Changing Workplaces Review

Response to the Interim Report

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Introduction

The Canadian Union of Public Employees (CUPE) Ontario is the largest union in the province with more than 260,000 members in virtually every community and every riding in Ontario. CUPE members provide services that help make Ontario a great place to live. CUPE members are employed in five basic sectors of our economy to deliver public services: health care, including hospitals, long-term care and home care; municipalities; school boards in both the separate and public systems; social services; and postsecondary education. CUPE members are your neighbours. They provide care at your hospital and long-term care home. They deliver home care for your elderly parents. They collect your recyclables and garbage from the curb. They plough your streets and cut the grass in your parks and playgrounds. They produce and transmit your electricity, and when the storm hits in the middle of the night, they restore your power. CUPE members teach at your university and keep your neighbourhood schools safe and clean. They take care of your youngest children in the child care centre and make life better for developmentally challenged adults. They protect at-risk children as well as those struggling with emotional and mental health issues. Our members do this work every day, and as a collective experience it equips us to make a positive and informed contribution to the discussions regarding the labour and employment law review.

We welcome this opportunity to respond to the Interim Report issued by the Special Advisors to the Changing Workplaces Review. This is an historic opportunity to help reshape labour and employment law in Ontario, and we are encouraged by the inclusion of many options that would make the Labour Relations Act and the Employment Standards Act more progressive, and more reflective of the needs of workers. Updating the LRA and the ESA to better protect workers must be central to the recommendations that will be made in the final report of the CWR.

The interim report acknowledges that there is a power differential between workers and employers (p.11), and also notes that their recommendations for reforms will focus on vulnerable workers, broadly defined (p. 23). Since a power differential exists, it is reasonable to conclude that all workers are vulnerable, recognizing that some are more vulnerable than others. Therefore protection for all workers must be central to the recommendations in the final report, even if more significant changes are needed to protect the most vulnerable.

In this submission we will provide CUPE Ontario's position on all of the issues raised in the interim report. In some cases we recommend modifications to the options provided by the Special Advisors, and in some areas we propose options that were not included in the interim report. Each of our recommendations could make improvements in the lives of workers in Ontario, and all of these should be considered for the final report. That being said, we would like to take this opportunity to highlight our four main priorities for labour law reform: Card Based Certification, Anti-Scab Legislation, First Contract Arbitration, and Successor Rights. These reforms will make the biggest impact for workers who want to exercise their constitutional right to join a union and engage in meaningful collective bargaining to improve their wages and working conditions.

With regard to the Employment Standards Act, we would like to highlight several issues that we believe to be of particular importance: Expanding the definition of employees and eliminating exclusions and special rules; providing paid sick time to all employees; protecting temporary workers and agricultural workers (including workers assigned through Temporary Help Agencies, and Temporary Foreign Workers); and extension of just cause protection to all employees. This is not to say that other issues are not important. In fact, our recommendations in their totality (for both the LRA and ESA) would go a long way to improving workers' lives and addressing the problem of vulnerability identified by the Special Advisors. But the issues raised as priorities should be the first areas of action coming out of the Changing Workplaces Review.

The special advisors note that the issue of the minimum wage is outside the scope of this review, and have therefore not made any recommendations on it. This is an unfortunate exclusion considering the importance of wage policy to workers' income security, and the relationship between minimum wage and vulnerability (something that is recognized in the interim report – p. 33). The minimum wage is also related to other stated policy goals of the government, including a poverty reduction strategy and eliminating the gender wage gap. Far too many workers live in poverty. Raising the minimum wage to $15/hour would help to alleviate that. Women make up a disproportionate number of low wage workers. Increasing the minimum wage to $15/hour would be a step towards pay equity. Other marginalized workers, including Aboriginal people, racialized workers, and young workers, are also overrepresented in low wage occupations. Increasing the minimum wage to $15/hour would promote equality across the board.

Top Priorities for Labour Relations Act Reforms

Card Based Certification:

- **Recommendation – Option 3 "return to the Bill 40 and current construction model".**

The Supreme Court of Canada has ruled that the Charter of Rights and Freedoms includes the rights to join a union, collectively bargain, and strike. The CWR Interim report recognizes this fact. In order for these rights to be meaningful the legal framework regulating labour relations must facilitate the exercise of these rights. The LRA must actively remove barriers to joining a union. The best way to do this is to abandon the mandatory vote system, and return to a system of card based certification. The threshold for certification should be 55% of employees signing union membership cards, as it was under Bill 40.

The preponderance of evidence demonstrates that unionization drives are much more likely to be successful under card based certification regimes than under mandatory vote regimes. Mandatory vote systems give employers a far greater opportunity to interfere with the choices of workers, to engage in threats, intimidation, and fearmongering. Sometimes the tactics are subtle, but they are still very real. Mandatory vote systems act as a barrier to unionization, undermining workers' desire to join a union.

Employers will likely claim that votes are more democratic, and should be retained in the LRA. The logic behind such statements is fundamentally flawed. By signing a union card workers are in fact voting to join the union. A majority of workers signing cards means that the union has majority support. Forcing a second vote, and thereby giving the employer the opportunity to interfere in the process, is profoundly undemocratic, because fear and intimidation tactics can undermine the true wishes of workers.

If employers truly care about democracy in the workplace, they should allow workers to elect their supervisors, managers and bosses. Workers should have the power to vote on how to organize work, and how shifts are allocated. A fully democratic workplace would allow workers to vote on how to allocate profits, and what investments to make. Unless employers are really willing to accept workplace democracy their arguments about mandatory votes should be dismissed for what they are: a strategy to undermine workers' right to join a union.

As has been the case in previous iterations of the LRA, even when a system of card based certification has been implemented there should still be provisions to allow for unions to apply for a certification vote when they have cards signed by 40% of members of a proposed bargaining unit.

<u>Successor Rights</u>:

- **Recommendation – modified version of Option 2 "expand coverage of the successor rights provision, similar to the law in place between 1993 and 1995, to apply to building services, home care and other services".**

Successor rights are a necessary protection for workers and their unions. The practices of contracting out, contract tendering, and contract flipping, are used by employers to undermine the democratic rights of workers to join and maintain unions, and undermine collective bargaining. In cases of contracting out, unions lose bargaining rights and workers lose their jobs. Successor rights will help protect vulnerable workers.

The Bill 40 model was useful for protecting workers in building services. Since that time, however, there has been a rise in the vulnerability of workers in a number of sectors that are regularly subjected to the practice of contracting out. The interim report includes home care work (in various forms) as an example of another sector that could be protected by expanding successor rights coverage. We support the broadest possible extension of successor rights. That is to say, any work that is covered by a collective agreement should be protected by successor rights provisions.

Option 2c suggests that work other than building services and home care could be included, "possibly by a regulation-making authority". We would propose that the default position should be that work is covered by successor rights provisions in the LRA. In particular, the LRA should state that all public sector bodies, or any workplace that is publicly funded, should be covered by successor rights. Government bodies should be held to the highest possible standards for protecting vulnerable workers, and for facilitating the constitutional right to meaningful

unionization and collective bargaining. Under no circumstances should government bodies, or workplaces funded by government, use contracting out or other strategies to undermine collective bargaining rights and the protection that comes with a collective agreement.

Successor rights should also be protected for federally regulated workplaces that transition to provincially regulated workplaces. The Canada Labour Code currently extends successor rights to workplaces that shift from provincial to federal jurisdiction, but the same kind of protection does not exist in the LRA.

- **Recommendation – New Proposal: ensure that unions covered by the HLDAA interest arbitration system have the status of bargaining protected in cases of a sale of business.**

Protection for newly certified bargaining units in the HLDAA interest arbitration process needs to be added to the LRA. In the current LRA, when there is a sale of business there is only protection of the procedural right to issue notice to bargain. Effectively this means that any progress that had been made in negotiating a collective agreement is eliminated. For those unions covered by HLDAA, all progress is lost if there has not yet been an arbitral award. The process of negotiating under HLDAA is long and drawn out. It often takes years to reach a first collective agreement through the interest arbitration process. Extending the length of this process by requiring it to start over again when there is a sale of business is a barrier to successfully reaching collective agreements, and is an undue hardship to workers and their unions.

The LRA should be amended to protect the status of collective bargaining in cases of a sale of business. All issues on which the parties have reached agreement should be considered to be a starting point for negotiations with the new employer. All progress made through the interest arbitration process should be considered to be binding on the new employer. We recommend a reintroduction of the LRA provisions that existed from 1993 – 1995:

> "If the predecessor employer is a party to any of the following proceedings, the successor employer is a party to the proceeding as if the successor employer were the predecessor employer, until the Board declares otherwise:
>
> 1. A proceeding before the Board under any Act.
>
> 2. A proceeding before another person or body under this Act or the Hospital Labour Disputes Arbitration Act.
>
> 3. A proceeding before the Board or another person or body relating to the collective agreement."

<u>Replacement Workers</u>:

- **Recommendation – Option 2 "reintroduce a general prohibition on the use of replacement workers".**

In the vast majority of cases collective bargaining is resolved without a labour disruption. As the interim report notes, employers use replacement workers in only a small minority of cases of a strike or lockout. Introduction of a general prohibition on replacement workers therefore would not create a disruption in the labour relations field.

