

**Strong Labour Legislation:
Healthy Workers in Healthy Communities**

Submission to Changing Workplaces Review

Peterborough County-City Health Unit

September 18, 2015

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The Peterborough County-City Health Unit commends the provincial government in its commitment to review two key pieces of legislation that have a profound impact on the lives of workers and our communities.

Our organization espouses a vision of “Healthy people in healthy communities.” We are committed to improving the living conditions of those in need for the benefit of all. We serve residents throughout the City and County of Peterborough, including two First Nations communities, and offer a wide range of programs and services ranging from healthy eating workshops, poverty reduction initiatives, and oral health clinics to controlling infectious disease outbreaks, water safety and sexual health clinic services.

In recent years, public health has directed more attention to societal influences on the health of our populations. Issues of income and food security, affordable housing and other supports for our most vulnerable have occupied more of our attention. Employment and its associated working conditions is a key social determinant of health that has a direct effect on the issues listed above.

This quote, taken from *Working without commitments*, clearly details the linkages between employment and the health of our citizens:

“In summarizing the findings of the World Health Organization’s Commission on Social Determinants of Health, Marmot et al. (2008) reported, ‘Work is the origin of many important determinants of health. Work can provide financial security, social status, personal development, social relations, and self-esteem and protection from physical and psychosocial hazards. Employment conditions and the nature of work are both important to health. A flexible workforce is seen as good for economic competitiveness but brings with it effects on health. Mortality seems to be significantly higher in temporary workers than in permanent workers. Poor mental health outcomes are associated with precarious employment.’”¹

We focus on social determinants of health because we know that what truly impacts the long-term health of our citizens is the social context in which they live their lives. No one makes a personal decision that is completely devoid of influence from the environment around them. So while we may try to encourage individuals to make choices that improve their health and their lives, we know that the greatest impact can be made through public policy, including labour legislation such as the Employment Standards Act (ESA) and Ontario Labour Relations Act (OLRA).

We would argue that this review should not be just about the logistics of how employers and workers will interact but it should facilitate a discourse on the collective vision for the kind of society we want and how the employment and the conditions that come with it will be actualized. It is through this broader systems lens where we can make the most profound impact on our citizens.

Our submission will focus on what we know best: the changes needed to ensure the best health outcomes for our workers and our communities. In addition to our comments, we also endorse the recommendations listed in the submissions presented by the Association of Ontario Health Centres², Sudbury and District Health Unit³, and the joint submission from Toronto Public Health and the Wellesley Institute⁴.

Finally, while this is a review of two key pieces of legislation that impact the lives of workers, we firmly believe that they need to be considered within the context of other relevant legislation and programs such as the Occupational Health and Safety Act, the newly created Ontario Retirement Pension Plan and the Ontario Poverty Reduction Plan (OPRP). For example, the OPRP includes expanding health benefits to all low income Ontarians⁵ which would be a priority for many workers, especially those who are precariously employed. The *Guide to consultations* outlines a number of questions. We will respond to those questions that fit best with our mandate.

EMPLOYMENT STANDARDS ACT

Q1: How has work changed for you?

For decades, employers and workers shared a social contract that reflected a mutually supportive arrangement which included workers providing their skills/trade in exchange for wages and security. Workers were seen to bring value to the organization. Due to economic conditions influenced by globalization, trade agreements and technology, this social contract has eroded over time to a point, now, where workers are seen as a cost to employers rather than an asset. More and more workplaces hire workers in a “just-in-time” fashion like they do their supplies and services. This has resulted in a much larger group of workers who find themselves in precarious employment—short-term, contract, temporary work. We also know that many precarious jobs offer low wages and few, if any, benefits. These workers rarely enjoy the protection that a union can provide. In recent research released by the Poverty and Employment Precarity of Southern Ontario (PEPSO) project, it is estimated that 44% of workers in the Greater Toronto and Hamilton Area are precariously employed.⁶ While we may not know the rate in Peterborough, we do know that the fastest growing sector is the service industry which is known for its low wages, irregular schedules and lack of benefits.

