

Submission to the Special Advisors of the Ontario Changing Workplaces Review

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Changing Workplaces Review
Employment Labour and Corporate Policy Branch,
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Dear Special Advisors:

Re: Changing Workplaces Review

Thank you for the opportunity to provide input to the Changing Workplaces Review. The enclosed submission was prepared jointly by Toronto Public Health and Wellesley Institute. Toronto Public Health strives to reduce health inequities and improve the health of Toronto residents through provision of programs and services, advocacy and policy development. Wellesley Institute is a non-profit research and policy institute with a mission to improve health and health equity in the Greater Toronto Area.

We have provided a number of evidence-based recommendations to better protect and promote health for Ontario workers through reform of the Employment Standards Act and other initiatives. We would be pleased to discuss these recommendations with you.

We commend you for your commitment to protecting workers in the changing workplace.

Sincerely,

Dr. David McKeown
Medical Officer of Health

Dr. Kwame McKenzie
CEO, Wellesley Institute

Encl: Submission to the Special Advisors of the Ontario Changing Workplaces Review- Toronto Public Health and Wellesley Institute

Introduction

The nature of work is changing. A growing number of workers are experiencing less job security, few employment benefits, and limited control over working conditions. Canadian and international literature reports a link between work with these characteristics and negative physical and mental health outcomes.^{1,2,3}

This joint submission to the Special Advisors of the Ontario Changing Workplaces Review was prepared collaboratively by Toronto Public Health and Wellesley Institute. Toronto Public Health strives to reduce health inequities and improve the health of Toronto residents through provision of programs and services, advocacy and policy development. Wellesley Institute is a non-profit research and policy institute with a mission to improve health and health equity in the Greater Toronto Area.

Our expertise and experience lead us to provide health and health equity analysis and advice, and evidence-based recommendations to the Ontario Changing Workplaces Review. Many of our recommendations, but not all, are drawn from the Worker's Action Centre report *Still Working on the Edge: Building Decent Jobs from the Ground Up* and from the Law Commission of Ontario's report: *Vulnerable Workers and Precarious Work*.^{4,5} We have identified specific recommendations from these reports because of their health implications, in addition to proposing our own recommendations.

We are Toronto-based organizations and our work focuses on Toronto populations. However, our recommendations are relevant to employment regulations and their health impact on all Ontario workers, their families, and communities. We are deeply concerned about the growing health inequities in the City of Toronto and in the Province of Ontario, and we believe that the Review is a critical opportunity to reform legislation governing employment relationships in Ontario in ways that will better protect and promote health for a broad section of the working population.

The Relationship between Employment and Health

Employment is an important determinant of health. Evidence shows that there is a link between labour market and employment policies and health.¹ Many features of the employment relationship, including wages, benefits and working conditions can have an impact on health outcomes and health equity. Low-wage employment can lead to shorter life expectancy and poorer health outcomes and poor working conditions can increase the risks of job injury, disease and hazardous exposures.^{6,7,8} These adverse health effects can disproportionately affect people depending on their social economic status. Certain disadvantaged groups of workers are over-represented in low-wage, insecure jobs with few benefits and poor working conditions.

According to the World Health Organization Commission on the Social Determinants of Health:

Employment and working conditions have powerful effects on health and health equity. When these are good they can provide financial security, social status, personal development, social relations and self-esteem, and protection from physical and psychological hazards – each important for health. In addition to the direct health consequences of tackling work-related inequities, the health equity impact will be even greater due to work's potential role in reducing gender, ethnic, racial and other social inequities.⁹

The Changing Workplaces Review and Principles of Decent Work

The *Employment Standards Act (2000)* is a key piece of legislation and an important policy tool through which the impact of work on health can be addressed. It can reduce the negative health effects of some employment practices.⁵ Reform of this legislation would best be grounded in what we consider the minimum standard for basic rights of workers and obligations of employers. It should ensure decent work for all employees, as decent jobs protect and promote health.