A prohibition on replacement workers would, however, provide greater security to unionized workers. As many unions noted in the original round of submissions to the CWR, "the use of replacement workers increases the risk of violence on picket lines, prolongs the duration of strikes and undermines the integrity of the collective bargaining process."[1] Additionally, use of replacement workers makes more conflictual the ongoing and necessary relationship between unions and employers after the end of a strike or lockout. In 1995 even some Police lobbied the government to maintain the prohibition on replacement workers because the provisions that existed in the NDP's Bill 40 made their jobs safer.[2]

Option 3, as presented in this section of the interim report, calls for a provision similar to the Canada Labour Code which bars using replacement workers if they are used for the "purpose of undermining a trade union's representational capacity". While this may seem like it would be an improvement on the status quo, it really does not provide any real protection. Research on the Code provision shows that it has almost never been successfully invoked.[3] It is almost impossible to prove the "purpose" is to undermine the representational capacity of the union because the CIRB has interpreted its provision as not operating on the taint theory. Undermining the representational capacity of the union has to be the predominant purpose. Option 3 will not provide the benefits that would come with a full-scale prohibition on the use of replacement workers.

<u>First Contract Arbitration</u>:

- **Recommendation – Option 2 "provide for automatic access to first contract arbitration upon the application of a party to the OLRB, after a defined time period, in which the parties have been in a legal strike or lock-out position.**

Employers regularly use obstructionary tactics to avoid reaching a first collective agreement and undermining the viability of newly certified bargaining units. The current LRA provides some access to first contract arbitration (FCA), notably when "employers refuse to accept the right of their employees to engage in collective bargaining."[4] Access to FCA is not automatic, and employers are able to find ways to block the successful completion of bargaining without triggering FCA. Furthermore, workers who want to join a union might be deterred from unionizing if they fear that they will need to strike in order to get a first collective agreement.

[1] CWR Interim Report, p. 90.
[2] Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms* 3rd edition, Toronto: Garamond Press, 2003, pp. 190, 219.
[3] CUPE Legal Branch, 2016.
[4] *CWR Interim Report*, p. 80.

FCA removes that barrier to unionization, and also facilitates the creation of mature bargaining relationships between unions and employers. Granting easier access to FCA can help reduce the likelihood of first contract labour stoppages by 50%. There is evidence to suggest that FCA is rarely used, even when made easily available. It is possible to conclude, therefore, that FCA encourages the parties to negotiate a settlement, and fosters the creation of stable collective bargaining relations between unions and employers.[5]

- **Recommendation – Option 5 "not permit decertification or displacement applications while an application for first contract is pending".**

The goal of FCA is to facilitate the reaching of a collective agreement and the creation of stable bargaining relationships. Allowing decertification and displacement applications to proceed while the FCA process is underway undermines the explicit purpose of FCA. In order to make fullest use of FCA provisions there should not be any access to decertification or displacement procedures while the FCA application is pending.

Other Priorities on the Labour Relations Act

Coverage and Exclusions:

- **Recommendation – Option 2 "eliminate most of the current exclusions in order to provide the broadest possible spectrum of employee access to collective bargaining".**

As the interim report noted, there is an emerging body of Supreme Court of Canada decisions that tends towards the greatest possible scope for freedom of association, including the right to collective bargaining. The LRA should reflect the decisions made by the SCC by removing the majority of exclusions. There is some merit in maintaining the exclusions for "managers and persons employed in a confidential capacity in matters related to labour relations". An exclusion of this sort should, however, be interpreted in the narrowest sense. It should not be used to exclude those workers who provide support (e.g. clerical and secretarial) to persons employed in a confidential labour relations capacity. Only those in positions of authority within those roles should be excluded.

The section of the interim report that addresses exclusions also notes that collective bargaining is only available in workplaces with two or more employees. This restriction effectively precludes most live-in domestic workers from accessing the collective bargaining regime, because in most cases there is only a single employee in a given household. In eliminating the exclusion of domestic workers, the LRA should also be amended to adopt a system of broader based bargaining to provide meaningful access to unionization to employees in industries or sectors of the economy that are dominated by single-employee workplaces.

[5] Susan J.T. Johnson, "First Contract Arbitration: Effects on Bargaining and Work Stoppages", *Industrial and Labour Relations Review*, vol. 63, no. 4, 2010, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1687294.

Agricultural and Horticultural Workers:

- **Recommendation – Option 2 "eliminate the LRA exclusions for agricultural and horticultural sectors under the LRA and repeal the AEPA for agricultural workers".**

Agricultural and Horticultural workers are particularly vulnerable, and the denial of their ability to access full collective bargaining rights exacerbates this vulnerability. The existing legislation covering agricultural workers, the so-called Agricultural Employees Protection Act, 2002, does nothing to remedy the vulnerability and precarity faced by agricultural and horticultural workers. It fails to provide real and substantive bargaining rights to workers, and does not contain meaningful mechanisms for workers to make collective representations to employers. Most other provinces provide collective bargaining rights to agricultural and horticultural workers, and Ontario should follow suit.

The AEPA was found to be constitutional in the *Fraser* decision, but that finding was based, in part at least, on the premise that the AEPA had not been in effect for long enough to determine if its mechanisms inappropriately disadvantage farm workers.[6] Since the time of that decision it has become abundantly clear that the AEPA's mechanisms for giving meaningful access for workers to collective self-representation, or for remedying disputes between workers and employers, have been a total failure. The AEPA does not provide any meaningful process for workers to actually negotiate for workplace improvements. Only collective bargaining would provide access to such a process.

There have been subsequent SCC decisions that reinforce the right to access meaningful collective bargaining and the right to strike. The *Saskatchewan Federation of Labour v. Saskatchewan* decision provides the strongest defense of the right to strike: "Where strike action is limited in a way that substantially interferes with a meaningful process of collective bargaining, it must be replaced by one of the meaningful dispute resolution mechanisms commonly used in labour relations."[7] Agricultural and horticultural workers should be covered by the LRA, and should have the same collective bargaining rights as all other workers, including the right to strike. Even if the right to strike is limited, the right to a meaningful process for resolving collective bargaining must be used. Such a mechanism does not exist in the AEPA.

Related and Joint Employers:

- **Recommendation – Option 4a) "create a rebuttable presumption that an entity benefitting from a workers' labour (the client business) is the employer of that worker for the purposes of the LRA, and declare that the client business and the THA are joint employers".**

In the United States, the National Labour Relations Board (NLRB) recently found that "its previous joint employer standard has failed to keep pace with changes in the workplace and

[6] *Ontario (Attorney General) v. Fraser*, (2011) SCC.
[7] *Saskatchewan Federation of Labour v. Saskatchewan*, (2015) SCC.

economic circumstances."[8] The NLRB recognizes that in light of the expansion of the use of Temporary Help Agencies (THAs) the legal framework needs to change in order to preserve workers' bargaining rights. The fissured workplace is a theme that runs through the CWR interim report. Fissuring of workplaces has led to an erosion of protection for workers, and has led to increased vulnerability. Employers use assignment workers through THAs, and use other forms of contracting out of work, as part of a strategy to avoid legal obligations, including collective bargaining obligations, that come with direct employment. The employers still benefit from the work done by assignment and contract workers, and are able to exercise direct and indirect control over those workers. While employers shed their legal obligations, workers are made more vulnerable.

The LRA should be amended to create a rebuttable presumption that an entity that benefits from a workers' labour is the employer for that worker. The onus must be on employers to prove otherwise. In making determinations on employers' applications to relieve themselves of their responsibilities, the OLRB should take into account direct and indirect control exercised by the applicant. Where an entity has direct or indirect ability to establish, monitor, and/or enforce operating standards for workers, that entity should be considered an employer.

- **Recommendation - For Option 4b see the sections (below) on and Broader Based Bargaining**

Franchisors benefit from the work performed by employees of franchisees. They also have a significant amount of control, both direct and indirect, over employee and labour relations of franchisees. As entities that receive benefits from, and hold considerable control over, employees, Franchisors should be considered to be joint employers for the purposes of the LRA.

As discussed in the sections on Broader Based Bargaining, franchises pose particular problems for workers trying to acquire and exercise bargaining rights. In many cases franchises employ a small number of workers in each workplace, which acts as a barrier to unionizing with sufficient bargaining strength to win a good collective agreement. Creating broader based bargaining structures could provide greater capacity for workers to exercise their rights to unionization and collective bargaining.

Electronic Membership Evidence:

- **Recommendation – Option 4 "permit some form of electronic membership evidence"**

Facilitating workers' rights to join unions should be a central goal of the CWR. Creating a system for electronic membership evidence during union organizing drives is a relatively easy step to take, and one that will assist many workers in joining a union. The system requiring signatures on physical cards was created when workers were more likely to be concentrated in a single

[8] National Labour Relations Board Office of Public Affairs, "Board Issues Decision in Browning-Ferris Industries", August 27, 2015, available at https://www.nlrb.gov/news-outreach/news-story/board-issues-decision-browning-ferris-industries.

workplace, and when technological developments had not made possible other kinds of membership evidence.

Since that time there have been significant changes in the organization of work. It is increasingly common for employees of the same entity to be spread across a number of different workplaces, and across a large geographic area, making it more difficult to acquire physical cards even when workers express interest in joining a union. The advancements in communications technology that are part of what make possible such workplaces changes could also be used to facilitate the collection of membership evidence. In the absence of some form of electronic membership evidence, it will remain unnecessarily difficult to organize some workplaces.

Access to Employee Lists:

- **Recommendation – Modified version of Option 2 "provide a union with access to employee lists with contact information."**

Workers who want to unionize their workplaces face a number of structural barriers to achieving this goal. One such barrier is the lack of information about how many other people are employed at their workplace, and how to contact them. Although this has always created difficulties, the problem is exacerbated when workers do not share the same physical space, or when they are not scheduled to work at common times.

