

Ontario Hospital Association

Submission to the Ontario Changing Workplaces Review

Changing Workplaces Review, Employment Labour & Corporate Policy Branch
Ministry of Labour
400 University Ave., 12th Floor Toronto,
ON, M7A 1T7
Fax: 416-326-7650

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Background

The Ontario Hospital Association (OHA), on behalf of its members, is pleased to have the opportunity to provide comments to the Changing Workplaces Review regarding the current employment and labour law framework in Ontario. The OHA supports the goal of the Changing Workplaces Review to modernize employment legislation in order address the changing nature of work in the province. In particular, in hospitals this goal must be balanced against the need to constantly evolve and improve service delivery to better meet the needs of patients.

As the voice of Ontario's 147 publicly funded hospitals, the OHA has an ongoing mission to ensure that hospitals can meet their full potential to achieve a high performing health system. Ontario hospitals employ over 200,000 people, and the success of each of these individual employees is critical for hospitals to achieve their objectives. The vast majority of those employed in hospitals have professional designations, such as Registered Nurses (RNs), Registered Practical Nurses (RPNs), Registered Technicians, Pharmacists, Pharmacy Technicians, and Social Workers. Seventy per cent of hospital employees work full-time while the remaining thirty per cent are part-time employees, of whom the majority work regularly scheduled hours.

Sixty-nine per cent of hospital employees are unionized. One of the OHA's accountabilities is to act as the bargaining agent on behalf of hospitals within a voluntary system of central collective bargaining currently in place in the hospital sector in Ontario. There are currently six collective agreements in place between participating hospitals and various unions representing different groups of employees who participate in the voluntary central system. Further, there is a seventh agreement which covers medical residents which is not a collective agreement but is negotiated centrally by the OHA. These collective agreements have been constructed to be responsive to both the needs of hospitals as well as employees through negotiations between sophisticated parties. The OHA's goal in collective bargaining has been focused on negotiating collective agreements that are reflective of the essential role hospitals and their employees play in delivering critical care to patients.



Employment Standards Act, 2000

Recommendations:

The OHA recommends:

1. That the *Employment Standards Act, 2000 (ESA)* should be amended to alter the greater right or benefit analysis, which currently allows for contracting out of the provisions of the *ESA* by determining whether each individual provision is met or exceeded. Instead the determination of whether an employer offers greater rights and benefits, and therefore can contract out of the *ESA*, would be based on a comparison of all the minimum standards against the full terms and conditions of employment in order to determine whether the employer has met the overall objectives of the *ESA*.
2. If amendments to the *ESA* are contemplated, that thorough consultation and consideration be given to the impact that every change may have on the various industries in Ontario, especially those which have significant union density. Exemptions and exceptions should be used in circumstances where amendments could result in a negative impact on well-established and appropriate terms and conditions of employment.

Rationale

The *Employment Standards Act, 2000* provides a foundation for the terms and conditions of employment for the vast majority of employees in the province. Hospital employees, barring minimal exceptions, fall within the scope of the *ESA*, and therefore hospitals must ensure that they are in compliance.

Hospitals, in recognition of the valuable and vital work performed by their employees, provide competitive total compensation packages. It is the OHA's understanding, both from our knowledge of the hospital labour relations, and our human resources benchmarking, that the total compensation packages offered to hospital employees exceed, and in many cases far exceed, the minimum standards under the *ESA*. This is true of both unionized and non-unionized hospital employees.

The majority of unionized hospital employees fall within the scope of one of the six central collective agreements negotiated between the Ontario Nurses' Association (ONA), the Ontario Public Service Employees' Union (OPSEU), the Service Employees' International Union (SEIU), the Canadian Union of Public Employees (CUPE), Unifor, and Professional Institute of the Public Service of Canada (PIPSC) and the OHA. These collective agreements, amongst other things, provide for competitive rates of pay, paid leaves which exceed what is mandated under the *ESA*, and strict scheduling provisions which provide for penalties if changes are made on short



notice. The terms of both non-centrally participating unionized employees and non-unionized employees tend to track the terms of these central agreements.

The terms and conditions of employment, whether established through collective bargaining or in order to attract high quality candidates to non-union positions, are crafted in consideration of the specific needs of hospital operations. Hospitals generally operate 24 hours a day and a significant part of the workforce are required to work a variety of shifts to cover the needs of patient care throughout a 24 hour period. As such, the process of crafting terms and conditions of employment to meet these needs creates a specific balance between the employees' interests and the needs of hospital operations which is distinct from the *ESA* which presents, at its base, a "one size fits all" model for terms and conditions of employment.