We believe that the Changing Workplaces Review should be guided by principles of decent work. The International Covenant on Economic, Social and Cultural Rights, which came into force in 1976 and was ratified by Canada in the same year, sets out fundamental principles of decent work that include fair wages and equal pay for equal work without distinction of any kind to ensure a decent living for workers and their families.¹⁰ Decency at work was also the fundamental principle of the Harry Arthurs review of Part III of the Canada Labour Code, which was enacted in 1965. Just as the Changing Workplaces Review considers the changing Ontario workforce, the Arthurs Report, *Fairness at Work*, conducted a similar review in 2006 to update the labour standards for workers in federally regulated enterprises.¹¹ The Arthurs Report emphasizes that the fundamental principle of decency at work underlies all labour standards legislation and is the benchmark against which all proposals must be measured.

Recommendation 1: The Changing Workplace Review should be guided by the principle of decency, as was the case in the review of the Federal Labour Code:

Labour standards should ensure that no matter how limited his or her bargaining power, no worker [...] is offered, accepts or works under conditions that Canadians would not regard as “decent.” No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is effectively denied a personal or civic life.¹²

Recent studies have documented a rise in non-standard forms of employment in Ontario, such as part-time, self-employed, temporary and contract work.^{13,14} United Way Toronto and McMaster University found that more than half of workers in the Greater Toronto and Hamilton Area were in non-standard forms of employment. Furthermore, non-standard employment increased by almost 10 percent between 2011 and 2014.¹⁵ The rise of precarious work, characterized by low wages, lack of benefits, job instability, and a low degree of control over the process,⁵ exposes an increasing number of Ontario workers to adverse health risks and health impacts.

In the following we present how some of the key features of precarious employment – low wages, poor access to benefits and personal emergency leave, and job insecurity – affect the health and well-being of Ontario workers, and provide recommendations to better protect workers and promote health.

1) Low Income/Wages and Health

There is extensive research that shows the strong relationship between poor health outcomes and low wages, one of the key markers of precarious work. According to United Way Toronto and McMaster University, in the Greater Toronto and Hamilton area workers with lower income tend to report poorer general health and mental health. Workers earning \$20,000-\$40,000 are 20 percent more likely to report poorer general health compared to workers earning \$40,000-\$79,999.¹⁵ A recent study by Toronto Public Health found that low-income groups fared worse than high-income groups for many health indicators including cardiovascular disease, diabetes, self-rated health, and premature mortality.¹⁶

The connections between low income and health have also been demonstrated at provincial and national levels. For example, an Ontario study found that twice as many workers who earned less than half of the provincial median income reported health as poor or fair compared to those who earned more than half of the provincial median income.¹⁷ A Canadian study found that lower household income was significantly associated with a higher risk of becoming distressed. Lower-income men were at a 58 percent greater risk and lower-income women at a 25 percent greater risk of becoming distressed than higher-income men and women, respectively. The differences were driven not only by material deprivation but also by the negative social environment that people were exposed to, including the neighbourhoods and the organization of their workplace.¹⁸ Evidence shows the substantial damaging impacts of stressors on physical and mental health. People with low income, education, or occupational prestige are more likely than those who are better off to be exposed to psychological distress and such differential stress exposure at least partially explains the higher rates of morbidity, disability, mortality, and psychiatric disorders that are generally found in lower status social groups.¹⁹

The prevalence of non-standard forms of employment in the Ontario labour market is a growing concern, particularly since such employment is highly associated with low-wage jobs. On average, Ontario workers in part-time and temporary employment earn much lower wage rates than full-time, permanent workers. For example, as of July 2015, the average hourly wage was \$17.02 for part time workers, \$18.44 for temporary workers, \$27.16 for full-time workers and \$26.73 for permanent workers.²⁰ Evidence shows that part-time and temporary workers are often paid at significantly lower rates, between 30 and 40 per cent less on average than their full-time counterparts for the same work in the same workplace.^{4,21} The share of involuntary part-timers rose in the recession and remains high. In 2013, 32 percent of all part-time workers reported they would rather be working full-time. This is a 43 percent increase in involuntary part-time work since 2000.²²