Providing unions with access to employee lists with contact information would help remove this barriers to workers exercising their rights to unionize. Lists should be provided when unions can demonstrate that a bona fide organizing campaign has been initiated. Lists should be provided to the union within two days of the request (the time frame for providing a list of employees after an employer has received notice of an application for certification). The list provided by the employer should include the name, job title, department (if relevant), home address, phone number, and email address (if available). In exchange for the lists, unions would agree that this information would only be used for the purposes of organizing, and would not be used for any other purposes.

Off-site/telephone/internet voting:

- **Recommendation – Modified version of Option 2 "explicitly provide for alternative voting locations outside the workplace, when requested by a union".**

In the event that card based certification is adopted, and assuming the threshold for certification is simple majority support of members of the bargaining unit (as is our recommendation), then the question of the location of votes will be of significantly less importance. Votes would only be held when unions apply for a certification vote with cards signed from 40% – 55% of the bargaining unit, which is similar in principle to the way votes were conducted when there was universal access to card based certification.

The location of certification votes would be virtually irrelevant if there was no power difference between employers and employees. The workplace would make sense as the voting location, because all potential voters have access to that space on a regular basis. But the workplace is not a neutral space, and is not always perceived by employees to be a neutral space. Employer intimidation of workers is a regular occurrence in organizing drives. Workers regularly report that they want to keep their intention to join the union confidential, and express concerns that their employer will terminate them for exercising their democratic right to unionize.

It is not uncommon for employees to ask for the vote to be held in a location other than their workplace because they believe that the employer's general control over the premises will empower them to find out how individual employees vote. This interferes with free and fair voting. It is not necessary to have all votes held off site, but in cases where the union applies for an off-site election the OLRB should be empowered to grant such a request.

Remedial Certification:

- **Recommendation – Option 2 "make remedial certification more likely to be invoked by removing the requirement to consider whether a second vote is likely to reflect the true wishes of the employees".**
- **Recommendation – Option 3 "remove the requirement to consider whether the union has adequate membership support for bargaining".**

It is all too common for employers to interfere with workers' rights to join a union. For an employer who engages in these practices, the benefits of contravention of the LRA are substantial. They can effectively prevent unionization, especially if they interfere in organizing campaigns relatively early. The consequences for such contraventions are insignificant compared to the potential benefit. In noting that the "OLRB does not often exercise its discretion to award remedial certification"[9] the interim report highlights the problem. The LRA provides inadequate protection against employer interference.

The requirement to consider whether a second vote is likely to reflect the true wishes of employees acts as a barrier to utilizing remedial certification. It tends to lead to the requirement that a second vote be held, even in cases where it is clear that the employer has tainted the working environment to the detriment of the union. Removing this requirement will allow the OLRB more fully to remedy against unfair practices.

Requiring that the union prove that it has adequate support for the Board to order remedial certification is also a barrier to the full and proper use of this remedy. Employers who interfere with organizing campaigns early enough are rewarded for the unlawful behaviour when they are able to use intimidation to prevent the union from achieving "adequate support" (e.g. at least 30% of a prospective bargaining unit signing cards).

[9] *CWR Interim Report*, p. 78.

Consolidating Bargaining Units:

- **Recommendation – Option 2 "reintroduce a consolidation provision from the previous LRA where only one union is involved".**

The Wager model of union certification, as practiced in Ontario, has led to a highly fragmented system of industrial relations. Fragmentation of labour relations within a workplace can be remedied by empowering the OLRB to consolidate bargaining units, on the same basis as the LRA between 1993 and 1995.

Consolidation should only take place when only a single union is involved, and should only be available when an application for consolidation is made by a union. The right of workers to decide on their own bargaining structures, outside of the influence of employers, is central to the right to freedom of association. Extending the ability to apply for consolidating bargaining units to employers would be an interference with workers' rights in this regard.

Additionally, consolidation that involves more than one union should be rejected because it would have adverse effects. Notably, it would undermine workers' right to choose their own bargaining agent. Consolidation of bargaining units of different unions essentially means that some workers will lose the union of their choice. This would be an unnecessary and unwelcome development. The LRA currently contains provisions for decertification and displacement of unions, which provides access to workers to change their bargaining agent if they so choose. Additional mechanisms, such as multi-union consolidation procedures that could be triggered by a single union applying for merging bargaining units, would be superfluous, and would create unnecessary turmoil in workplaces.

Rights of Striking Employees to Return to Work:

- **Recommendation – Option 2 "remove the six-month time reference in the LRA section but leave the provision otherwise the same".**

As with much of the CWR, this provision can be read on its own, and in relation to other options for LRA reforms. On its own, removal of the reference to the six-month timeframe would eliminate pressure felt by striking or locked-out workers. The provision, as it stands, is an encouragement to strikers to apply to return to their job, and abandon the strike for fear that they cannot make an application to return after the six-months have passed. While it does not force workers to end their strike, it does provide incentive to some to return to work. Eliminating this timeframe would allow workers to decide on how long to engage in strike action, free from economic coercion.

This recommendation should be implemented in tandem with other options in the CWR interim report. For example, the security that workers would receive from eliminating the six month timeframe would be bolstered by also adopting Option 4 from section 4.4.2.2 of the interim report (on 'Refusal of Employers to Reinstate Employees Following a Legal Strike or Lockout'). Requiring employers to recall all employees, or, if insufficient work is available, recalling workers based on seniority, would protect striking workers against unilateral action by their

employers. This would also be consistent with the option that would afford all workers with just cause protection (i.e. employers could not terminate striking workers for exercising their constitutional right to strike).

Both of these recommendations would also be consistent with the reinstatement on the general prohibition on the use of replacement workers. The prohibition on replacement workers would mean that striking workers would not be forced into competition for their jobs with the scabs who took them during a strike. The only barrier to a worker returning to their job would be the absence of work. This problem would be resolved by recalling workers based on seniority as work becomes available. The consistency between the prohibition on replacement workers, removal of the six-month timeframe, and recalling all workers after a strike (based on seniority if there is insufficient work) suggests that all three of these should be adopted as a single package of reforms.

Refusal of Employers to Reinstate Employees Following a Legal Strike or Lockout:

- **Recommendation – Option 4 "Adopt an approach similar to the LRA, as it was in 1993 to 1995, providing that at the end of a strike or lockout: a) the employer is required to reinstate each striking employee to the position he or she held when the strike began; b) striking employees generally have a right to displace anyone who performed the work during the strike; and c) if there is insufficient work, the employer is required to reinstate employees as work becomes available".**

Option 4 of this section should be adopted as a compliment to adoption of Option 2 in section 4.4.2.1 of the interim report (Application to Return to Work After Six Months From the Beginning of a Legal Strike) (see above).

Renewal Agreement Arbitration:

- **Recommendation – Modified version of Option 3 "Empower the OLRB to order interest arbitration as a remedy following a finding of bargaining in bad faith after the commencement of a strike or lock-out, when such a remedy has been requested by the applicant".**

In CUPE Ontario's original submission to the CWR consultation process we indicated that we oppose any reforms that impinge on the right to strike. We view the option of renewal contract arbitration based on the Manitoba model to be a restriction on the right to strike because it would empower employers to apply for, and be granted, interest arbitration as a mechanism for ending a strike. The decision to submit outstanding issues to arbitration would, in such cases, be out of the hands of the union. Taking the decision to end a strike out of the hands of the union is, by definition, a limitation on the right to strike. There is no objection to interest arbitration when both parties agree to use that mechanism to resolve a labour dispute. Empowering the OLRB to order interest arbitration when the parties have already established a bargaining relationship with the successful completion of at least one collective agreement, however, is too heavy handed.

Alternatively, adding to the OLRB's list of remedies in cases of bad faith bargaining is a reasonable amendment to the LRA. At present the OLRB's remedy where it finds a party has bargained in bad faith is to order the parties back to the table. This is a relatively weak remedy, and does not necessarily preclude further acts of bad faith bargaining. Giving the OLRB the power to order interest arbitration in cases of bad faith bargaining would provide a real and effective remedy. However, the Board should only be empowered to order this remedy if the applicant has specifically requested interest arbitration as the desired remedy. There might be cases in which the applicant believes that their better option is still to negotiate a settlement. In those cases they should not be bound to a remedy that they do not desire.

Interim Orders and Expedited Hearings:

- **Recommendation – all of Option 2**

Union organizing campaigns can be subject to unfair interference by employers. Interference can take a number of different forms of reprisal against individual employees, or groups of employees. Prior to the successful certification of a union workers are particularly vulnerable to the power of their employer, and such unfair tactics can have profoundly deleterious effects. Insufficient remedies, or delays in the implementation of remedies allow employers' illegal activities to effectively undermine an organizing campaign. Employers are thus incentivized to break the rules, because their bad behaviour gets them what they want.

Expanding the powers of the OLRB to use interim orders and expedited hearings will help to remove the incentives to employer bad behaviour, and will provide meaningful redress when workers' rights have been violated during an organizing campaign. Early intervention by the board, providing remedies (including reinstatement of terminated employees) that reverse the harm done by employer unfair practices, will help ensure that workers' rights to join unions will be exercised freely.

The powers of the OLRB should be as broad as possible, and should not be merely restricted to procedural orders. We recommend the elimination of the requirement to prove irreparable harm before interim relief will be granted. Such a standard is too demanding, and acts as a barrier to the Board developing an appropriate standard.

