

Changing Workplaces Review

Ryerson University Equity, Diversity and Inclusion Division Submission

This submission makes suggestions for changes to the Ontario *Employment Standards Act*, as well as some changes to the Ontario *Labour Relations Act*, so that all workers have equitable opportunities to participate in the workforce and achieve their potential. We believe that these changes will benefit society, businesses, employers and workers. The suggestions are based on research, including by Ryerson University researchers and from other sources; and some suggestions have specific references to employment standards legislation in other jurisdictions that can inform changes to Ontario legislation from an equity, diversity and inclusion perspective.



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Introduction

Thank you for the opportunity to provide input into changes to the Ontario *Employment Standards Act (ESA)* and the Ontario *Labour Relations Act*. The Equity, Diversity and Inclusion (EDI) division at Ryerson University, together with Dr. Winnie Ng, our Unifor Sam Gindin Chair in Social Justice and Democracy, and Jacquie Chic, a lawyer who has represented workers who have made *ESA* claims, and is currently a Lecturer in Ryerson's department of Politics and Public Administration, welcome the opportunity to provide suggestions from an equity, diversity and inclusion perspective. Our perspective and proposals are consistent with, and supportive of, the submission from Ryerson's Centre for Labour Management Relations (CLMR), and were prepared in conjunction with that submission.

The EDI division at Ryerson provides leadership to promote the integration of equity, diversity and inclusion throughout the University. By integrating EDI into our policies, programs and processes we will create a more inclusive work and learning environment, and contribute to citizenship building in Toronto, Ontario and Canada.

The Ministry of Labour acknowledges that the makeup of the workforce is much different today than when employment standards legislation was first introduced. The 21st century workforce, as the consultation document indicates, includes, and will need to be more inclusive of, historically underrepresented and marginalized groups such as women, racialized people, Aboriginal peoples, persons with disabilities, new Canadians, LGBTQ people, and people with a variety of cultural and religious beliefs and practices. Increased equity, diversity and inclusion in the workplace will provide benefits to individuals, businesses and society as a whole.

We would be happy to discuss any of our suggestions further.

If you would like to contact us, please call or email Tamar Myers, Director, Strategic Planning, Assessment and Special Projects, Equity, Diversity and Inclusion, Ryerson University at 416-979-5000 ext. 7974, tmyers@ryerson.ca.

Research



The attached reference list includes Ryerson, CLMR and other research which provides evidence that,

- Workplace diversity that is fostered, valued and managed enhances innovation, productivity, quality of work and profitability.
- Individuals who belong to groups that have been historically underrepresented and marginalized have higher unemployment rates, lower wages and are more likely to be employed in precarious work. This makes them more likely to be vulnerable workers who need protection under the *ESA*.
- A workplace that supports an individual's personal circumstances and social responsibilities is more productive and efficient.



Issues and Recommendations

Establishing Values Based and Integrated Legislation

Values, principles and references to human rights and accessibility legislation that are incorporated into the Ontario ESA and OLRA, will frame the legislation in a way that will benefit both employers and workers. Ryerson University's new Academic plan, [Our Time to Lead](#), recognizes the benefits of equity, diversity and inclusion, and putting people first, to the university. These values are not only included in stand-alone policies and processes, such as our policies on accommodation of students and employees with disabilities and our human rights policy, but are also the foundation of our plan, and are to be reflected in all of our institutional policies and processes.

Recommendations

1. **Incorporate equity, diversity and inclusion values and principles into a Preamble or Purpose section of the legislation.** The British Columbia [Employment Standards Act](#) provides an example in their Purpose section (Part 1, Section 2). Another example can be found in the Alberta [Employment Standards Code](#) preamble. An Ontario ESA section should make it clear that fairness and equity include the concept of social justice, that an employer's responsibilities include assisting employees to meet both their work and personal responsibilities, that workplaces must be made as accessible as possible, and that employers and workers should respect Aboriginal perspectives.
2. While the Ontario *Human Rights Code* has primacy over other legislation including the ESA and the OLRA, it will be useful to **include reference to the Code in a non-discrimination section in the ESA and OLRA, as a way to reinforce the requirement for equitable treatment in employment generally.** More specifically, **Part XII of the Ontario ESA (equal pay provisions) should be modified with language similar to the [Saskatchewan Employment Act](#), Division 2, Subdivision 4,** which includes a prohibition on different rates of pay based on any of the protected grounds under their *Human Rights* legislation.
3. **The ESA should include a reference to the Accessibility for Ontarians with Disabilities (AODA) Employment Standard** as a foundation for inclusion of workers with disabilities in the workforce and workplace.
4. **Equitable access to jobs should be incorporated into the principles underlying ESA and OLRA legislation.** For many disadvantaged groups, such as Aboriginal peoples, persons with disabilities and new Canadians, access to jobs is as critical an issue to a decent standard of living as protections once employed. In fact, one of the recommendations of the [Truth and Reconciliation Commission of Canada: Calls to Action](#) (number 92.ii) is to, "Ensure that Aboriginal peoples have equitable access to jobs..." The preamble and/or principles of the former [Ontario Employment Equity Act](#) could help to inform the language to be included in the ESA and OLRA.