In addition, the report provided an excellent description of the financial challenges faced by those in precarious work:

“...those in precarious employment are more likely to earn lower wages and live in households with lower household income. Those in precarious employment who have low and/or irregular income are particularly vulnerable, financially, because they have low total compensation—meaning that they are significantly less likely to have benefits, such as health, pension, vacation and paid sick days. This only exacerbates

their low income. Workers in precarious employment are also more likely to experience irregular income, in part, because they experience periods without work. This is particularly true for low-income workers who earn less than \$40,000 a year.”⁷

In recent times, our society’s response to our economic challenges has resulted in placing greater pressure on many individual workers through the elimination of full-time, stable and secure employment and replacing them with temporary, part-time and contract work. The expectation that a worker’s productivity, efficiency and loyalty to the organization would be rewarded by the employer through good compensation including benefits and job security, otherwise known as the employment social contract, is less likely to be a reality today. In other words, the costs of employment, once shared between the employer and employee, has shifted almost entirely to workers only. As Lewchuk et al. (2011) put it, “Without any real public dialogue or awareness, Canadians have moved out of an era when we expected employers—sometimes with the help of unions—to handle responsibilities for hiring, training, health care insurance, pensions and other employment related supports and benefits.”⁸

This employment shift is not only affecting the individual worker but their families and communities. Lewchuk’s research shows that people are putting off making major life decisions (e.g., marriage, purchasing homes, having children) due to their employment instability. These social changes will not only impact individuals but the well-being of our communities.⁹

According to Lewchuk et al., unionized workers are faring best of all.¹⁰ However, we have seen in recent years that unions are not making the gains they once did but rather are putting great effort in simply trying to protect what they already have.

It is difficult to quantify what the health costs are from the change in employment practices but we can infer that the costs will rise. Lewchuk et al. found that precariously employed workers “were two to three times as likely to report poor health” as workers in more stable and secure employment.¹¹

Dr. Martin Shain’s research on work stress has demonstrated that workers with low control, low reward, high demand and high effort are at greatest risk of poor health outcomes including three times the risk of heart problems and back pain, five times the risk of certain cancers and two to three times the risk of injuries, infections, conflicts, mental health problems such as depression and anxiety disorders, and substance abuse problems (e.g., drugs, alcohol).¹² In addition, the World Health Organization predicts that depression will be the second leading cause of world disability by 2020. It is estimated that in Canada alone, mental illness is costing our economy \$51 billion per year. With many workers finding themselves in even more stressful situations (i.e., uncertain work, lower pay, multiple jobs with multiple employers, risky work environments), one can predict that the stress levels and incidence of mental illness will rise.

Q2: What type of workplace changes do we need to both improve economic security for workers, especially vulnerable workers, and to succeed and prosper in the 21st century?

For many workers today, the workplace looks quite different. A shrinking segment of the workforce goes to work at the same location for the same employer over a long period of time. These workers enjoy economic security and stability. Unfortunately, a growing segment of the workforce is experiencing the fluidity and unpredictability of working for multiple employers in multiple locations with uncertain schedules. If we continue to support this “just-in-time” workforce, our laws must adapt to protect these workers.

Of specific concern are the workers in contract and temporary positions who receive less pay for the same work performed by permanent staff. The law needs to ensure equity among all workers in the same workplace so that all workers performing the same work are paid the same hourly wages.^{13,14,15}

Q5: In light of the changes in workplaces, how do you feel about the employment standards that are currently in the ESA? Can you recommend any changes to better protect workers? Do the particular concerns of part-time, casual and temporary workers need to be addressed, and if so, how?

As mentioned above, the current standards in the ESA reflect the needs of a workforce of a bygone era where the employment relationship between employer and employee was long-term and stable. With the increasing workforce flexibility being demanded by employers, a new type of worker has emerged and the current standards need to adapt to address the different work relationships. The Standards themselves are not as problematic as the fact that some employers have learned how to circumvent the laws by hiring temporary workers thereby making these workers the responsibility of temporary agencies and hiring contract workers who are not protected by the ESA.