- **Recommendation – NEW: amend s. 48(12)(i), and delete s. 48(13), to remove the prohibition on arbitrators to order interim reinstatement.**

The prohibition on arbitrators making interim orders that would require an employer to reinstate an employee in employment is an unnecessary, and unjust limitation on the general power of arbitrators to make interim orders. This prohibition imposes undue hardship on workers while they await the adjudication of their grievance by a third party neutral, which regularly requires over one year to complete and obtain a ruling. In cases where the grievance is granted, the grievor has been denied employment and income to which they are entitled. In the absence of the ability of arbitrators to grant interim relief, employers benefit from delaying and drawing out the arbitration process.

The granting of interim relief, by reinstating a terminated employee prior to the final arbitral decision, should be based on a balance of harm. In consideration of the case, the arbitrator would balance the potential harm to the employee if they are not reinstated against the potential harm to the employer if they are reinstated. This is a system that worked under the LRA prior to the 1995 amendments, and continues to be used in other jurisdictions. It should be reinstated.

Just Cause Protection:

- **Recommendation – Modified version of Option 2 "provide for protection against unjust dismissal for bargaining unit employees from the date that an application for certification has been filed by the union".**
- **Note: just cause protection should be extended to all employees (see recommendations under the ESA section of this submission).**

The issue of just cause protection is raised in both the LRA and ESA sections of the interim report. One of the options presented in the ESA section would be to provide just cause protection for all employees. The interim report also recognizes that virtually all collective agreements have just cause provisions. Extending protection enjoyed by virtually every unionized worker to all workers would be the preferred option.

Some just cause protection exists in Nova Scotia and Quebec, and the Supreme Court of Canada recently ruled (*Wilson v. Atomic Energy of Canada Ltd*.) that just cause protection is covered by sections 240 to 246 of the Canada Labour Code. It is therefore not unprecedented in the Canadian context. Just cause protection would also improve standards for vulnerable workers, which has been identified as a central goal of the CWR.

However, if the focus is to be narrow, and only directed at the LRA, then we would recommend that just cause protection be extended to all workers in a proposed bargaining unit from the day on which the union has filed for a certification vote. The option proposed in the interim report would only extend such protection from the time of certification. The time period from the application for certification until the date on which the certificate is issued can be drawn out, and employers do use this window to terminate employees – often with the implicit goal of creating a climate of fear to undermine the newly certified union.

Extending just cause protection to the date of the application for certification would reduce the likelihood of unjust terminations during this period of vulnerability. It would extend protection that will eventually, in all likelihood, be included in the resulting Collective Agreement. But discussions about the timing of when just cause protection should be granted are made irrelevant if this protection is extended to all workers regardless of their membership in a union.

Prosecutions and Penalties:

- **Recommendation – Option 2 "increase the penalties under the LRA"**

Other recommendations made in this section would be more effective to remedy unfair practices by employers (e.g. remedial certification, expanding the power of the OLRB to use interim orders and expedited hearings, etc.). Increasing penalties for contravention of the LRA could, however, help to augment the powers of the OLRB, and deter violations of the Act, and should therefore be considered.

Broader Based Bargaining Structures:

- **Recommendation – Maintain existing bargaining structures where union density is currently relatively high (e.g. much of the broader public sector), and create a diversity of broader based bargaining structures to facilitate meaningful access to unionization and collective bargaining in relatively low union density sectors.**

The Wagner model, as adopted in Ontario, has had its successes. Most notably, unions in many parts of the Broader Public Sector are able to maintain strong and viable bargaining units, and continue to provide collective agreement protection to our members. There are still modifications to the Wagner model of organizing and collective bargaining that will help facilitate meaningful access to unionization for workers. A return to the card based certification system will improve workers' chances of joining a union, and thus should be a key recommendation coming out of the Changing Workplaces Review. In fact, all of the recommendations we have made above will help strengthen existing bargaining units, and give greater access to collective bargaining for workers who do not currently have the benefit of a union.

That being said, there are sectors of the economy that are significantly more difficult to organize under the Wagner model. Additionally, there are sectors, or types of workplaces, in which the Wagner model does not provide sufficient bargaining strength to unions to give meaningful access to good collective agreements. Alternatives to the Wagner model should be implemented to give access to collective bargaining to workers in those sectors/workplaces that are currently difficult to unionize, where union density is currently relatively low.

The term "Broader Based Bargaining" (BBB) is used in the interim report as a catch-all term for alternatives to the Wagner model. Although alternatives to the Wagner model are about more than just bargaining – amongst other things, they are also about organizing, and providing collective voice to workers in their workplaces – we will use BBB in describing our proposal.

There is no single model of BBB that will be appropriate for all sectors. In some cases, it will be appropriate to have BBB structures based on franchises, which could be beneficial for workers in food services/fast food (for example). In other cases it might be necessary to develop sectoral arrangements based on a modified version of the Baigent-Ready model (e.g. in retail, or child care). A modified version of the Status of the Artist Act could be useful for freelancers and independent or dependent contractors. With appropriate modifications, an SAA-type

structure could also be used for domestic live-in caregivers (or possibly other domestic care workers).

We propose that structures of BBB be built on the following principles:

1. Broader Based Bargaining (BBB) should focus on sectors of the economy with low union density. There should be no changes to organizing and bargaining structures in the Broader Public Sector (BPS) where the existing legislation has been used to successfully organize more than 70% of workers.
    a. There is room for BBB structures in parts of the BPS where union density is low, and/or there is little bargaining strength.

2. There is no single model of BBB that would be applicable to all sectors of the economy. Different models should be considered where sectoral conditions require a distinct model to give meaningful organizing and bargaining rights to workers.

3. Unions should have the ability to build bargaining units over time.
    a. This could be done on a sectoral/regional basis, or on a franchise basis.
    b. Unions that demonstrate majority support at 2 or more workplaces (within a sector or a franchise) can apply to the OLRB to have a single bargaining unit/single collective agreement for all of these sites.
    c. When the union organizes more workplaces within that sector or within that franchise, the union can apply to the Labour Relations Board to vary the union's certificate, include that newly organized workplace in the existing Collective Agreement, and require the employer at the newly organized workplace to participate in multi-employer collective bargaining when the CA is up for renewal.

4. In any BBB structure, there must be compulsory multi-employer bargaining (i.e. it must be mandatory to create an employers association responsible for bargaining a collective agreement that covers all workplaces covered by the certificate issued by the Labour Relations Board)
    a. Where there is multi-employer bargaining, measures must be taken to ensure that employers bargain in good faith, and do not use the employer association as a tool to block the successful completion of collective bargaining.
    b. Employers should bargain based on majority support for their positions – i.e. one, or a minority of employers, should not be allowed a veto. Failure to abide by this principle should be considered bargaining in bad faith, and the LRB should have power to compel good faith bargaining.
    c. In cases in which the BBB structure is designed for bargaining at multiple worksites of a franchise, the franchisor will be responsible for collective bargaining.

5. BBB should not be based on a "winner-take-all" model (i.e. there must be room for multiple unions to establish and maintain bargaining rights in a defined sector, with each union having responsibility for negotiating their own collective agreements).

6. The right to strike must be protected in BBB structures.

7. A specific model of BBB must be designed for the home care sector, in light of the distinct organization of work in home care. In the process of developing such a model, the government will be required to consult with unions to ensure that the model includes a meaningful process for organizing and bargaining.

8. There should be a model of BBB for independent contractors and freelancers, including live-in domestic caregivers.

9. Voluntary recognition agreements should be restricted to cases where unions can demonstrate majority (50% +1 of the bargaining unit) support at the time of application for recognition.
    a. In the event that card based certification is reinstated, voluntary recognition would only be required in cases where the union has not met the threshold for certification (e.g. if the union needs 55% of workers to sign cards to get automatic certification, voluntary recognition would only be necessary if the union had between 50% and 55% support)

Employee Voice:

- **Recommendation – Option 5 "enact legislation protecting concerted activity along the lines set out in the United States NLRA".**

Providing greater access to unionization, through card based certification, broader based bargaining structures, and other recommendations outlined above, is the most appropriate strategy for providing workers with voice in the workplace. Unionization helps diminish the power differential between workers and employers. It provides access to collective bargaining, which gives workers a meaningful opportunity to try to shape their terms and conditions of employment. It provides workers with access to a legally binding grievance and arbitration system, which is still the most effective way to redress rights violations in the workplace. Providing employees with "voice" in the absence of the collective and institutional power of a union will be largely ineffective.

In particular, proposals for the creation of workplace committees should be rejected. Since this proposal appears, in one form or another, in both the LRA and ESA sections of the interim report, we assume that the Special Advisors are taking this proposal seriously. Rafael Gomez's report outlines a number of options for strengthening employee voice. We agree with his inclusion of measures that would make certification easier. Other options, including the creation of workplace committees, are much more problematic.[10] Most of the recommendations that include creating workplace structures for employee voice, in the absence of unionization, do nothing to diminish the power differential between workers and employers.

Structures that would be akin to creating workplace committees, based on the model of existing Joint Occupational Health and Safety Committees, would provide no material

[10] Rafael Gomez, "Employee Voice and Representation in the New World of Work: Issues and Options for Ontario", Prepared for the Ontario Minister of Labour, to support the Changing Workplaces Review of 2015.

improvement for workers. Experience with Health and Safety Committees demonstrates quite clearly that in the absence of a union to protect and empower workers, the committees do not provide substantial protection.[11] Embedding employee voice in workplace structures that are based on unequal power relations, ones that experience shows will be dominated by employers, is an inadequate measure.