Increasing Diversity and Inclusion in the Workplace

The diversity of Ontario's workforce makes us more competitive in a global economy. Research suggests that diversity is associated with business success when it is managed in a way that promotes



respect and inclusion. A growing body of research has linked diversity and inclusion to increased innovation, effectiveness and productivity. Following are some ideas for changes.

Recommendations

1. **Include a provision in the ESA requiring businesses to prepare and implement a plan to increase the diversity of workers in all occupations in their workforce, so that it reflects the diversity of the community in which their workplace(s) is (are) located.** The legislative provisions do not need to be overly prescriptive, so as to allow flexibility for employers (i.e. small family owned business) to tailor their plans to specific circumstances. Direction can be provided through education and guidelines and, if necessary, regulation.
2. Just as there are requirements for worker education to promote workplace safety, accessibility, etc. **there should be requirements for education to promote respect for differences and to create positive working environments, where people with different experiences and knowledges can work together effectively.** In line with the [Truth and Reconciliation Commission of Canada: Calls to Action](#) (number 92.iii), include a requirement in the ESA for businesses to provide **skills based training to their management and staff** in, “intercultural competency, conflict resolution, human rights and anti-racism,” and more specifically in, “the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples...” If Ontario is to realize the potential benefits of the diversity of the workforce, businesses must create inclusive workplaces. Businesses should be able to customize training based on the nature of the work.
3. **Incorporate provisions for appointments to the Ontario Labour Relations Board so that Board members reflect the diversity of the province.**

Addressing Precarious Work

Work that is paid minimum wage or below; is temporary or part time; is non-unionized; is with small employers; and/or is exempted from *ESA* protections, is more likely to be precarious. As noted above, there is substantial evidence in research to indicate that marginalized groups (such as women, Aboriginal peoples, persons with disabilities, new Canadians, etc.) are more likely to be employed in precarious work. Therefore, the following recommendations are submitted for your consideration.

Recommendations

1. **Reduce the categories of workers not covered under the ESA and remove all or most of the exceptions to specific standards, especially those provisions that relate to termination of employment, minimum wage and hours of work.** Generally, if there are minimum standards for employment, they should be minimum for all workers, unless workers are protected by alternative standards, e.g. federal workers. For example, many other jurisdictions in Canada, including [Alberta](#), have the same minimum wage for paid student workers as for other workers, whereas Ontario has a separate lower minimum wage for paid student workers. In fact, Ontario has so many exceptions and special rules that it doesn't seem as though we have minimum standards for employment.

Exceptions may also create unintended barriers for some groups. For example, exceptions in the Ontario *ESA* to maximum hours of work, for many professionals, helps to perpetuate work



environments where excessive hours are considered appropriate. This, in turn, may inhibit some women and people from other equity seeking groups from pursuing careers in those professions.

2. **Minimum standards should be prescriptive even when they vary for specific types of work.** For example, the British Columbia [ESA Regulations](#) provide specific minimum wage provisions for farm workers who are employed on a piece work basis, whereas the Ontario *ESA* has a “special rule” that can result in payment to these workers that is below minimum wage.
3. The recent [report](#) of the Ontario Minimum Wage Advisory Panel focused on how to set the minimum wage and did not address the structure for determination of minimum wages. We recommend **establishing a committee of diverse stakeholders to review the structure of the minimum wage standard, to consider incorporating factors such as geographic location in establishing minimum wages** (e.g. workers in the GTA could have a different minimum wage given the cost of living in the area compared with other areas of the province).
4. We support the concerns expressed in the research, including Ryerson CLMR research, about precarious work and support any changes to the *ESA* to increase job stability, such as:
 - a. Work schedules –provisions to require a minimum amount of stability in work schedules, such as exist in the [Saskatchewan Employment Act](#) Division 2, Subdivision 2.
 - b. Part time work - benefits for part time workers, such as provided for in the [Saskatchewan Employment Act](#) , Division 2, Subdivision 9, for businesses with 10 or more employees (excludes students); equal pay provisions for part time work that is the same as full time work; and establishing minimum hours of work.
 - c. Temporary work - enhanced protection for temporary workers, such as by removing exceptions to provisions of the Ontario *ESA* that apply to temporary workers, as well as by adding provisions that create a path to regular, ongoing employment for temporary workers within a well-defined time period of employment in the same capacity with the same employer.