Employment practices that utilize flexible staffing through non-standard forms of employment help employers keep labour costs down. The growth of temporary, part-time employment has far outstripped the growth of full-time permanent jobs, with temporary employment growing 40 percent and part-time growing 25 percent, while full-time work has increased only 16 percent since 2000.²² Flexible hiring practices often shift the legal liability that employers have for their employees onto intermediaries such as temporary help agencies. In the case of independent contractors, the responsibility is shifted onto workers themselves, as they are exempt from the Employment Standards Act entitlement. Recent studies have documented that workers are often misclassified as independent contractors, especially in low-paying sectors such as cleaning, trucking, food delivery, construction, courier, and other business services.⁴

Legislative protections are critical to reducing discrimination and improving the situation for workers in non-standard forms of employment. The Employment Standards Act has a role in establishing a framework for fair wages and equal pay among workers in equivalent positions within the same workplace, regardless of the form of employment. When contracting out, employers should at least be held jointly responsible with subcontractors for the employment conditions of all indirect workers. In Quebec, the *Act Respecting Labour Standards* makes employers that engage subcontractors jointly liable for monetary obligations. To ensure fairness, the Ontario government should develop a strengthened enforcement mechanism and work with various organizations to identify where violations are occurring and identify best investigative strategies.

Recommendation 2: The Employment Standards Act update should expand the definition of employee to ensure people are not excluded from Employment Standards Act protection.

Recommendation 3: The Employment Standards Act update should ensure that part-time employees are paid at proportionately the same rate as full-time employees in equivalent positions where there is no justification for the difference based on skill, experience, or job description.

Recommendation 4: The Employment Standards Act update should protect workers hired by temporary agencies from any wage discrimination when compared to workers hired directly by the company. Employers and subcontractors, temporary help agencies and other intermediaries should be jointly liable for wages owed and for statutory entitlements under the Employment Standards Act and its regulations.

Recommendation 5: The Ministry of Labour should partner with organizations working directly with precarious workers (e.g., workers centres, community legal clinics, unions, immigrant serving agencies) to identify where violations are occurring and identify investigative strategies that will best detect employer tactics to evade or disguise violations.

2) Poor Access to Health Benefits and Personal Emergency Leave

Access to uninsured health care services like prescription drugs and dental care are essential to good health. However, workers in low-wage jobs tend to have less access to health, dental and drug benefits which can contribute to workers' poor health outcomes and health inequities over time. The connections between living with low income and poor access to uninsured health care services are clear. Wellesley Institute's recent research found that one in three workers in Ontario does not receive employer-provided medical or dental benefits and workers with low earnings are far less likely to receive benefits than those with higher earnings.²³ People with low income are less likely to access prescription drugs than those with higher income.²⁴ Around one in nine Ontarians do not fill prescriptions because of cost.²⁵ Access to dental care is particularly income sensitive.²⁶ An Ontario study found that while 85 percent of people with household income of \$80,000 or more had dental insurance, only 35 percent of people with household income between \$15,000 and \$29,000 had dental insurance and people without insurance reported

significantly fewer dental visits and poorer oral health outcomes.²⁷

Precarious employment generally does not provide benefits.⁵ The benefit coverage rate for temporary workers is extremely low, with fewer than 10 percent receiving extended medical benefits and only two percent receiving dental benefits.⁵ Wellesley Institute's recent research found that in Canada only 27 percent of part-time workers had employer-provided medical benefits, while 73 percent of full-time workers had access to such benefits in 2011.²⁸ The lack of health benefits may cause workers and their families to delay or not seek essential health and dental care and, as a result, face poor health.

There are examples of policy innovations from different jurisdictions, such as France and Australia, of how to make casual and temporary forms of work less precarious through the provision of benefits (e.g. benefits bank) or mandatory short-term contract premiums (e.g. casual loading).^{5,29} To determine the best course of action for Ontario, the Ministry of Labour in partnership with other governments and organizations should consider such policy innovations through an extensive analysis of the costs and benefits to all parties.

Recommendation 6: The Ontario government should explore options for the provision of extended benefits for workers so that a broad section of the Ontario workforce is covered by extended health benefits.