For example, we are very concerned about the health and safety of temporary workers. Since these workers are considered employees of the temporary agency rather than the ‘client employer,’ any health and safety training required is delivered by the temporary agency. Research by Dr. MacEachen through the Institute for Work and Health identified several problems with having the health and safety training offered by the temporary agency. These problems include:

- “Temp agencies do not supervise their own workers or see the day-to-day work conditions of their client employers.
- Although temp agencies require workers to pass generic safety tests (and their clients are responsible for providing specific instructions about the jobs into which temp agency workers are placed), newness on the job still leaves temp agency workers unfamiliar with equipment, processes, staff and specific conditions of the workplace.

- While most temp agencies interviewed described conducting pre-placement worksite inspections, temp agency staff have limited hazard assessment skills and see client sites only briefly.
- Temp agencies and workers described agency staff asking workers to inform them of worksite hazards, but the temp agency workers in the study spoke of hiding injuries and not reporting problems because of their economic insecurity; i.e. they needed the work and did not want to jeopardize their placements.
- Temp agencies regularly face pressure to fill jobs very quickly, which is not conducive to ensuring a good fit between workers and the jobs into which they are being placed.”¹⁶

We advocate for joint responsibility of both the temporary agency and the client employer in ensuring the health and safety of workers.

The potential of hazards to workers spans both physical and psychological health. While the Occupational Health and Safety Act focuses mainly on physical health, we believe that there must be safeguards put in place in the ESA to protect workers from psychological harm and injury. Having to challenge whether or not you received appropriate wages, or watching the worker beside you getting paid more than you for the same work, or not reporting harassment or health and safety violations for fear of losing your temporary job are all very stressful and contribute to poor psychological health. Therefore, the standards regarding scheduling, wages, leaves of absences, vacation time and other key working conditions must ensure that employers manage their workforce in such a way that reduces unwarranted stress.

Of equal concern is the number of workers in Ontario who do not have access to benefits (i.e., prescription drugs, eye and dental care).¹⁷ Based on very recent research done in the GTHA, “[o]nly 8% of workers in *Precarious* employment receive employer-funded drug, vision or dental benefits compared to 100% of those in *Secure* employment.”¹⁸ Creating an environment that motivates employers to hire permanent, full-time workers would ensure better health care for workers. In addition, aligning the ESA to the planned expansion of the benefits program through Ontario Poverty Reduction Plan will also ensure that the lowest paid workers will have access to essential health care.

Q7. Should this leave [i.e., unpaid leave of 10 days for employers with 50 or more employees] be revised in any way? Should there be a number of job-protected sick days and personal emergency days for every employee? Are there other types of leaves that are not addressed that should be?

Regardless of the size of the workplace, all workers should be entitled to leaves, preferably paid, for a) personal illness, injury or medical emergency, b) the death, illness, injury or medical emergency of certain relatives; or c) an urgent matter that concerns certain relatives. This entitlement should also be made available to part-time workers on a prorated basis.

The Peterborough Chamber of Commerce reports that two-thirds of their members own businesses with less than 30 employees.¹⁹ The local Workforce Development Board provided a summary of the number of employers in the City and County of Peterborough based on Statistics Canada data for June 2015.²⁰ Of the 10,854 employers in our area, nearly two-thirds are self-employed with no employees. Of the remaining 36% of employers with employees, 71% have one to nine employees and 24% have ten to 49 employees. This means that 95% of employers with employees in our area have less than 50 employees and that these employees are not entitled to any unpaid leaves. Therefore, the current standard allowing for ten unpaid leave days in workplaces with more than 50 employees should be revised to include all workers regardless of the size of the workforce in order for the majority of workers to benefit.

In public health, we are especially concerned that some workers do not feel they can take time off from work due to illness. Whether it is protecting the public through proper food handling for restaurant workers or preventing the spread of infectious diseases by personal support workers in long-term care facilities, our public health message is clear — stay home when you are sick. We recognize that the best practices we advise are in conflict with the realities faced by many workers.

It is good public health practice for all workers to stay home when they are ill. Having paid sick days would ensure that this would happen with more frequency than it does now. We strongly support the recommendation made by others including the Association of Ontario Health Centres that every employee, including those in workplaces with less than 50 employees, should be entitled to seven paid sick days per year.^{21,22,23}

In addition, more women than men find themselves in precarious employment and women are still the primary caregivers to their children. Paid personal leaves to tend to sick children will also contribute to healthier workers and workplaces.

