

September 18, 2015

Changing Workplaces Review
Employment Labour and Corporate Policy Branch
Ministry of Labour
400 University Ave., 12th Floor
Toronto, ON M7A 1T7

Mr. Mitchell and Mr. Murray,

Injured Workers Action for Justice (IWA4J) is a collective of injured workers. We are grateful for the opportunity to provide submissions to the Changing Workplaces Review.

We are encouraged that the province is looking the changing nature of work with a focus on precarious workers. It is imperative that we have employment protections that promote fair and decent jobs for all workers, especially those who are marginalized within the labour market.

There are a lot of workers in our group who have been injured in low income and precarious jobs. Too often they come from racialized communities, speak English as a second language and, since their workplace injuries, have disabilities that severely restrict their employability.

Systemic discrimination by employers and legislators based on intersecting grounds of have limited what rights are available to our members. We trust your review will result in protections that promote equity in our workplaces and in how our government agencies treat workers.

We discussed the Changing Workplaces Review as a group at our last few meetings. The following submissions reflect the consensus on some key changes we think Ontario needs to make in order to facilitate fair and decent employment for all workers. Five of our members also contributed written statements. They are quoted here (edited for readability) and appended for your review.

Enforcement

While looking at how to modernize the system of employment and labour law, the province must remember that a prerequisite to any positive changes is the ability of workers to actually enforce their rights.

Tarly, one of our members, discusses how systemic the lack of enforcement of existing protections is:

“I had worked in Canada for 6 years. I had worked for 15 restaurants which only one of them paid me minimum wage and overtime pay, other of them only paid me \$5 to \$10 per hour without pay and benefit. Some restaurants need me to work 6 days a week, 12 hours a day, over 70 hours a week. But I only got \$430 payment. Not any overtime and benefit.”

“For everyone, getting decent job and decent pay is to give expression to human rights and justice of our societies. Minimum wage is already 16% percent lower than poverty level which is injustice. I am even much lower than poverty level. It does not make sense! I hope the government do some real things to protect workers’ rights. Make laws and carry out them seriously. Punish severely employers who break the laws.”

We adopt the recommendations of the Workers Action Centre on this issue. Namely, improve enforcement by doing more proactive inspections; moving enforcement up the chain of subcontracting and enforce multiple liability among multiple employers that are responsible for violations; increase the cost of violations of the Act; and, provide more support for workers to enforce their rights through individual claims and to remedy victims of violations.

Permanent Jobs Not Temporary Agencies

One of the reoccurring themes throughout our discussions was the need for permanent and predictable jobs. We believe Ontario needs to facilitate permanent jobs by strongly disincentivizing the use of temporary help agencies.

As Jose notes:

“I have a friend and a relative who were working for agencies and their salaries were \$14 an hour and \$15.75 an hour. (When they were released) from the agency 3 years later they started to get \$22-\$24 an hour.”

He goes on to note:

“The agencies steal from many from workers... A good law would be to have no agencies (and not allow) them to get money from workers. (Or) have it the other way to help people get a job (without the agency).”

Several members also spoke about their understanding that agencies themselves create contracts with companies that add unnecessary barriers for workers to get permanent jobs. This practice unnecessarily and unfairly ensures workers are kept in poverty and insecurity.

The ability of temporary agencies to get what effectively is a significant part of the worker’s hourly wage offended a lot of workers. Members strongly hope the government will take steps to get rid of “the middle man”.

Stronger Protections Against Bullying and Harassment

As a group of injured workers, almost every one of our members knows the psychologically and physically damaging impact of bullying and harassment in the workplace.

Betty’s attached submission explains that she began throwing up and collapsing while at work, eventually learning that she had Multiple Chemical Sensitivity. Rather than work with her in a respectful and dignified manner, her employer escalated harassment that included: denying that Multiple Chemical Sensitivity was a disability, unnecessarily restricting her access to the workplace, monitoring her phone calls, over-scrutinizing and reprimanding her work, and making excessive demands for her medical information.

Betty eventually had to go on sick leave and, when she tried to go back, the employer made up an excuse to refuse to let her return to work. She was left without an income to support her and her son for almost a year. She notes:

“When employers are not held accountable for their actions, when they harass workers with impunity, when they use financial blackmail against their employees, when they are allowed to bully without consequence, the workplace becomes an emotional minefield. Without strong laws, enforceable laws, workers risk being the expendable factor.”

It is imperative that stronger protections are in place for workers whose employers are harassing them. It is not sufficient to rely on other statutory schemes to like the Human Rights Code or Occupational Health and Safety Act to protect workers – there must be an effective mechanism for workers to use that will remedy all types of bullying and harassment.

