# Submission
# of the
# Canadian Labour Congress

# In Response
# to the

# Interim Report of Ontario's
# Changing Workplaces Review

October 14, 2016

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## Introduction

The Canadian Labour Congress (CLC) represents 3.3 million workers in virtually every industry and occupation in Canada and, as Canada's largest labour organization, we welcome the opportunity to provide feedback on the Changing Workplaces Review (CWR) Special Advisors' Interim Report.

As is identified in the Interim Report, trends and factors such as globalization, trade liberalization, technological change, growth of the service sector, and changes in the prevalence and characteristics of standard employment relationships, are changing the world of work. In turn, the CLC applauds the Government of Ontario for taking on this important initiative to conduct a comprehensive review of Ontario's *Labour Relations Act, 1995* (LRA) and *Employment Standards Act, 2000* (ESA).

Overall, the CLC is pleased with the comprehensiveness and scope of the Interim Report, as it not only identifies the many ways in which work is changing, but it also paves the way for legislated improvements that would lift the standard for every worker in today's workplace, whether unionized or not. The CLC encourages other provinces to follow suit and adopt a broad approach similar to that of Ontario.

The Interim Report provides a range of options and, in line with the process laid out for the CWR, the CLC respectfully submits its recommendations with regard to these proposed options and with the ultimate goal of promoting the realization of decent work for all workers in Ontario. Alongside this submission, the CLC fully supports the submission made by the Ontario Federation of Labour (OFL) during the first round of consultations, as well as its most recent submission in response to the Interim Report.

# Labour Relations Act, 1995 (LRA)

## Scope and Coverage of the LRA

***Coverage and Exclusions (4.2.1)***
In its current form, the scope of Ontario's LRA is too narrow, denying far too many workers their constitutional right to freedom of association. The recent jurisprudence from the Supreme Court of Canada decision in Mounted Police Association of Ontario v. Canada (Attorney General) clarified that freedom of association protects:

1) the right to join with others and form associations;

2) the right to join with others in the pursuit of other constitutional rights; and

3) the right to join with others to meet the power and strength of other groups or entities on more equal terms.

In order to guarantee this right to freedom of association, the scope of the LRA should be extended as widely as possible, while still recognizing the need for excluding managers and persons employed in a confidential capacity in matters related to labour relations.

As such, the CLC encourages the Government of Ontario to pursue the following option, as outlined in section 4.2.1 (p.54) of the Interim Report:

**Option 2:** Eliminate <u>most</u> of the current exclusions in order to provide the broadest possible spectrum of employees with access to collective bargaining by, for example:

a) permitting access to collective bargaining by employees who are members of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; and

b) permitting access to collective bargaining by domestic workers employed in a private home.

***Related and Joint Employers (4.2.2)***
The structure of workplaces are changing and the fissuring of employment relationships, such as contracting out, contracting in, agency work and third party management relationships, have led to

complexities when determining where accountability should be held. Given such changes and trends, it is absolutely necessary to enhance and expand workers access to their rights under the LRA.

Accountability must flow up and down the supply/value chain to ensure that liability and costs are held by the appropriate entity and are not shifted onto workers.

Currently, the OLRB has the power to treat related or associated businesses as a single employer when they conduct complementary activities that are under common control or direction, yet these powers should be expanded, alongside the addition of other provisions in the LRA, in order to clarify company accountability, prevent wrongdoing, and grant the right to bargain collectively to the widest possible scope of workers.

For these reasons, the CLC encourages the Government of Ontario to pursue the following options, with the amendments indicated, as outlined in section 4.2.2 (p.69) of the Interim Report:

**Option 2:** Add a separate general provision, in addition to section 1(4), providing that the OLRB may declare two or more entities to be "joint employers" and specify the criteria that should be applied (e.g., where there are associated or related activities between two businesses and where a declaration is required in order for collective bargaining to be effective, without imposing a requirement that there be common control and direction between the businesses).

**Option 3:** Amend or expand the related employer provision by:

a) providing that the OLRB may make a related employer declaration where an entity has the power to carry on associated or related activities with another entity under common control or direction, even if that power is not actually exercised; and

b) stating which factors should be considered when determining whether a declaration should be made (e.g., the Board should consider whether the entity can exercise direct or indirect influence or control over the operations, including the ability to fund the work as well as establish, monitor, and enforce standards that impact employment conditions for workers.