Protecting collective actions by employees that are organized independently of employers, however, might provide a modicum of voice in the workplace. In the absence of a union, workers' right to engage in concerted activity should be protected. Concerted activity does not have the institutional power of a union, and therefore is unlikely to make the significant and long-term improvements that come through collective bargaining. However, there are still some benefits that could come through this kind of protection. Collective activity by workers that is protected, self-organized, and independent of the employer, is a legitimate means of airing workplace grievances. Empowering workers to engage in forms of collective job action without fear of reprisals has demonstrated some efficacy, as has been demonstrated by the fast-food workers strikes in the United States. As a collective activity of workers, there is some ability to mitigate against the power differential between workers and employers. Protecting workers' jobs when they engage in this activity would help give meaning to this form of employee voice.

Ability of Arbitrators to Extend Arbitration Time Limits:

- **Recommendation – Amend the LRA to empower arbitrators to extend the time for any step in the grievance or arbitration procedure under a collective agreement.**

Changes to the LRA in 1995 eliminated the power of arbitrators to "extend the time for any step in the grievance or arbitration procedure under a collective agreement" in situations where the arbitrator determined that there were reasonable grounds for the extension. Returning to the pre-1995 provisions of the LRA, empowering arbitrators to extend timelines when they deem it reasonable to do so, would be a significant improvement to the Act.

As it stands, arbitrators are required to dismiss meritorious grievances on technical grounds, denying the grievor access to remedies to which they are entitled. This is unnecessarily restrictive, and creates situations where justice is denied. In expanding the power to extend timelines arbitrators would still be restricted to utilizing this power to situations in which "the opposite party would not be substantially prejudiced" (as noted in the CWR Interim Report), which is a reasonable restriction on the arbitrator's authority.

[11] Wayne Lewchuk, "The Limits of Voice: Are Workers Afraid to Express Their Health and Safety Rights?", *Osgoode Hall Law Journal*, 2013.

Priorities on the Employment Standards Act

Definition of Employees:

- **Recommendation – Option 3 "focus proactive enforcement activities on the identification and rectification of cases of misclassification".**
- **Recommendation – Option 4 "provide in the ESA that in any case where there is a dispute about whether a person is an employee, the employer has the burden of proving that the person is not an employee covered by the ESA and/or has an obligation, similar to section 1(5) of the LRA in relation to related employers, to adduce all relevant evidence with regard to the matter".**

Misclassification of employees as independent contractors is a widespread problem. Employers gain a benefit from such a classification, in that they can avoid providing statutory benefits to workers, and can deny workers access to ESA and LRA protection. Whether the misclassification is deliberate or unintentional is irrelevant. The fact is, misclassification denies workers of their rights, and costs workers a significant sum of money in denied statutory benefits, as the research reports associated with the CWR have indicated.

The most significant means by which misclassification can be rectified is through the establishment of a presumption that a worker is an employee, and assigning the employer the burden of proof in cases in which there is a dispute over the workers' status as an employee or an independent contractor. To further bolster this option, employers should bear the burden of adducing all relevant evidence with regard to the matter. Employers have control over the workplace, and have an obligation to keep all relevant information about all employees and contractors who provide work for them.

- **Recommendation – Modified version of Option 6 "Include a dependent contractor provision in the ESA".**

The Interim Report has identified the fissured workplace as a central feature of the modern workplace. Fissuring has been responsible to a significant degree for the trend towards a broader spectrum of relations between workers and employers that cannot be easily reduced to old distinctions between employees and independent contractors. The category of dependent contractor should be added to the definition of employee in the ESA to reflect these changes in the workplace, and to provide protection to those workers who cannot be easily categorized as employees by the current definition, but who cannot reasonably be considered to be independent contractors. Dependent contractors are recognized in the LRA, and in common law. Extending protection for dependent contractors to the ESA would not be inconsistent with existing practices in Ontario.

Who is the Employer and Scope of Liability:

- **Recommendation – Option 2, 3, 4, 5, 6, 7, 8.**

The fissured workplace has led to the related problems of worker vulnerability, and a lack of employer responsibility for maintaining minimum standards. Employers have engaged in a variety of tactics to shed costs and responsibility for upholding employment standards. Employers use contracting out, outsourcing, temporary help agencies, franchising, and other methods to shield themselves from obligations under the ESA, leaving workers in much more vulnerable and precarious situations.

Option 2 would hold employers and/or contractors jointly and severally liable for employment standards. The Interim Report suggests that this could either be universally applied in all cases, or could be reserved for certain industries where vulnerable employees and precarious work are commonplace. We believe that all industries should be held to joint and several liability. Fissuring is a problem that cuts across all sectors, including the public and private sectors, and vulnerable and precariously employed workers across the board will need this kind of protection.

All of the remaining options outlined in this section of the Interim Report, if implemented, would also help protect vulnerable employees and support the maintenance of the minimum employment standards in the ESA.

Exemptions, Special Rules and General Process:

- **Recommendation – remove exemptions and special rules for all Category 1 occupations, engage in a review process, ensuring substantial input from workers, unions and non-union worker advocacy groups, for all other occupations.**

Exemptions and special rules weaken the principle of universality that should underpin the ESA. They also create the possibility of confusion or deliberate misapplication of the special rules, resulting in workers who should have access to the general provisions of the ESA having different standards applied. The greater the number of exclusions and special rules, the greater the possibility of confusion and misapplication. Special rules and exemptions also come at a significant cost to workers, who forgo $45 million of income per week due to deviations from the minimum standards in the ESA.[12]

Minimum standards should be varied in only rare and exceptional circumstances. We support using the criteria outlined by the Workers' Action Centre's response to the Interim Report when determining whether or not an exemption or special rule should be used:

- Universality and fairness of minimum standards is presumed
- That there be substantive fairness in the process of reviewing exemptions that recognizes the power imbalances in the employment relationship

[12] Leah Vosko, Andrea M. Noack, and Mark P. Thomas, "How Far Does the Employment Standards Act 200 Extend, and What Are the Gaps in Coverage? An Empirical Analysis of Archival and Statistical Data".

- Economic cost of complying with the standard(s) is rejected as a rationale
- The onus to meet these criteria is on the employer or industry seeking to use an exemption or special rule
- The economic and social cost of the exemption to workers who would have their standards reduced shall be considered
- The nature of the work (not the employer's organization of the work) is such that applying the standard would preclude a type of work from being done at all
- The industry or business provide equal or greater benefit in compensation or alternative arrangements in instances where exceptions are permitted.[13]

The Interim Report identifies three categories of existing exemptions. Category 1 identifies exemptions that could be immediately eliminated. We support the elimination of exemptions for all of these: information technology professionals, pharmacists, managers and supervisors, residential care workers, residential building superintendents, janitors and caretakers, special minimum wage rates (students under 18, and liquor servers), student exemption from the three-hour rule.

For category 2 (public transit, mining and mineral exploration, live performances, film and television industry, automobile manufacturing, and ambulance services) the special advisors have recommended that no further review be undertaken. We oppose this position, and argue that these six sectors should be subject to review. The last time the Ministry reviewed these was ten years ago, and they are due for a review. Moreover, we are proposing (along the lines outlined by the Workers' Action Centre) that an updated set of criteria be used reviewing these exemptions, the application of which could lead to a removal of the exemption. Finally, it is not entirely clear that workers, unions, and non-union worker advocates were adequately consulted in the review process conducted in 2005 and 2006. Ensuring worker input must be a key component to any process for determining whether a sector should be excluded or have special rules applied.

Category 3 consists of the remaining sectors that are exempted or to which special rules apply. The Special Advisors suggest that these should be subjected to a new review process to determine whether the exemptions or special rules should continue to apply. We agree that there should be a process to review these, and the review should also include the Category 2 sectors. The review process should be initiated immediately, and be completed within 18 months. It should also be empowered to review all exemptions on a regular basis (e.g. every 2 years), and to review all applications for new exemptions. The process must include substantive participation from workers, unions and non-union workers' advocacy organizations.

[13] Workers' Action Centre, *Building Decent Jobs from the Ground Up: Responding to the Changing Workplaces Review Special Advisors' Interim Report*, September 2016.

Exclusions: Interns/Trainees:

- **Recommendation – Option 2 "eliminate the intern/trainee exclusion"**
- **Recommendation – not included in the interim report: recommend to the government that unpaid internships for experiential learning be eliminated, and make it mandatory to pay all interns (including those related to experiential learning)**

Excluding interns and trainees from the ESA leaves a growing part of the labour force uncovered by minimum standards, and in effect increases vulnerability for those workers. All workers should be paid for the work that they contribute, and that should include people who are in training, as well as those who are enrolled in experiential learning programs or courses. Exempting interns and trainees opens up the possibility of greater employer abuse, as the results of Ministry inspection blitzes has revealed.[14]

The Provincial Government's Expert Panel on the Highly Skilled Workforce has recommended that all secondary school students and all students enrolled in a post-secondary institution should be required to engage in workplace placement based experiential learning courses. The expectation is that students would receive course credit for the work they perform instead of being paid and having the protection of the ESA applied. The expectation that students engage in unpaid internships further extends precarity. It reinforces the belief amongst young workers that they have no option but to do unpaid work to get experience and connections necessary to eventually get access to paid employment. It is bad public policy, and it is bad for workers, especially young workers. We encourage the Special Advisors to reconsider their decision to not comment on work experience programs, and recommend that these be covered by the ESA.

Exclusions: Crown Employees:

- **Recommendation – Option 2 "remove the exception"**

There is no basis for the exclusion of Crown Employees from the ESA. The Interim Report states that Ontario is alone in having this exclusion. It should be removed.