Expanding Flexibility/Accommodations in the Workplace

In a diverse society, employers must be increasingly flexible, to integrate workers with different worldviews that inform how they work, how work fits into their lives and how their lives fit into their work. Women continue to be the primary caregivers for their family members. Persons with disabilities face barriers outside of the workplace that impact their jobs. For example, workers with disabilities may not be able to get to work some days, or work rigid schedules, because of issues related to transportation.

Work and personal lives are not seen as separate and distinct in many cultures. In addition, social obligations may extend beyond the nuclear family, and beyond family to the broader community. The narrow view of some leave provisions that focus on the immediate family and specific reasons for leaves do not work for everyone and can create barriers for workers from equity seeking groups.

1. **Establish a panel or committee with diverse representation to review Ontario *ESA* leave provisions and recommend changes to make them more inclusive.** Considerations would include



new leave provisions (e.g. community service leave) as well as changes to existing leave provisions (e.g. changes to personal emergency leave to include care of dependents who are not relatives).

2. **Establish standards, consistent with the Ontario Human Rights Commission [policy](#) and human rights case law, that provide two or three paid flexible “holidays” for workers, to the same extent as Christian paid holidays are provided for** (i.e. 2 days if workers are entitled to Good Friday and Christmas as paid holidays and 3 days if workers are also entitled to Easter Monday as a paid holiday).
3. **Reframe Part VIII, Section 22(2), of the *ESA* as a modified or flexible work standard**, similar to [Manitoba’s Employment Standards Code](#) (Sec.14.1). The provisions should indicate that modified work arrangements that involve a variance to the standards, such as hours of work and overtime, must be initiated by the worker(s) and agreed to by the employer. This will help to support workers’ requests for modified work to help them meet work and personal responsibilities and circumstances, while limiting the potential for employers to pressure workers to agree to alternative work arrangements that are not in their best interests.
4. **Establish standards that provide 3-7 paid days off in a year for short term illness.** Paid time off to recover from an illness or injury benefits the employer and the employee. Research suggests that productivity and quality of work are negatively impacted for extended periods of time by “presenteeism” (when employees come to work when sick). Employees are less likely to take the necessary time off if the absence is unpaid. There is an opportunity for Ontario to show leadership in this area in Canada.
5. **Extend vacation pay and time off to 3 weeks per year** such as is provided in Saskatchewan’s *ESA* (after 10 years the entitlement increases to 4 weeks), **or 3 weeks per year after 5 years working with the same employer**, which is what British Columbia, Alberta and Manitoba’s *ESAs* provide. [Federal Labour Standards](#) provide for an increase in vacation to 3 weeks after six years. In Nova Scotia and New Brunswick, vacation increases to 3 weeks after 8 years. There is a growing amount of research that points to evidence of the benefits of vacations to employee productivity, health and wellbeing.

Improving Enforcement

While all workers fear reprisal when challenging their employers, equity seeking groups are all the more apprehensive given their higher unemployment rates and the possibility that another job won’t be found. Despite protections in the *ESA* for those who make a claim, there have been many instances of workers, including women, racialized employees, etc., who not only lost their job in the immediate aftermath of lodging a claim but who were unable to find work for lengthy periods thereafter.

In order to address the differential impact of the existing complaints process, we join others in recommending changes to the *ESA* to:

1. **Establish provisions for anonymous and/or third party claims to the Ministry of Labour.** Regarding the latter, the Ministry might look to section 34(5) of the [Ontario Human Rights Code](#) which permits third parties to file an application with the Tribunal.



2. **Expand proactive enforcement measures**, such as audits, to relieve precarious workers of the burden of enforcing the law, e.g. increasing employer audits.

Conclusion

Ryerson University is Canada's leader in innovative, career-focused education. Our motto is, "With Mind and Skill," indicating our focus on education that incorporates both theory and practice, and on building strong relationships with external communities.

Our campus has one of the most diverse student populations in Ontario and, therefore, we have and will continue to produce many of the diverse skilled, creative and critical thinkers who contribute to the province's social and economic development, participating in the current and future workforce. It is with our students and alumni in mind, along with our focus on innovation, excellence, people first values, city building and our commitment to equity, diversity and inclusion, that we present this submission.

Thank you for considering our thoughts and suggestions as part of this review that will lead to making our workforce more inclusive in the future.



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