**Option 4:** Enact specific joint employer provisions such as the following:

a) regarding the THAs and their client businesses:
   i. create a rebuttable presumption that an entity directly benefitting from a worker's labour (the client business) is the employer of that worker for the purposes of the LRA; and

   ii. declare that the client business and the THA are joint employers;

b) regarding franchises, create a model for certification that applies specifically to franchisors and franchisees (Option 3 in section 4.6.1), and introduce a new joint employer provision whereby:
   i. the franchisor and franchisee could be declared joint employers for all those working in the franchisee's operations regardless of industry or sector.

## Access to Collective Bargaining and Maintenance of Collective Bargaining (LRA)

***Card-based Certification (4.3.1.1)***
Ontario's current certification model, secret ballot vote, allows for extensive direct and indirect employer interference or undue influence in the certification process. This has presented barriers to the certification process and has contributed to declining union coverage, especially in the private sector.

As such, it is necessary to take steps to facilitate employees' access to collective bargaining. The CLC encourages the Government of Ontario to pursue the following option, as outlined in section 4.3.1.1 (p.73) of the Interim Report:

**Option 2:** Return to the card-based system with a majority.

***Access to Employee Lists (4.3.1.3)***
Workplaces are changing and becoming increasingly decentralized (e.g., geographically dispersed workforces, unpredictable scheduling) and it's becoming increasingly difficult for workers to know exactly how many employees and unions are in a workplace and where they work.

In order for employees to be able to fulfill their right to organize and to freedom of association, it is necessary for them to have reasonable access to other employees in their workplace.

In turn, the CLC encourages the Government of Ontario to pursue the following option, as outlined in section 4.3.1.3 (p.75) of the Interim Report:

**Option 2:** Subject to certain thresholds or triggers, provide a union with access to employee lists with contact information.

***Off-site, Telephone and Internet Voting (4.3.1.4)***

The current practice of holding certification votes within workplaces allows for undue employer influence and may discourage employees from freely expressing their will to join a particular union. As such, unions should be given the discretion to hold certification votes at a neutral location, or by telephone or other electronic means.

Thus, in order to support the full realization of the right to bargain collectively, the CLC encourages the Government of Ontario to pursue the following option, with the indicated amendment, as outlined in section 4.3.1.4 (p.77) of the Interim Report (note that this option is only relevant in the event that card-based certification is not reinstated in Ontario):

**Option 2:** Explicitly provide for, at the discretion of the union, alternative voting procedures outside the workplace and greater use of off-site, telephone and internet voting.

***Remedial Certification Rules (4.3.1.5)***

Currently the OLRB has the power to certify a union without a vote if the employer has contravened the LRA in a way that makes it unlikely that the true wishes of the employees can be ascertained. Nevertheless, the present legislation strongly favours a second representation vote over remedial certification without a vote. This path is not genuinely remedial because it would be virtually impossible to redress the situation and make a vote meaningful once the employer has breached the LRA in such a way that the true wishes of employees cannot be ascertained.

As such, the CLC encourages the Government of Ontario to pursue the following options, as outlined in section 4.3.1.5 (p.79) of the Interim Report:

**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.

**Option 3:** Remove the requirement to consider whether the union has adequate membership support for bargaining.

***First Contract Arbitration (4.3.2)***

After a workplace has been certified, the process of reaching a first collective agreement can be challenging and divisive for a number of reasons such as lingering tensions after an organizing campaign or employer misconduct or unreasonableness.

First contract arbitration allows an arbitrator, an arbitration board, or the Labour Relations Board to impose an agreement on any points not yet agreed upon by the parties when they reach an impasse. First contract arbitration is useful as it acts as an incentive for parties to reach an agreement, avoids work stoppages, and sets a starting point for future collective agreements.

As part of a wider package to address declining private-sector union density, the CLC encourages the Government of Ontario to pursue the following options, as outlined in section 4.3.2 (p.82) of the Interim Report:

**Option 2:** Provide for "automatic" access to first contract arbitration upon the application of a party to the OLRB.

**Option 3:** Provide for first contract arbitration on either an automatic or discretionary basis in circumstances where the OLRB has ordered remedial certification without a vote.