Hours of Work and Overtime Pay:

- **Recommendation – Option 11 "reduce weekly overtime pay trigger from 44 to 40 hours"**

Given that a fundamental goal of the CWR is to provide greater protection for vulnerable workers, it was somewhat shocking to see most of the options put forward under this section. Employers in Ontario already have a great deal of flexibility when it comes to hours of work. Employers have the ability to schedule workers for up to 11 hours per day, only have to pay overtime after 44 hours of work in a week, have access to overtime averaging agreements that can mean that even when employees do work in excess of 44 hours in a week they might not

[14] *CWR Interim Report*, p. 181.

receive overtime pay, and employers have access to a process that allows them to schedule workers for more than 48 hours per week.

In light of the extensive flexibility that employers have when it comes to hours of work, and the negative effects employer-oriented flexibility has on workers, it is unreasonable to provide so many options that will increase employer-oriented flexibility at the expense of workers. We oppose practices that allow for contracting out of minimum standards (e.g. written agreements to extend the length of the workday/workweek). Giving employers easier access to those "agreements" makes matters worse. The Interim Report recognizes an inherent power differential between workers and employers, an imbalance that is particularly acute for the most vulnerable workers. Under these conditions, where employees believe that agreeing to opt out of minimum standards is a necessary condition to keeping their job, easier access to lower standards cannot truly be considered to be consensual.

The only option from this section that is acceptable, the only one that addresses the material needs of vulnerable workers, is Option 11, which would reduce the trigger for overtime from 44 to 40 hours per week.

Scheduling:

- **Recommendation – Option 2b "increase minimum hours of reporting pay from 3 hours at minimum wage to 4 hours at regular pay"**
- **Recommendation – modified Option 3 "provide employees job-protected right to request changes to schedule at any time"**
- **Recommendation – Option 4: provide scheduling rights based on the same principles as the San Francisco Retail Workers Bill of Rights**
- **Recommendation – New: prohibit the use of on-call shifts, unless workers are compensated at their normal rate of pay for being on call, and are paid for a minimum of 4 hours.**

The ESA, at present, contains no rules regarding scheduling. This vacuum has allowed employers to engage in a number of practices that increase worker vulnerability and precarity. The flexibility afforded to employers over scheduling has been at the expense of workers' certainty over how many hours they will work from day to day or week to week. Employer flexibility over scheduling means that workers cannot have any certainty over when they will have to be at work, and when they will have their own time to take care of their own needs (let alone have any real leisure time).

Providing employees with certainty over the amount of work for which they will be scheduled can be accomplished, in part at least, by enacting ESA provisions that are akin to the San Francisco Retail Workers Bill of Rights. For example, giving employees at least 2 weeks of advance notice of shifts will help workers plan for their lives outside of the workplace, including child care and education plans. Paying employees more for last-minute shift changes will give incentives to employers to maintain schedules once they have been issued. Requiring

employers to provide additional hours to part-time workers who want them before hiring new employees will give greater opportunities for full-time work, when workers desire it.

Employers also need to face limits in their ability to use on-call shifts, split shifts, or end shifts early. Increasing the minimum reporting time to four hours at regular pay would help with this. But there will also need to be additional limits on the ability to use on-call shifts. Expecting workers to be on-call, without paying them for their time, is an unreasonable encroachment on workers' time. Workers accept these kinds of shifts because they need the job and the income that comes with it. Refusing on-call shifts can lead to termination, or fewer shifts being offered, increasing economic and employment uncertainty for workers. But there is no guarantee that an on-call shift will be used, and employees regularly find out on very short notice that they will not be scheduled that day. There must be a prohibition on on-call shifts, or at the very least, employees must be compensated for 4 hours of reporting pay at their regular rate of pay for being available for an on-call shift.

Paid Vacations:

- **Recommendation – Option 3 "increase entitlement to 3 weeks for all employees"**

Paid vacations are a necessary component to workers' health and wellbeing. Without paid vacations workers run the risk of burning themselves out by not taking time off work, or foregoing income that they need in order to get an appropriate amount of rest and to find ways to enjoy life. Any discussion of an appropriate work-life balance must recognize the importance of paid vacations.

The Interim Report recognizes that Ontario provides the least generous paid vacation provisions in Canada. Paid vacation entitlement should be increased to 3 weeks per year. We oppose the option that would require an employee to work a certain number of years with the same employer (e.g. 5 or 8 years, as identified in the Interim Report) before having access to 3 weeks of paid vacation. This is an onerous threshold for vulnerable workers, including those who work a succession of short-term jobs.

Paid Sick Days:

- **Recommendation – modified Option 2 a) ii) "Introduce paid sick leave: have to be earned by an employee at a rate of 1 hour for every 35 hours worked, with no cap on the number of sick days earned"**
- **Recommendation – prohibit employers from requesting medical notes when employees use paid sick leave.**

CUPE takes the position that all workers deserve to have paid sick leave. Gaining and protecting this right is a bargaining priority for all of our locals, and we have had significant success at ensuring that our members have access to paid sick time. Paid sick time should be extended to all workers, regardless of whether or not they have the protection of a collective agreement. All workers will eventually get sick and require time off. They should not have to risk losing income in order to take time to recuperate. Nor should the threat of lost income incentivize them to go

to work when ill where they could potentially make others ill. Paid sick time is particularly important for vulnerable workers who are least likely to be able to afford unpaid time off. The World Health Organization has documented the importance of paid sick leave for worker productivity and disease control.[15]

We support the proposal to allow workers to accrue paid sick leave at the rate of one hour of paid sick time for every 35 hours worked. There should be no cap on the amount of sick time accrued. This formula takes into account differences between full-time and part-time employees, and prorates the benefit based on actual hours worked. This rate would give approximately 7 days of paid sick leave to someone who worked 35 hours per week for 50 weeks of the year (accounting for 2 weeks of vacation time).

With regard to sick notes, we agree with the Ontario Medical Association that it is inappropriate to require medical documentation when an employee misses work due to illness.[16] Forcing workers to go to a doctor to get a note prevents workers from resting and taking time to get well. It also puts a burden on the health system, taking doctors away from caring for other patients in order to produce documentation for employers.

Paid sick leave should be made available to all workers, in addition to the ten days of Personal Emergency Leave (PEL). There should not be any reduction in PEL when paid sick days are extended to all workers. As CUPE Ontario proposed in the early submission on PEL, we also support providing PEL to all employees by eliminating the exclusion for workplaces that employ fewer than 50 people.

Other Leaves of Absence:

- **Recommendation – Option 2 "monitor other jurisdictions and the federal government's approach to leaves and make changes as appropriate (e.g. to family medical, pregnancy and parental and family caregiver leave).**
- **Recommendation – Option 3 "Introduce new leaves: a) Paid Domestic or Sexual Violence Leave for a number of days followed by a period of unpaid leave; c) Death of a Child Leave"**

There are a number of leaves covered by the ESA that are tied to federal income support programs. It is necessary to regularly review how these leaves are offered, and how they connect to federal income support plans, so that workers can maximize the utility of the leaves. Option 2 in this section of the Interim Report supports this premise.

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[15] Xenia Scheil-Adlung and Lydia Sandner, *The Case for Paid Sick Leave*, World Health Organization: World Health Report, Background Paper 9, 2010, available at http://www.who.int/healthsystems/topics/financing/healthreport/SickleaveNo9FINAL.pdf.

[16] Sara Mojtehedzadeh, "Lack of Paid Sick Days in Ontario a Public Health Risk, Doctors Say", *Toronto Star*, November 5, 2015, available at https://www.thestar.com/news/gta/2015/11/05/lack-of-paid-sick-days-in-ontario-a-public-health-risk-doctors-say.html

With regard to new leaves, we support the extension of paid domestic or sexual violence leave. The leave should entitle workers to ten paid days of leave, with the option to extend the leave after that on an unpaid basis. Regardless of how much unpaid time is taken, the employee should have complete job protection (i.e. should have the right to return to their job when they are ready to return).

When a victim is leaving their home and possibly neighbourhood or region in the province, they need workplace legislation to reflect the unique issues and stressors they face during a turbulent time in their lives. They may need to do any of the following: move or relocate their household and/or children; they might have to arrange for new schools for their children; they might have appointments with a variety of professionals, such as lawyers, doctors and others, who rarely have meeting times outside of the regular workday. Additionally, finding new schools, teacher meetings, apartment rentals and other tasks rise to an emergency and critical level when talking about the context of leaving a domestic or sexual violence situation in a safe and contained way. For many, their employment is crucial to their financial stability, as well as a constant during a time of great uncertainty. Knowing that they have a paid leave for these situations, including ten days of paid leave and access to unpaid leave after that, and that they have assurances that they cannot be fired for taking this time, will go a long way to bringing stability back.

It is relevant to note that earlier in 2016 Manitoba brought in legislation granting workplace leave to victims of domestic violence. The Federal government is now looking into implementing paid and unpaid domestic violence leave. As part of its broader strategy to eradicate domestic and sexual violence, the government of Ontario should immediately implement this leave provision in the ESA.

Part-time and Temporary Work – Wages and Benefits:

- **Recommendation – modified Option 2 "require part-time, temporary and casual employees be paid the same as, and have the same working conditions as full-time employees in the same establishment"**
- **Recommendation – modified Option 3 "require employers to pay benefits to part-time employees where they provide them to full-time/permanent employees"**
- **Recommendation – Option 5 "Limit the number or total duration of limited term contracts"**

Part-time and temporary employees regularly receive lower compensation (in wages and benefits) than full-time/permanent employees, even when they do the same work or perform work of equivalent value. Moreover, full-time/permanent employees regularly have access to superior working conditions, such as paid leave or pensions. There is a fundamental unfairness in this. Measure should be taken to ensure that part-time and temporary employees receive the same wages, benefits and working conditions as full-time/permanent employees.