Raise the Minimum Wage

Having a living wage is one of the most important components of ensuring decent work and ensuring people can take care of their families and plan for the future. Mark’s story exemplifies how low wage work can keep you in poverty no matter how hard you work.

“I worked at minimum wage before for 6 months and it was very difficult to make ends meet every month. I worked for an agency and it was just a part-time job. I worked hard and the boss liked me, but the wages were too low. I didn’t have money for many things and had to keep (the money I immigrated with) aside because there was no security. I could never save.”

He goes on to say:

“Raising the minimum wage can help workers get out of poverty. It is good for our economy too. Low income people earning more money, they will spend it immediately and create more job opportunities.”

We strongly urge the province to immediately increase the minimum wage to \$15 an hour.

The Need for Stronger Protections for Injured Workers

Although we recognize that your review does not consider the Workplace Safety and Insurance Act or the operation of the Workplace Safety and Insurance Board (WSIB), we encourage the province to consider strong protections for injured workers as an essential part of promoting decent and fair work.

For example, even though our group strongly supports the call for an increase of \$15 to the minimum wage, raising the minimum wage actually works against injured workers because of the WSIB's unfair practice of deeming.

Deeming is when the WSIB tells injured workers that they must find a job that is theoretically suitable and available on the labour market. The WSIB then reduces or eliminates the workers' loss of earnings benefits as though they were doing that job regardless of whether or not they are actually able to find work.

You can imagine the impact on severely injured workers who, like many in our group, have to manage a lot of pain and healthcare appointments, speak limited English, and experience barriers in the labour market because of systemic and intersectional discrimination.

Since the WSIB often reduces the benefits of severely and permanently injured workers saying that they can work in a minimum wage job, when the minimum wage increases, the WSIB pretends workers can earn more money and reduces or eliminates loss of earnings benefits accordingly.

Carlos was injured in a workplace accident several years ago. The WSIB retrained him and then pretended he was earning the wages in his deemed field. He struggled through the retraining program and has not been able to find a job, despite his best efforts. The whole process has left him struggling financially and emotionally. He asks:

“Why am I crying at home? Why can I not get a job? I loved my career. I wish somehow that I could still be part of it....If we don't protect the injured workers we will be completely lost. Mentally we're getting weak, we're losing ourselves in the process...My experience of dealing with the WSIB and how they handled my injury caused me to have a mental breakdown, a deep depression and a loss of self esteem...We need to see change. We need to be protected.”

The province should recognize that not all injured workers are able to find work after an injury and, instead of blaming the worker for their unemployment, pay compensation based on the worker's actual wage loss.

There are many other problems with how the WSIB is operating that the province should address. These include, but are sadly not limited to: the denial of compensation and return-to-work assistance for injured workers who have "pre-existing conditions", the push to return injured workers to work instead of providing time to heal, the use of expected recovery dates to end claims and disentitle workers from return-to-work assistance from the WSIB, and the problematic provision of healthcare.

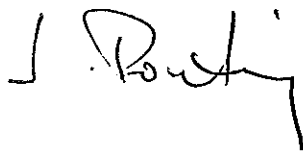
As such, we also urge you to consider strong protections for injured workers alongside the ESA and OLRA as a necessary part of promoting fair and decent employment for all.

To conclude, Injured Workers Action for Justice recommends the province do more to facilitate fairness and dignity in our workplaces by:

- Ensuring effective enforcement,
- Creating strong disincentives to using temporary help agencies,
- Creating stronger protections against bullying and harassment,
- Immediately raising the minimum wage to \$15 an hour, and
- Ensuring strong protections for injured workers.

Thank you for consideration.

Sincerely,
Injured Workers Action for Justice



per Jessica Ponting
Community Legal Worker
IAVGO Community Legal Clinic

Mark

Raise the Minimum Wage

Your experience?:

I worked at minimum wage before.

for 6 months and it was very ~~diff~~ difficult to make ends ^{meet} every month.

I worked for an agency and it was just a part-time job. I worked hard and the boss liked me, but the wages

Why is this important?: were too low. I was the 4 year before the company hired me ~~to~~ I didn't have money for many things and had to keep money aside because there was no security. I could ~~not~~ save.

Raise the minimum wage can help workers

get rid out of poverty... ~~It~~ is good for our economy too, low income people

earning more money, they will spend them immediately, can create more job opportunities.

What might a good law or practice be?:

Raise minimum wage to \$15/hour.

Jose

Permanent Jobs not Temporary Help Agencies



Your experience?:

I have a friend and Relative Who Where working for Agencie and There Salary Were \$14.00 and \$15.75 an hour and they ~~Resing~~ ^{3 years later} from the agencie and star getting \$22.00-24.00 an hour

Why is this important?:

because the agencies still many from worker's and wened to try keep full time jobs but better paid-benefits and less paid to the agencies ~~or~~ not paid any many to them.