***Successor Rights in the Contract Sector (4.3.3)***

The increase in non-standard work relationships and a rise in practices, such as contract tendering, have made it very difficult for employees to organize and maintain collective bargaining rights in sectors that are dominated by such practices. This has placed limits on workers' ability to exercise their right to organize collectively and has had a disproportional impact on vulnerable, low-wage workers.

For these reasons, successor rights should be extended to ensure that employees' rights are maintained when a service contract changes. In turn, the CLC encourages the Government of Ontario to pursue the

following options, as outlined in section 4.3.3 (p.84) of the Interim Report:

**Option 2:** Expand coverage of the successor rights provision to apply, for example, to:

a) building services (e.g., security, cleaning and food services);

b) home care (e.g., housekeeping, personal support services); and

c) other services, possibly by a regulation-making authority.

**Option 3:** Impose other requirements or prohibitions on the successor employer in a contract for service situation (e.g., provisions to maintain employment, employee remuneration, benefits and other terms of employment; a requirement that the union representing the employees under the former employer be provided with automatic access to the new employer list or other information.

## The Bargaining Process (LRA)

***Replacement Workers (4.4.1)***

Currently, Ontario's LRA does not prohibit the use of replacement workers by employers during a lawful strike or lock-out. Legislation banning the use of replacement workers during a strike is an essential component of the right to strike as it protects workers from threats posed by globalization, outsourcing, liberalization, and trans-national mobility. Legislation banning replacement workers not only evens the playing field between workers and employers, but it can also reduce picket line violence and reduce the length of labour disputes.

As such, the CLC encourages the Government of Ontario to pursue the following option, as outlined in section 4.4.1 (p.90) of the Interim Report:

**Option 2:** Reintroduce a general prohibition on the use of replacement workers.

***Application to Return to Work After Six Months From Beginning of a Legal Strike (4.4.2.1)***

Currently the LRA provides that an employee engaging in a legal strike may make an unconditional application to return to work within six months of the commencement of the strike and the employer is required

to reinstate the employee in his or her former employment free from discrimination. The employer is not required to reinstate the employee into their former position if the employer no longer has persons engaged in work that is the same or similar to the employees work prior to the strike. As it stands, the six-month limitation on the right to return to work undermines the effectiveness of a strike and may even provide an incentive for the employer to lengthen the strike. This limitation may act as a deterrent for workers to engage in a strike and undermines their constitutional right to strike.

As such, the CLC encourages the Government of Ontario to pursue the following option, as outlined in section 4.4.2.1 (p.93) of the Interim Report, with the following amendment:

**Option 2:** Remove the six-month time reference and allow employee to return to their former position.

***Refusal of Employers to Reinstate Employees Following Legal strike of Lock-out (4.4.2.2)***

Related to the discussion above (the application to return to work after six months from the beginning of a legal strike) is the refusal of employers to reinstate employees following a legal strike or lock-out. Often the refusal is based on alleged misconduct by the employee related to the labour dispute. Yet, since no collective agreement is in operation during a legal strike or lock-out, employees have no access to a grievance or arbitration procedure, and often the union will take up the dispute. This may prolong a labour dispute, as the union may not agree to a settlement without the reinstatement of the employee even if all other terms of a collective agreement have been settled. As it currently stands, the LRA does not provide sufficient recourse for an employee who has been refused reinstatement.

As such, the CLC encourages the Government of Ontario to pursue the following option, as outlined in section 4.4.2.2 (p.95) of the Interim Report:

**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 lock-out:

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, based on seniority.

## Remedial Powers of the OLRB (LRA)

***Interim Orders and Expedited Hearings (4.5.1)***
Union certification campaigns are far too often undermined by unfair labour practices committed by employers. Such practices cause irreparable harm to a campaign and undermine an employee's constitutional right to join a union and engage in collective bargaining. Expanding the OLRB's power to issue substantive interim orders on "such terms as the Board considers appropriate" is a useful tool to stabilize the workplace, pending an adjudication of an unfair labour practice complaint.

As such, the CLC encourages the Government of Ontario to pursue the following options, as outlined in section 4.5.1 (p.103) of the Interim Report:

**Option 2:**

a) restore the power of the OLRB to issue interim orders and decisions;

b) broaden the scope of the OLRB's remedial power by providing the OLRB, in cases of alleged unfair labour practices, with the ability to grant interim relief on "such terms as the Board considers appropriate";

c) eliminate the requirement that an applicant for interim relief prove that the relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives;

d) eliminate statutory requirements that must be met by an applicant for interim relief; and

e) require that the OLRB expedite hearings for interim relief by establishing prescribed statutory time limits so that hearing proceed without unnecessary delays.

