes its size, and current and projected financial situation, when making decisions.



WORKER COUNCILS

Work Councils are primarily found in Europe, and are structures where employees and management come together to exchange information and to discuss business decisions that may affect working conditions or employment. European Works Councils were officially recognized by the European Union in 1994.²²

WHAT WE HEARD ABOUT ONTARIO

The majority of HR professionals felt additional representation was not required. They believed that with good management, and a proper approach to employee relations, companies don't need additional structures in place. Those that felt new representation was required often said traditional union structures were too ridged.

Most senior HR professionals interviewed did not believe new forms of representation like worker councils found in Germany would be a good fit for Ontario.

Many saw these as similar to existing union structures, and some pointed to other jurisdictions such as France, where they have experienced national strikes using this model. One professional feared that implementing worker councils "would make (Ontario) far less competitive."

Another HR professional who worked with these types of councils in Italy said they were cumbersome to deal with, and very bureaucratic. While another who also had experience working directly with councils said "they were debilitating to the business," and "would be vehemently opposed to this in Ontario." They saw these types of organizations create an unnecessary "'us vs. them' dynamic."

Ontario's proximity to the United States made other senior HR professionals worried about the impact of further unionization and the ability for Ontario's businesses to compete.

OUR RECOMMENDATIONS

- Continue to support unions as the approved structure for employee organization.





07 ENDNOTES

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