What might a good law or practice be?:

The good law be no agencies a law get many from workers or have other way to help people to get a job with out of paid or loss many wich the agencies get from them an hour.

Enforcement
~~Paid Sick Time~~
~~Injury Exp.~~

Tally.

Your experience?:

我在加拿大工作6年。曾在15家餐馆工作过，只有家餐馆给了我最低工资和假日工资，其它的也只是给我5元-10元每小时的工资，除此之外没有任何其它工资和福利。

有餐馆一星期工作6天，每天12小时，一星期70多小时，也就是\$430元，没加班工资等任何福利。

Why is this important?:

对于每个人，应有自己应有的权力和劳动所付出的应有工资是体现人权和社会的公平；最低工资本来就在贫困线下16%已经是不公平的；我甚至连这贫困线下的16%都没有，这意味着什么？我努力工作，难道就是为了生活在贫困线下遥远的生活区!!! 做一个奇葩!!!

What might a good law or practice be?:

我希望政府确实能做点确切保护工人的利益的事情，立法还要执法，对违法的老板要严惩。

Enforcement (Translation)

1) I had worked in Canada for 6 years. I had worked for 15 restaurants which only one of them paid me minimum wage and overtime pay, other of them only paid me \$5 to \$10 per hour without any other pay and benefit.

Some restaurant need me to work 6 days a week, 12hours a day, over 70 hours a week. But I only got \$430 payment. Not any overtime and benefit.

2)For everyone, getting decent job and decent pay is to give expression to human right and justice of our societies. Minimum wage is already 16% lower than poverty level which is injustice. I am even much lower than the 16% poverty level. That means even I work hard but I still have to live in much lower than poverty level. It does not make sense!!!

3)I hope government do some real things to protect worker's rights. Make laws and carry out them seriously. Punish severely employers who break the laws !

Betty

PSYCHOLOGICAL HARASSMENT

My experience

In 2009 I became very ill in my workplace. Eventually, I would be diagnosed with *Multiple Chemical Sensitivity* after being exposed to poor indoor air quality within the workplace.

I began to experience serious symptoms in early January of 2009 after being moved next to a large vent that spewed out cold air; this vent appeared to be causing issues of vomiting, respiratory infections, cognitive concerns and severe dizziness. I became so ill that my absenteeism became severe – missing 27 days of work in less than 6 weeks. I attempted to rectify the issue with my employer by requesting accommodation for the issue: be moved to another desk, be allowed to take more breaks, be allowed to sit at another desk when things got too bad (my old workspace sat empty for nearly a year) etc. My doctor asked the employer to move me away from the vent; the employer refused all requests. They made no attempt to accommodate me and would eventually write a letter saying that they did not have to accommodate me, because I did not have a disability (MCS is a recognized disability under Ontario's Human Rights legislation).

As my absenteeism rose, I was constantly being called into my superior's office to explain why I was missing so much work. I was asked to "guarantee" that I would not continue to be ill, told that my absence was causing problems for my colleagues who had to do my work and informed that collapsing in the workplace was "unacceptable behaviour". Restrictions were put on my access to the workplace. My boss told me I could not be on the property before 9:00 am and that I must leave exactly at 5:00 pm or there would be consequences. My phone calls were monitored.

Even as I vomited in the women's washroom and collapsed with dizziness in the halls I was not permitted to sit anywhere else. Managers told me, "if you're too sick to sit in your own workspace, you should go home", but when I signed-out sick, I would be called into my boss' office to be bullied for my absence.

Eventually, I would receive an email from my supervisor telling me that I could not leave my desk without permission, unless it was my break or lunch hour. I had to ask permission to go to the bathroom. I was the only employee in the organization (of about 100 people) who had these restrictions.

On one occasion, I was called into my boss' office to explain why I had contacted our benefit's carrier about purchasing an air-purifier. I had been looking into purchasing (with my money) one. Apparently the employer had been monitoring my calls or had his assistant spy on me. My boss stated to my union steward that accommodations had to come from him, but when she asked him if he would provide the air-purifier he responded 'no". He informed us he would not allow an air-purifier in my workspace.

As I searched with my doctor for answers to my health, the employer continued to penalize me. Unlike my coworkers I was not allowed to make-up time spent on specialist's appointments (to find the diagnosis the employer was insisting on). I was forced to use vacation and lieu days instead.