***Just Cause Protection (4.5.2)***
Just Cause Protection is intended to protect against the unjust termination of employees (e.g., practices of "cleaning house") from the

time a union is certified or voluntarily recognized to the effective date of the first collective agreement.

Such protections are essential to protect workers' at a time of vulnerability and to ensure stability in the workplace during this critical period. The CLC encourages the Government of Ontario to pursue the following option, as outlined in section 4.5.2 (p.106) of the Interim Report:

**Option 2:** Provide for protection against unjust dismissal for bargaining unit employees after certification but before the effective date of the first contract.

***Prosecutions and Penalties (4.5.3)***

As discussed above (Interim Orders and Expedited Hearings), employers' non-compliance with the LRA comes at a cost to employees and unions, especially during organizing campaigns. As currently structured, the OLRB has broad general remedial powers to provide compensatory relief (e.g., awards for damages), yet does not make orders that are primarily intended as a deterrence or punishment. As outlined in the Interim Report, prosecutions under the LRA are very rare and one must question whether these provisions act as a sufficient deterrent for unlawful activity.

Given the existing system offers no credible threat of prosecution for violations, the cost of violating the LRA can simply be viewed as a cost of doing business.

In order to level the playing field and truly support employees constitutional right to organize and bargain collective, the OLRB should have more expansive powers and stronger tools to ensure that those perpetrating unfair labour practices do not go unpunished and are deterred from further illegal activities.

As such, the CLC encourages the Government of Ontario to pursue the following option, as outlined in section 4.5.3 (p.112) of the Interim Report:

**Option 2:** Increase the penalties under the LRA.

## Other Models (LRA)

***Broader-Based and Bargaining Structures (4.6.1)***
The current Wagner Act Model (WAM) assumes that the collective bargaining process will take place between one union and one employer within one individual workplace. Yet, as workplaces change and non-

standard work relationships increase, it's essential that Ontario's industrial relations system evolves to extend the scope of coverage to the largest possible number of workers.

Given that the WAM is still relevant for workers employed in large, single site workplaces with traditional hours of work, existing legislation and current bargaining structures should remain in these industries and sectors.

It is nevertheless important to recognize that, given the diversity of workplaces and new forms of employment relationships, there cannot be a one-size-fits-all approach. For sectors and industries that are dominated by workplaces with a small number of employees, non-standard employment relationships and high rates of part-time, temporary, and contract jobs, a range of models should be explored to protect workers, many of whom may be recent immigrants, women, and racialized individuals.

In exploring such options that will help fulfill to the right to organize and collectively bargain, it is essential to ensure that the constitutional right to strike is protected as part of this package.

With the understanding that an effective solution will require more than one model, the CLC supports the following options, with the amendments indicated, as outlined in section 4.6.1 (p.123) of the Interim Report, (please refer the submission made by the OFL for further details on each option):

**Option 3:** Adopt a model that would allow for certification of a unit or units of franchise operations of a single parent franchisor with accompanying franchisees; units could be initially single sites with accretions so that subsequent sites could be brought under the initial agreement automatically, or by some other mechanism.

**Option 4:** Adopt a model that would allow for certification at a sectoral level, defined by industry and geography, and for the

negotiation of a single multi-employer master agreement, allowing newly organized sites to attach to the sectoral agreement so that, over time, collective bargaining could expand within the sector. Along the lines of the model proposed in British Columbia.

**Option 7:** Create specific and unique models of bargaining for specific industries where the *Wagner Act* model is unlikely to be effective or appropriate because of the structure or history of the industry, (e.g., home care, domestic, agriculture, or horticulture workers, if these industries were included in the LRA).

**Option 8:** Create a model of bargaining for freelancers, dependent contractors, and artists based on the *Status of the Artist Act* model.

**Option 9:** Apply the provision of the LRA to the media industry as special provisions affecting artists and performers.

# Employment Standards Act, 2000 (ESA)

## Scope and Coverage of the ESA

***Definition of Employee (5.2.1)***
As was outlined in the Interim Report, two key concerns in relation to the definition of employee as it relates to the scope and coverage of Ontario's ESA are:

1) the misclassification of employees as independent contractors; and
2) the current definition of employee in the ESA.