The Employment Standards Act provisions currently provide unpaid, job-protected time off work for up to ten days per year for illness, injury, medical emergency, and bereavement or urgent situations related to close relatives. It is important for all workers to take care of themselves or their family members when they are sick or in emergency situations. Taking time off when sick can speed up recovery and prevent further illness. Lack of sick leave protection can also have substantial consequences for public health, including the spread of infectious disease, obstacles to preventive care, and increasing health care costs.³⁰ Although important for individual workers' health as well as for the public's health, these provisions are only applicable to workers in large workplaces with at least 50 employees. The lack of access to personal emergency leave for employees who work in smaller businesses may produce inequitable health outcomes as lower wage and precarious workers, usually found in smaller workplaces, continue to work even when they or their family members are sick.

Enacting a paid leave provision is a healthier way to ensure that every worker can take time off when sick. When earning minimum wage or low wages, workers without paid sick leave are forced to make a choice when they or their family members are ill. If they cannot afford to lose a day's pay, many workers decide to go to work and compromise their health as well as the health of those they encounter at work, on transportation systems, and elsewhere in their community.³⁰ In most high-income countries workers are entitled to paid sick days for short-term and long-term illness.³¹ Recently, a growing number of U.S. cities and states have also adopted guaranteed paid sick days. A system of proportional benefits will ensure that all part-time workers have access to paid sick leave protection.

Recommendation 7: The Employment Standards Act update should extend personal emergency leave to workplaces with fewer than 50 employees (including part-time, casual and temporary employees of these small enterprises).

Recommendation 8: The Employment Standards Act update should introduce provisions for paid sick leave for all workers, regardless of forms of employment. Part-time employees shall accrue sick leave hours at an amount proportionate to monthly full-time employees.

3) Job Insecurity

The increased insecure nature of work also poses additional barriers to good health. Job insecurity is causing widespread concern not only to low-income employees but also to middle- and high-income employees.³² Permanent employment is no longer the norm in Ontario. A recent study documented that more than half of the workers surveyed in the Greater Toronto and Hamilton area were in non-standard employment relationships, including part-timers, temporary and contract workers, own-account self-employed, and full-time workers without benefits or long-term employment prospects.¹⁵

There is well-established international literature on the negative impacts of job insecurity on workers' health and well being such as higher burnout scores, lower life satisfaction, and increased levels of anxiety, psychosomatic and physical complaints.³³ Canadian research also shows higher risk of self-reported ill health and a greater incidence of working in pain among workers in insecure jobs compared with those in similar jobs but in more secure forms of employment.³⁴

In Ontario, growing evidence documents the harmful health impacts of job insecurity. In the Greater Toronto and Hamilton area, workers in insecure positions were more likely than those in secure employment to report poor mental health status, social isolation, and negative impact of their employment on family life.¹⁵ Recent Toronto and Ontario studies also found that workers who experienced changing work conditions due to contracting out and outsourcing were negatively affected by reduced work hours, erratic schedules, and increased insecurity that created constant stress, anxiety and depression.^{4,35} Toronto Public Health's recent research on suicide in Toronto has found that employment-related issues such as recent job loss/unemployment and job issues/stress were frequently noted stressors present during the one-year period prior to death by suicide.³⁶

Policies that influence the length, continuity and conditions of employment have impacts on health and health equity.¹ There are health risks associated with non-standard and precarious employment due to lack of control over work process and exemptions from statutory regulations.³⁷

Recommendation 9: The Employment Standards Act update should require employers to provide all employees with written notice of employment status and terms of employment contract (including rates of pay, hours of work, general holidays, annual vacations and conditions of work) at the outset of the employment relationship.

Recommendation 10: The Ministry of Labour should explore options and develop legal measures to prohibit long-term temporary assignments.

Recommendation 11: The Employment Standards Act update should define a limit for temporary agency assignments so that agency workers are directly hired after working for an employer for a set period of time.

Recommendation 12: The Employment Standards Act update should require employers to offer available hours of work to those working less than full time before new workers performing similar work are hired.

Proactive Labour Market Policies to Protect Health

This submission makes a number of specific recommendations to improve health and health equity through Employment Standards Act reform. The Employment Standards Act is a key component of Ontario's employment and labour law system because it establishes minimum rights and responsibilities for most Ontario workers and employers. However, it exists within a broader context of labour market policies and legislation that also need to be strengthened to respond to changing workplaces, and to improve health and health equity.