Eventually, I would collapse in an elevator where colleagues would find me blacked-out. The employer's response would be to put me on short-term disability (they said it was for liability reasons). After several months of being on leave and having no incident, my doctor felt I could return to work. We continued to search for an answer to my health issues, but noted that the issues greatly decreased when not at work and substantially decreased when not in my workspace. We ruled-out possible conditions (like heart disease, inner ear issues etc.) through testing. But this was not enough for the employer, who refused to return me to work. Because my doctor had written that she believed I could work, long-term disability refused my claim and I was left without an income for nearly a year. I was shocked to find out that this is legal. In several meetings with my union they stated that the employer was willing to consider reinstating me if I dropped the grievances I had against them for harassment, improperly accessing medical documents and failure to accommodate a disability. Employers and unions are very aware of this loop-hole that allows an employer to leverage the financial welfare of an employee against their own interests. I was surprised

when, during a conversation with *Employment Standards*, I was told there was no protection under the legislation for this act of bullying. In Labour law, I was told that conversations that take place during “negotiations with the employer” cannot be used. So, even though the employer was using my financial insecurity as a bargaining-chip it could not be openly discussed or brought to the attention of any organization.

MCS is a condition that is not well understood and the WSIB does not generally support it as a workplace injury. As a result, I was not afforded the protections under the WSIA and fell through the cracks. Eventually, I would lose my job of nearly 17 years. The psychological harassment that I suffered at the hands of my employer – particularly the effects on my emotional health, as well as my financial security – has taken a toll. I continue to struggle with both.

Why is this important

When employers are not held accountable for their actions, when they harass workers with impunity, when they use financial black-mail against their employees, when they are allowed to bully without consequence, the workplace becomes an emotional mine-field. If employment is a contract then bullying behaviour must be seen as a breaking of that contract under the ESA. Employees who are dependent on a paycheque should not be the ones paying the price for bad behaviour by those in power. Without strong laws, enforceable laws, workers risk being the expendable factor. Their only recourse is to sue the employer for either wrongful or constructive dismissal. This is difficult to do without an income. For those who cannot risk their jobs, they remain silent, enduring unacceptable behaviour that takes a toll on their bodies and their minds, while they try to avoid it also taking a toll on their financial security. Often, something eventually gives and they lose this financial security too.

I know that the anti-violence and harassment legislation is housed under the OHSA, but the ESA must speak to the issue of harassment and bullying. It must acknowledge the importance of this issue. As we see the changing-face of employment in this country: more precarious work, contract and part-time employment with little to no benefits that pay barely more than minimal wage,

the need for stronger enforceable laws – with the means to enforce – are imperative.

The ESA must also speak to Human Rights legislation – particularly accommodation for those with disabilities – and put in place language that supports the rights of those with disabilities and workplace injuries. It must be a law that helps harmonize the various areas of the workplace such as Human Rights, Anti-Violence and Harassment and workplace injuries and ensure the protection of those who are most vulnerable in society.

What might a good law or practice be?

- Add language to the ESA that supports the Anti-violence and Workplace Harassment amendment in OHSAA. Ensure enforcement of the policies around this issue, and set-out clear measures on penalties for violations of this law under the ESA not just OHSAA.
- Add strong language to support Human Rights issues in the workplace – particularly the right to accommodation for those with disabilities. Strong measures, policies and procedures should be outlined on how to support these issues through the ESA in harmony with existing human rights legislation.
- Allow unionized workers to access resources outside the union. Although an important ally, many workers with unions are realizing that when needed, not all unions fully protect their rights. Allowing all members of unions the right to **“care and carriage of the grievance”** – not just public union members – will permit workers to take a more active role in their workplaces. Allowing them access to information from outside organizations gives them the opportunity to ensure that they are receiving important information to keep their workplaces fair, just, compliant and harassment-free.
- Close loop-holes that permit employers to use medical liability issues to keep employees from earning an income. If an employee has a job, but not a paycheque how is this not a breach of contract? Most employers are not doctors; an employer should not be allowed to veto the opinion and

experience of a recognized medical expert without explanation and scrutiny.

It is my hope that the review of the ESA will lead to better, enforceable legislation that will create workplaces that are respectful of the rights of all workers. No one should go to work to be bullied; no one should have to choose between their health and financial security to keep a roof over their heads and food on the table.

Carlos

Why am I crying at home?
Why can I not get a job?...

I loved my career... I wish some how
I could still, be a part of it...
Yes it's true, I walk funny now, my back
hurts and my hand doesn't work very well...

If we don't protect the injured workers, we
will be completely lost. Mentally we're getting
weak, we're losing our selves in the process.

My experience of dealing with the WSIB and
how they handled my injury... caused me to have
a mental break down, a deep depression and
a loss of self-esteem.

It's important to find work for injured workers
so we continue to be proud member of society
that contribute, have initiative and work in
our country, this contributes to self-esteem,
something that was stolen from us.

We need to see change...

We need to be protected...

We need to work perhaps back in our field,
doing what we already know, just in a different
capacity.

TRUST ME... GIVE ME A CHANCE... I CAN DO IT...
I WANT TO WORK. IT IS MY RIGHT.