Finally, workers currently are entitled to two weeks of vacation per year. As Dr. Sutcliffe mentioned in her presentation:

“Vacations are important for physical and mental health and there is increasing evidence that they are good for productivity and the economy. Vacations help address *absenteeism* – reducing stress and enabling workers to deal with life’s personal matters outside of work hours. Enhancing minimum vacation entitlement from the current two week duration would be health (and productivity) enhancing.”²⁴

Therefore, we endorse Dr. Sutcliffe’s argument for increasing paid vacation days and we support the recommendation made the Association of Ontario Health Centres that this increase should be to three weeks of vacation each year.²⁵

Q8: In the context of the changing nature of employment, what do you think about who is and is not covered by the ESA? What specific changes would you like to see? Are there changes to definitions of employees and employers or to existing exclusions and exemptions that should be considered? Are there new exemptions that should be considered?

We believe in equity for workers. All non-unionized workers should benefit from the same protections under the ESA, including currently excluded workers in the construction and agriculture sector as well as domestic workers.

Workers in the food and beverage industry who serve alcohol should receive minimum wage thereby removing the need for gratuities. Gratuities were intended to augment the wages of those in the food industry however it is not a predictable amount. If the wage remains below the minimum, then there needs to be explicit language in the ESA stipulating that no amount of the gratuities can be clawed back by the employer.

Q9: Are there specific employment relationships (e.g., those arising from franchising or subcontracting or agencies) that may require special attention in the ESA?

We are concerned with the number of employees who are misclassified as independent contractors/self-employed yet only work for one employer. This is a problem especially for workers in such sectors as janitorial services, courier services and trucking. There is a need to tighten up the definition of an independent contractor in order to deter employers from using the term in an effort to avoid paying equivalent wages and benefits and ensuring a safe work environment.

Q10: Do the current enforcement provisions of the Act work well? In your experience, what problems, if any, exist with the current system, and what changes, if any, should be made? In your experience, what changes could help increase compliance with the ESA?

The complaints-driven process is problematic since the most vulnerable workers have no protections in their workplace and they fear reprisals. As a result, they feel they have to quit their jobs before making a complaint. The Ministry of Labour must take a more proactive role in conducting blitz inspections of workplaces employing the most vulnerable workers. Focus should be placed on temporary agencies and sectors with high numbers of misclassified independent contractors.

In addition, there is no point having legislation if it is not properly and actively enforced. What is the incentive for employers to follow the rules if the penalty is not great enough?^{26,27}

It is our understanding that no employer is required to undergo mandatory training on the ESA. While larger enterprises have human resources personnel acquainted with the ESA, small enterprises of less than 50 employees may not have designated personnel. Since these workplaces employ the vast majority of workers, we believe that it is essential that these employers know the law. We suggest that a mandatory on-line training program highlighting

the key components of the ESA be completed by employers. They must provide proof of completion with a competence rating of 75% or greater.

ONTARIO LABOUR RELATIONS ACT

While we leave it to other organizations to weigh in on the changes needed to the OLRA, we do believe that the rights of workers to organize and gain the protections of a union are essential to their health. Research shows that unionized workers are the healthiest of workers²⁸ primarily because the union provides protections for workers who voice concerns around their treatment and advocates for decent working conditions including good wages, benefits and pensions. Historically, the gains made by unions influenced the entire labour force by pushing for a stronger welfare state and healthier working conditions—all of which shapes the health of our population.²⁹ To this end, the Act must include provisions making it easier for workers to organize including those workers (i.e., contract, temporary) who do not benefit from this affiliation at the moment. We will leave it to the labour advocates participating in this consultation to detail the best approach for ensuring that the most vulnerable workers are able to access union support.

CONCLUSION

We appreciate the opportunity to provide our perspective. This review and the recommendations moving forward will set the tone and reflect the values we want to espouse in our society. Will it be one of respect and value for the contributions of all or will it focus on economic growth at the expense of people? We urge you to filter your recommendations through the lens of their health impact on our population.

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