Regarding the misclassification of employees, there is an increasing trend whereby employees are misclassified, whether inadvertently or advertently, as independent contractors, meaning that they are not covered by the ESA. This trend exempts employers from the costs associated with compliance and denies the benefits of coverage to workers.

In turn, costs and risks are shifted from the employer onto employees. Regarding the definition of employee, as workplaces have changed and working relationship have become more complex, far too many workers

are not captured by the narrow definition provided in the current ESA (either employee or independent contractor) leaving them unprotected. To rectify this fundamental issue, the definition of employee should be expanded to capture economically dependent workers (e.g., dependent contractors) and a presumptive model should be applied to employees, whereby a worker is presumed to be an employee unless the employer demonstrates otherwise.

As such, the CLC encourages the Government of Ontario to pursue the following options, as outlined in section 5.2.1 (p.147) of the Interim Report:

**Option 3:** Focus proactive enforcement activities on the identification and rectification of cases of misclassification.

**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.

**Option 6:** Include a dependent contractor provision in the ESA, and consider making clear that regulations could be passed, if necessary, to exempt particular dependent contractors from a regulation or to create a different standard that would apply to some dependent contractors.

***Who is the Employer and Scope of Liability (5.2.2)***

Determining the appropriate employer and what should be their scope of liability has become increasingly complex. Nevertheless, it is only fair that lead or parent companies should have some liability and responsibility for the employees in the business from which they benefit.

To ensure accountability up and down the supply chain, the CLC encourages the Government of Ontario to pursue the following options, as outlined in section 5.2.2 (p.154) of the Interim Report:

**Option 2:** Hold employers and contractors responsible for compliance with employment standards legislation of their contractors or subcontractors, requiring them to insert contractual clauses requiring compliance.

**Option 3:** Create a joint employer test akin to the policy developed by the DOL in the US as outlined above.

**Option 4:** Make franchisors liable for the employment standard violations of their franchisees in all circumstances.

**Option 5:** Repeal the "intent of effect" requirement in section 4 (the "related employer" provision).

***Exemptions, Special Rules and General Process (5.2.3)***
Currently, Ontario's ESA contains over 85 exemptions and special rules, leaving less than 25 percent of Ontario employees with full coverage under the ESA. Many employees impacted by these exemptions are vulnerable workers, including part-time, temporary, low wage, and young workers.

The Interim Report proposes a three tier process for reviewing the issue and, based on this process, the CLC encourages the Government of Ontario to pursue the following options, as outlined in section 5.2.3 (p.161) of the Interim Report:

**Category 1:** Of the seven exemptions listed in this category, the following six exemptions should be eliminated from the exclusions (granting them coverage under the ESA):

- information technology professionals;
- pharmacists;
- residential care workers;
- residential building superintendents, janitors, and caretakers;
- students (minimum wage differential for those under 18 and "reporting pay"); and
- liquor servers (minimum wage differential).

The exemption for managers and supervisors should be subject to further review.

**Category 2:** The exemptions and special rules for the following industries should be reviewed through stakeholder consultations:

- public transit;
- mining and mineral exploration;
- live performances;
- film and television industry;
- automobile manufacturing; and
- ambulance services.

**Category 3:** The remaining exemptions should be subject to further review. Please refer the submission made by the OFL for recommendations regarding this process.

## Standards (ESA)

***Hours of Work and Overtime Pay (5.3.1)***
Maintaining reasonable hours of work is essential for achieving work-life balance and ensuring the health and safety of workers. Although, in theory, workers can refuse to work overtime or enter into an overtime averaging agreement. In reality, the power imbalance inherent in the employee-employer relationship may make it difficult to do so without negative repercussions.

In turn, the CLC encourages the Government of Ontario to pursue the following options, with the amendments indicated, as outlined in section 5.3.1 (p.195) of the Interim Report:

**Option 3:** Maintain the status quo employee consent requirement. The right to refuse overtime should be based on an 8-hour day and 40-hour week, with a 48-hour maximum work week.