Evidence shows that active labour market policies can improve labour market outcomes, which leads to improved population health and reduced health inequities.³⁸ A recent study of associations between education, work stress and national labour market policies in 16 European countries found that while lower education is associated with higher levels of work stress, this effect is less strong in countries with active labour market policies including training programs, employer incentives to hire new workers or maintain jobs, and direct job creation.³⁹

In particular, there is growing recognition of the role the Ontario government can play in developing comprehensive workforce development and training strategies that enable all workers to connect with better quality, higher paying jobs.^{15,38} This is particularly important given evidence that people in less secure and low-income employment generally do not have access to employer-funded training and cannot afford to pay for their own training.¹⁵ This traps them in low-wage jobs and contributes to health inequities. On the other hand, labour market policies and programs that promote education and training and encourage employers to invest in employee skill development can reduce health inequities by enabling individuals to advance in organizations and secure better quality jobs. Policy and program development in this area will require input from businesses, labour, education and training institutes, other levels of government, and other stakeholders.³⁸

Overall, we encourage the Ontario government to adopt a broad range of co-ordinated policies and programs with the goal of promoting good jobs, healthy workplaces and equitable labour market conditions. The Ministry of Labour should constantly monitor progress on achieving these goals. This will require access to good quality population-level data about Ontario labour market trends and evaluations of employment policies and legislation, including the reformed Employment Standards Act. The Ontario government should also advocate to the federal government for fair access to income support programs, such as employment insurance, when the labour market is reducing jobs.

Recommendation 13: The Ontario government should adopt an integrated, coordinated workforce development strategy, in partnership with other levels of government, businesses and community partners.

Recommendation 14: The Ministry of Labour should fund or develop new tools to collect and analyze labour market data and trends.

Recommendation 15: The Ministry of Labour should fund evaluations of labour market programs and legislation.

Recommendation 16: The Ontario government should advocate to the federal government for fair access to income support programs.

Reforming the Employment Standards Act to Improve Health and Health Equity in Ontario

The ESA sets basic standards for workers' rights in Ontario. Reform is needed to ensure effective and relevant standards given the changing modern workplace. This Review is an opportunity to reduce special rules and exemptions in order to ensure that the basic minimum employment standard is broadly applicable to the working population, including vulnerable workers. Gaps in protections for part-time, casual and temporary workers should be identified and closed, particularly given the disproportionate adverse impact of non-standard and precarious employment on certain groups who are over-represented in these low-wage, insecure forms of employment.

Ontario studies have identified that racialized persons, women, persons with disabilities, Aboriginal persons, youth and newcomers are more likely to be in precarious employment.⁵ The over-representation of certain groups of workers in precarious employment has contributed to their poorer health outcomes and to growing health inequities in Ontario. A Toronto study highlights the interplay between multiple factors, including the experience of racism, the challenges of working in precarious employment and living in poverty, and other forms of social exclusion. They may build upon each other in ways that lead to significant health inequities between racialized and non-racialized groups.⁴¹ Public policy consideration should be given to special rules and exemptions within the Employment Standards Act that have disproportionate negative impacts on certain workers.

A health-in-all-policies approach systematically takes into account the health implications of decisions, in order to avoid harmful health impacts and improve population health and health equity. The Employment Standards Act regulates a wide-variety of work-related issues, and policy considerations should take health into account to improve the consequences on health systems, determinants of health, and well-being.

Recommendation 17: The Ontario government should conduct a Health Equity Impact Assessment of recommendations by the Special Advisors of the Ontario Changing Workplaces Review to the province to ensure that proposed actions will not worsen health inequities and that opportunities to reduce or eliminate health inequities through the Employment Standards Act are identified.

The positive effects of an enhanced Employment Standards Act will reach not only individual workers but also their families, children, and communities. Evidence shows that precarious employment negatively affects household well-being and community connections. Workers in precarious employment are more likely to have their employment anxiety interfere with family life and to experience difficulties in raising children, and are less likely to vote and to have social interaction.¹⁵ The nature of precarious work is also likely to have long-lasting, intergenerational costs.⁵ Employment standards reform should be guided to

provide better protection for those who are disadvantaged and marginalized in today's labour market so that all workers, regardless of race, immigration status, gender, disability, and age, can realize their full potential in employment as well as in their family and community lives.

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