It will be necessary to guard against employer attempts to modify (or give the appearance of modifying) job descriptions of part-time and temporary employees in order to avoid providing equal pay and conditions of work. Where possible, comparators can be used in the same workplace. Where no similar work is done in the workplace, comparators should be found in relevant collective agreements, or from other businesses in the same sector where no collective agreements can be found.

Termination Pay:

- **Recommendation – Option 2 "increase the 8-week cap on notice of termination"**
- **Recommendation – Option 3 "eliminate the 3-month eligibility requirement"**
- **Recommendation – Option 4 "for employees with recurring periods of employment, require employers to provide notice of termination based on the total length of an employee's employment (i.e. add separate periods of employment as is done for severance pay)."**

The requirement to give notice, or pay in lieu of notice, to employees before terminating them is one of the few protections employees currently have against termination at-will by employers. Upon termination, or notice of termination, employees require time to find alternate employment (or sufficient funds to get them through until they find their next job). Termination pay thus mitigates against some of the vulnerability and risk associated with unemployment. Under no circumstances should termination pay be reduced.

Instead, strengthening termination pay, but eliminating the 8 week cap, would be appropriate. Eliminating the 3-month eligibility requirement will provide greater protection to workers on limited term contracts or other forms of temporary employment. Temporary, seasonal, contract, and other precarious workers would benefit from Option 4, requiring employers to provide notice based on the total length of employment, even when there have been breaks in service. These measure would provide additional protection to vulnerable workers.

Severance Pay:

- **Recommendation – Option 2 "eliminate the 50 employee threshold"**
- **Recommendation – Option 3 "eliminate the payroll threshold"**
- **Recommendation – Option 4 "eliminate the 5-year condition for entitlement to severance pay"**
- **Recommendation – Option 5 "eliminate the 26-week cap"**

Severance pay, in addition to termination pay, provides income protection for workers whose employment is severed. Unlike termination pay, however, there are several restrictions on which workers are eligible to receive severance pay. The result is that over 60% of employees in Ontario do not have access to severance pay. Severance pay should be extended to all employees in the province, regardless of the size of the workplace, the total payroll expended by the employer, or the length of time worked. As we have stated elsewhere in this response, the principle of universality should be a guiding principle for employment standards.

Just Cause:

- **Recommendation – Option 2 "Implement just cause protection for TFWs together with an expedited adjudication to hear unjust dismissal cases"**

Temporary Foreign Workers (TFWs) are amongst the most vulnerable workers in Canada. A significant source of TFWs' vulnerability arises from the fact that the vast majority are tied to a single employer. Their ability to stay in Canada is premised on their continued employment in the one workplace in which they are allowed to work. This increases the power of employers over workers, because employers can (and do) threaten to dismiss TFWs who attempt to exercise their rights under the ESA, Occupational Health and Safety Act, and other legislation. When TFWs are terminated, they are then repatriated quickly, without any regard to their ability to make use of the adjudicative processes that would allow them to enforce their rights.

Extending just cause protection to TFWs would be an important step towards remedying the power imbalance, and protecting a group of vulnerable workers. Because of the likelihood that terminated TFWs will be repatriated quickly, just cause protection must be bolstered with expedited adjudication to ensure that they can make use of their rights.

- **Recommendation – Option 3 "provide just cause protection (adjudication) for all employees covered by the ESA"**

Just cause protection is negotiated into virtually all collective agreements. In cases where unions have set a standard that is virtually universally available to their members those rights should be extended to all employees. Just cause protection will provide additional protection to all workers, but will be of particular importance to vulnerable workers.

Temporary Help Agencies:

- **Recommendation – Option 2 "Expand client responsibility: b) make the client the employer of record for all employment standards"**
- **Recommendation – modified Option 3 "same wages, benefits and working conditions for similar work"**
- **Recommendation – Option 5 "reduce barriers to clients directly hiring employees by eliminating agency ability to charge fee to clients for direct hire".**
- **Recommendation – Option 6 "Limit how much clients may use assignment workers by establishing a cap of 20% on the proportion of client's workforce that can be agency workers"**
- **Recommendation – Option 7 b) and c) "promote transition to direct employment with client: b) deem assignment workers to be permanent employee of the client after six months; c) require that assignment workers be notified of all permanent jobs in the client's operation and advised how to apply"**

Workers employed through Temporary Help Agencies (THAs) are exceptionally vulnerable. The triangular relationship between worker, THA, and client/employer regularly makes it more difficult for assignment workers to have meaningful access to their rights under the ESA. Option

2b) would go a long way to redressing the problems created by these triangular relations. Making the client the employer of record creates a clear line of responsibility. And since the client/employer has direct control over the workplace and the work done therein, it makes eminent sense that they should bear responsibility for upholding employment standards.

In keeping with our proposal (above) regarding equal pay, working conditions, and benefits for part-time and temporary employees, we support a modified version of Option 3 from the interim report. The legislation must be written in strong enough language that employers will not be able to use minor or superficial changes in job requirements or descriptions as a means of getting around the requirement to provide equal pay, benefits and working conditions. The purpose of the legislation, protecting assignment workers from unequal treatment, should be made absolutely clear so that interpretation of the Act favours granting equal pay, benefits and working conditions.

Assignment workers should also be afforded greater opportunity to get full-time and/or permanent employment in the workplaces where they have been assigned. Barriers to hiring workers from THAs should be eliminated, including the elimination of fees charged by THAs when clients directly hire.

Promotion of full-time/permanent, directly hired employees would be facilitated by Option 6, which we support. Option 7 b) and c) would also help facilitate the transition from THA assignment to permanent employment by the client.

Greater Right or Benefit:

- **Recommendation – Option 1 "maintain the status quo"**

Contracting out of minimum standards is bad public policy. Such practices erode the protection enshrined in the ESA, and give employers incentives to push for new exceptions. The 'Greater Right or Benefit' provisions of the ESA are not intended, nor should they be intended, to facilitate the erosion of minimum standards. Instead, this part of the ESA is intended to allow employers (either on their own, or through negotiations with their employees) to have standards that are better than those outlined in the Act.

Employers might wish to be granted the right to fall below ESA standards on some issues if they can demonstrate that they provide a greater right or benefit on another. Granting such a wish, however, would create significant problems. In allowing for lower standards in some areas the intent of the ESA would be vitiated. Minimum standards establish a floor, below which conditions would be insufficient to meet the needs of employees and the socially acceptable standards for treatment of employees. Providing improvements in one area does not necessarily make up for treating someone below the socially acceptable standard on another. It would also be impossible in practice to determine how improved benefits in some areas would satisfactorily offset reduced standards in others.

Written Agreements Between Employers and Employees to Have Alternate Standards Apply:

- **Recommendation – Option 3 "Amend the ESA to remove all of the ability to have written agreements"**

We have noted throughout this submission that the unequal power relations between employers and employees creates conditions for worker vulnerability, and that this power dynamic gives employers the ability to use coercion to get agreement from employees on a number of issues. Often this consent is not freely given, but the employees feel like they have no real ability to say 'no' without facing formal or informal reprisals, including termination, loss of shifts, or other forms of economic penalty. It is our position that written agreements (in whatever form) that lead to lowered employment standards should be eliminated.

Pay Periods:

- **Recommendation – Option 2 "amend the ESA to require employers to harmonize their pay periods with their work weeks by, for example, permitting only weekly or biweekly pay periods, and requiring the start and end days of the pay period to correspond to the employer's work week"**

The Special Advisors heard from Ministry of Labour staff that the ability of an employer to have pay periods that differ from work weeks poses administrative problems in the enforcement of employment standards. If the goal of harmonizing work week and pay period is to assist in the proper enforcement of the ESA, then we are supportive of this change. We do note, however, that this relatively minor change should not be made at the expense of other more substantive reforms that would make a material difference in the day-to-day lives of workers.

Enforcement and Administration:

- **Recommendation – We are opposed to both of the options outlined in the Interim Report**

Although not stated explicitly in the interim report, this section appears to have some sympathy for the idea of outsourcing the responsibility for enforcement of the ESA. Nowhere is this more apparent than in the section on creation of ESA committees and requiring employers to do self-audits of select employment standards. The Special Advisors are right to identify a significant problem with enforcement of the ESA. The Ministry of Labour has not created enough capacity to do investigations and inspections. Where inspections are done, violations of the ESA are found in 75-77% of cases. That rate rises to over 80% when an investigation is done after a complaint is made.[17]

In light of the crisis levels of non-compliance with the ESA it is clear that more needs to be done to ensure minimum employment standards are upheld. The most appropriate way to do that

[17] CWR Interim Report, p. 261.

would be through increasing the capacity of the Ministry to do investigations and inspections of workplaces.

Workers are far more likely to file complaints after they have quit or been terminated. The fear of reprisals leads employees to refrain from making complaints. Implement ESA Committees as an expansion of the Joint Health and Safety Committee will do nothing to eliminate the power differential between workers and employers. It will do nothing to remedy the fear of reprisals. Experience with joint health and safety committees in non-unionized workplaces demonstrates that these structures are ineffective because, without a union, workers lack the power to compel their employer to comply with the law.[18] There is no reason to believe that this will change with the creation of ESA committees, or by expanding the role of joint health and safety committees to include oversight of employment standards.

Requiring employers to conduct an annual self-audit on select standards with an accompanying employee debrief is also an insufficient response. Employer self-audits would be subject to manipulation by the very people who are required to do them. This proposal does not include any mechanisms for the Ministry to ensure compliance with self-audits, nor does it provide any clear means (other than those already in the ESA) for ensuring that non-compliance is rectified for employees whose rights have been violated. Given such high rates of non-compliance with the ESA, it is odd to suggest that violators should be responsible for policing themselves.