The terms and conditions of employment in hospitals have been developed, through negotiations and trade-offs between sophisticated parties, to be responsive to the needs of both the employees and hospitals. The OHA is concerned that amendments to the *ESA* may disrupt this balance and further increase labour costs which already represent approximately 68% of total hospital expenses. When the *ESA* is amended to provide a new benefit, it could result in a situation where the compensation and benefits package provided by hospitals, while remaining generous on the whole, no longer reflects the specific requirements of the Act.

For example, when personal emergency leave days were added to the *ESA*, hospital employees were generally provided two kinds of paid leave which fall within the same category of personal emergency leave days - bereavement and sick leave. The majority of hospital employees are covered under the Hospitals of Ontario Disability Income Plan (HOODIP). HOODIP was established to provide salary protection to eligible employees during an illness. The HOODIP sick leave plan far exceeds the minimum standards under the *Act* and is considered to be above the normal standard when compared with other sick leave plans in Ontario. However, because personal emergency leave days can be used for personal illness, the illness of a family member, bereavement, or an "urgent matter," hospitals were required to provide the 10 personal emergency leave days in addition to paid bereavement leave and the HOODIP sick leave plan. This led to additional cost and administrative burden for hospitals.

Other potential amendments to the *ESA* which have been proposed in the context of this review could have a similar effect as the introduction of personal emergency leave days. This includes a call for strict scheduling regulations, which mandate the advance scheduling of meal breaks, would be impractical for hospitals to follow and could lead to penalties. A requirement that temporary employees be given the same job conditions as regular employees could give them access to lay-off procedures under collective agreements, which would be unduly disruptive given the fact that temporary employees are generally hired to backfill for absent employees and are therefore not additional to complement. Also, while trade unions have negotiated collective agreements which ends coverage under benefits plans upon reaching a



certain age, there is a request that the *ESA* no longer allow benefit plans to have age limits for coverage which would undercut these negotiated agreements.

The OHA believes that amendments to the *ESA* run the risk of increasing the already considerable labour costs of hospitals. In our view, the key problem is that the greater right or benefit provision of the *ESA* requires a narrow and direct comparison between “like” terms and conditions of employment without consideration of whether the terms and conditions of employment in their totality fulfill the intention of the *ESA* to provide a stable working life and appropriate compensation. Unless the greater right or benefit provision is amended to allow for a global comparison between the *ESA* and the terms and conditions of employment held by employees, the OHA would have serious concerns with any amendments to the *ESA* that conflict with the extensive terms and conditions of employment already in place at hospitals.

Labour Relations Act, 1995

Recommendations

The OHA recommends that potential solutions to help address issues of bargaining unit fragmentation amongst hospitals be considered, including:

1. A process to allow for employers or unions to create, or request the creation of, councils of trade unions in order to better facilitate central collective bargaining systems.
2. A process to allow for change to the composition of a bargaining unit absent any particular trigger event, such as the sale of a business captured by section 69 of the *Labour Relations Act, 1995 (OLRA)* or a rationalization under the *Public Sector Labour Relations Transition Act* in circumstances where bargaining unit structures do not reflect current workplace realities and impedes necessary operational flexibility and innovation.

Rationale

There is an on-going and deepening problem of fragmentation in hospital labour relations. Bargaining unit structures are crafted to permit the orderly acquisition of bargaining rights. However, single site bargaining units split into particular groups of employees based on their work have not matured well. As such, the OHA supports consideration of new solutions to reduce or eliminate as much bargaining unit fragmentation as possible which would ultimately benefit both hospitals and hospital employees.

Problems of fragmentation have been noted as early as 1974, and the problems have only become more pronounced since that time. Currently, there are over 1000 collective agreements in force between the 147 hospitals in Ontario, with over 20 different unions



representing employees in at least one hospital bargaining unit. For instance, allied health professionals working in hospitals are represented by 17 different unions. While central collective bargaining has mitigated some of the fragmentation, only 4 of the 17 unions, ONA, OPSEU, SEIU, and CUPE, participate in central collective bargaining for this group of employees. This fragmentation leads to illogical variations in the terms and conditions of employment, increases competition amongst unions, and increases the cost and amount of time spent in bargaining over the same or similar issues.

Additionally, the community of interest between different employee groups in hospitals has changed considerably from when bargaining units were first established. Most notably, RNs and RPNs are generally separated into different bargaining units at each hospital. While at one time RNs directed the work of RPNs, the current regulatory environment in health care has both classes of nurses working together in collaborative, inter-professional teams. Moves to make appropriate changes to skill mix, or to transfer work between classes is generally met by significant resistance by unions seeking to protect their interests in the size and scope of their respective bargaining units.

In the OHA's respectful view changes to the *OLRA* that consolidate bargaining or rationalize bargaining unit structure would be more conducive to an environment of constructive and progressive labour relations.

Conclusion

The OHA would like to extend its appreciation to the Ministry of Labour and the Special Advisors for providing the opportunity to engage in this significant review of legislation that is of great importance to employers, employees and their representatives.