Rather than outsource compliance measures to workers and employers, it will be necessary for the Ministry to engage in more direct forms of enforcement. It will also be necessary to remove all barriers to making claims so that the fear of reprisals does not prevent viable enforcement of the ESA.

Reducing Barriers to Making Claims:

Initiating the Claim:

- **Recommendation: Option 2 "remove the ESA provision allowing the Director to require that an employee must first contact the employer before being permitted to make a complaint"**
- **Recommendation: Option 3 "allow anonymous claims"**
- **Recommendation: Option 5 "Allow 3rd parties to file claims on behalf of an employee or group of employees"**

The rationale behind requiring employees to contact their employer before making a complaint is unfathomable. There is widespread recognition that employees fear reprisals from employers. Whatever the stated intent of this requirement, the effect is that workers are dissuaded from filing claims because they believe they will face reprisals for asking their

[18] Wayne Lewchuk, "The Limits of Voice: Are Workers Afraid to Express Their Health and Safety Rights?", *Osgoode Hall Law Journal*, 2013.

employers to follow the law. Eliminating this requirement is one measure to remove barriers to filing complaints.

Options 3 and 5 will provide workers with support for filing complaints. Anonymous claims will allow workers to avoid the fear of reprisals. Allowing 3rd parties to file claims will allow workers to have support through the complaints process. Support from worker advocacy organizations can significantly improve workers confidence in the process.

Reprisals:

- **Recommendation: Option 2 "Require ESOs to investigate and decide reprisal claims expeditiously where there has been a termination of employment (and other urgent cases such as those involving an alleged failure to reinstate an employee after a leave)"**
- **Recommendation: Option 3 "Require the OLRB to hear applications for review of decisions in reprisal on an expedited basis if the employee seeks reinstatement"**
- **Recommendation: New – "Publicize successful anti-reprisal claims to increase awareness of reprisal protections under the Act."[19]**

The fact that fear of reprisals remains a significant barrier to claims strongly suggests that the existing protection against reprisals is not sufficient, and is not perceived by workers to be strong enough. Options 2 and 3 in this section of the Interim Report would help strengthen the anti-reprisal sections of the ESA. We concur with the Workers Action Centre that an additional change could be made to increase workers perception that the anti-reprisal measures of the ESA actually work. In conjunction with the stated options, successful anti-reprisal claims should be publicized.

Strategic Enforcement:

Inspections, Resources, and Implications for Changing Workplaces for Traditional Enforcement Approaches:

- **Recommendation: Option 3 "increase inspections in workplaces where migrant and other vulnerable and precarious workers are employed"**
- **Recommendation: Option 4 "cease giving advance notice of targeted blitz inspections"**
- **Recommendation: Option 7 "develop other strategic enforcement options"**

As stated above, the Ministry must take a much more active role in enforcing the ESA. That more active role will require proactive inspections. Considering the large number of employers who violate the ESA, inspections should be increased across the board. There is still a need to pay particular attention to workplaces where migrant workers and other vulnerable workers are employed. Ultimately this means that the government will need to dedicate significantly more resources to the enforcement of the ESA. Failure to provide substantial and sufficient

[19] Workers' Action Centre, *Building Decent Jobs from the Ground Up: Responding to the Changing Workplaces Review Special Advisors' Interim Report*, September 2016.

resources to enforcement would signal that the government accepts that violations occur, and is willing to allow employers to ignore their legal obligations.

The Ministry should continue the use of targeted blitz inspections. Employers should not, however, be given advance notice of the blitz. The goal should be to uncover existing violations of the ESA. Giving employers advance notice gives them some opportunity to fix, temporarily at least, violations and give the appearance that they are in compliance.

Use of Settlements:

- **Recommendation: New – include provisions in the ESA that no settlement will result in workers receiving less than they are legally entitled to receive.**
- **Recommendation: Option 3 "have more legal or paralegal assistance for employees in the settlement process at the OLRB"**

It is a regular occurrence that workers who file an ESA claim against their employer, and who receive an order from an Employment Standards Officer, settle for less than they are entitled to receive. Employers regularly attempt to drag out the claims process, and use other measures to coerce workers into taking less. Workers in more precarious situations are the most likely to take less, either because they cannot afford the time, energy or legal support to sustain a drawn out process, or because they need money immediately and conclude that getting part of what they are owed now is better than having to wait an undetermined amount of time to get their entire entitlement.

Setting up a system that regularly denies people the full amount of what they are owed is fundamentally flawed. This must be rectified by prohibiting employers from getting settlements that are only a fraction of what they owe. The unequal power differential between workers and employers, and the unequal access to the funds necessary to get legal support, also tilts the system in favour of employers paying less than what they owe. Providing more legal or paralegal support to workers in the settlement process at the OLRB will help to remedy these inequalities.

Remedies and Penalties:

- **Recommendation: Option 10 "make access to government procurement contracts conditional on a clean ESA record"**

Businesses that are in violation of the ESA should not be given access to government procurement contracts. Upholding the law should be a fundamental public policy goal. Denying access to contracts would be a clear signal that the government takes this goal seriously. Moreover, businesses that want to have access to government procurement contracts will be induced to take all measures to ensure that they are in compliance with the ESA.

- **Recommendation: increase deterrence through creation of fines, penalties and other costs on employers who violate the ESA**

Currently employers who are found to be in violation of the Act are only required to make whole the employee(s) whose rights were violated. Often they are able to settle a complaint such that they pay less than what is owed. Employers' costs are no greater than they would be had they followed the law, and in some cases the employer is in a better position. It is uncommon for there to be fines or other penalties levied against employers. There should be an increased emphasis on deterrence through expanding the penalties assessed against violators of the ESA.

Application for Review:

- **Recommendation: Option 1 "Require ESOs to include all of the documents that they relied upon when reaching their decision when they issue reasons for their decision"**
- **Recommendation: Option 3 "increase regional access to the review process"**
- **Recommendation: Option 4 "Request OLRB to create explanatory materials for unrepresented parties"**
- **Recommendation: Option 5 "increase support for unrepresented claimants"**

Workers need support throughout the entire ESA claims process, including the review of ESO decisions. The power imbalance that exists in the workplace is reproduced in the ESA claims and review processes, with employers having greater access to information and resources than workers. Reforms that will help to reduce that power differential will be welcome.

Option 1 will ensure that all parties to the process have access to all of the relevant documentation used in assessing a claim, something that is not always easily accessed by workers. Option 4 will help guide workers through the process. It should be noted, however, that this option will be most effective if the materials are made available in a variety of languages. Additional resources will need to be provided to workers who have literacy issues. Option 5, providing additional support for unrepresented clients will create greater balance in the process.

Collections:

- **Recommendation: Generally improve collections through various measures, with priority given to Option 5 "establish a provincial wage protection plan", which should be funded through employer paid premiums.**

There is a significant problem of workers not being paid the wages they are owed. The annual average for unpaid wages is $21.5 million, of which approximately 63% is recovered. The Ministry of Labour is able to recover about 10% of the 300 to 400 unpaid orders. Workers, especially economically vulnerable workers, cannot bear this cost.

Broadly speaking, Options 2 – 6 in this section of the interim report will help alleviate the harm done when workers are not paid what they are due. Considering how widespread this problem

is, we believe that the most effective way to protect workers in this situation would be to create a provincial wage protection program that is funded by employer contributions.

Conclusion

The Special Advisors have identified the protection of vulnerable workers as a central goal of the Changing Workplaces Review. Barriers to accessing collective bargaining, the fissuring of the workplace that has made enforcement of workers' rights more difficult, among other factors, have increased the power of employers in relation to workers. All workers are more vulnerable, even though we can identify some workers who are particularly disadvantaged in the workplace.

The CWR Interim Report has identified a number of options that, if adopted, would improve workers' chances of improving their terms and conditions of employment. We know very well that unionization is still the most effective way of addressing the power differential between workers and employers. The CWR final report should include recommendations that would:

- Make unionization easier, by reinstating card based certification for all workers, providing unions with names and information about workers during organizing campaigns, remove exclusions from the LRA, provide greater protection to workers during organizing campaigns, and implement broader based bargaining to facilitate unionization in sectors of the economy that are difficult to organize under the Wagner Act model;
- Make maintenance of bargaining rights easier by implementing First Contract Arbitration, Successor Rights, and protection for striking workers including the reinstatement of a general prohibition on replacement workers during strikes and lockouts;

We have provided a comprehensive list of recommendations for amendments to the LRA that would ensure that workers' constitutional right to join a union and engage in collective bargaining.

Removing barriers to unionization, and creating structures to facilitate unionization must also be accompanied by enhanced protection for workers who are not currently covered by a collective agreement. Protecting vulnerable workers will require:

- Expanding the definition of employees and eliminating exclusions and exemptions from the ESA;
- Improve minimum standards including providing paid sick time to all workers;
- Improving enforcement of the ESA, including proactive enforcement, and enhanced measures to ensure that workers are not deprived of their right to be protected by minimum standards;
- Providing workers with greater security by adding just cause protection to the ESA, and enhancing termination and severance pay provisions;

- Protecting Temporary Foreign Workers, and workers assigned through Temporary Help Agencies.

It is encouraging to see that there is a broad array of options for reforms to both the LRA and ESA. Our submission has identified the options that we believe would make the most significant improvements and help reverse the trends towards increasing worker vulnerability and precarity, and we look forward to continuing our participation in the CWR in advancing the reforms that we have identified.

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