**Option 11:** Reduce weekly overtime pay trigger from 44 to 40 hours.

**Option 12:** Eliminate all overtime averaging provisions.

***Scheduling (5.3.2)***
Unpredictable scheduling is on the rise and is adding to the trend of growing precarious work. Although unpredictable scheduling can take a number of different forms, from being on-call to being offered too little notice of shifts, no matter the form, the impact on workers is immense and presents challenges both personally and financially.

In addition, current requirements, such as those regarding reporting pay, are relatively easy to circumvent through practices such as the scheduling of split shifts. Scheduling uncertainty is most prevalent in sectors that predominately comprise of women, visible minorities, and recent immigrants (e.g., food, hospitality, retail, health care, and child-care).

In order to protect all workers, especially vulnerable workers, legislation must be adapted to ensure or to improve the predictability of schedules,

minimum shift requirements, and compensation for being on-call and for last minute changes to schedules.

For these reasons, the CLC encourages the Government of Ontario to pursue the following options, with the amendments indicated, as outlined in section 5.3.2 (p.203) of the Interim Report:

**Option 2(c):** Expand or amend existing reporting pay rights in the ESA to increase the minimum hours or reporting pay from 3 hours at minimum to the lesser of 4 hours at regular rate or length of a cancelled shift.

**Option 3:** Provide employees a job-protected right to request changes to their schedule at certain intervals, for example, twice per year. The employer would be required to consider such requests.

**Option 4:** Require all employers to provide advance notice in setting and changing work schedules to make them more predictable. This may include, but is not limited to:

- require employers to post employee schedules at least 2 weeks in advance;
- require employers to pay employees more for last-minute changes to employees' schedules;
- require employers to offer additional hours of work to existing part-time employees before hiring new employees;
- require employers to provide part-timers and full-timers equal access to scheduling and time-off requests; and
- require employers to get consent from workers in order to add hours or shifts after the initial schedule is posted.

***Public Holidays (5.3.3.1)***

Paid public holidays are essential to improving work-life balance and to providing workers with time for rest, as well as contributing to a more productive workforce with higher morale.

In order to expand access to as many workers as possible, the CLC encourages the Government of Ontario to pursue the following recommendations:

- repeal exemptions and special rules for public holidays; and

- improve proactive inspections and deterrence measures to address high violation rates of public holidays.

***Paid Vacation (5.3.3.2)***
Alongside paid public holidays, paid vacation is also essential to improving work-life balance and to providing workers with time for rest,

as well as contributing to a more productive workforce with higher morale.

In turn, the CLC encourages the Government of Ontario to pursue the following option as outlined in section 5.3.3.2 (p.207) of the Interim Report:

**Option 3:** Increase entitlement to 3 weeks paid vacation for all workers.

***Paid Sick Days (5.3.5)***
The current lack of legislated entitlements to paid sick days forces workers to go to work when sick due to fear of lost wages or termination. Not only is this detrimental to the health of the sick worker, but it also causes unnecessary costs to other workers who may become infected by colleagues who are ill.

In turn, the CLC encourages the Government of Ontario to pursue the following option, with the amendments indicated, as outlined in section 5.3.5 (p.214) of the Interim Report:

**Option 2(a)(ii):** Introduce paid sick leave that would be accrued by an employee at a rate of 1 hour for every 35 hours worked. <u>There should be no requirement for a medical note</u>.

***Other Leaves of Absence (5.3.6)***
One in three workers have experienced domestic violence. To ensure victims of such abuse are able to find shelter, seek counselling, attend court proceedings, and deal with contested family issues, the CLC encourages the Government of Ontario to pursue the following option, with the amendments indicated, as outlined in section 5.3.6 (p.219) of the Interim Report:

**Option 3(a):** Introduce Domestic or Sexual Violence Leave. <u>Mandate five days job-protected paid leave, with the right to extended unpaid leave as needed</u>.

***Part-time and Temporary Work – Wages and Benefits (5.3.7)***
With the rise in part-time and temporary work, employers may use such classifications to impose inferior pay and benefits to workers, leading to growing precarious work.

In order to protect vulnerable workers and promote decent work, the CLC encourages the Government of Ontario to add a just-cause protection for contract workers, as well as pursuing the following options, with the

amendments indicated, as outlined in section 5.3.7 (p.226) of the Interim Report:

**Option 2:** Require part-time, temporary and casual employees to be paid the same as full-time employees in the same establishment unless difference in qualifications, skills, seniority or experience or other objective factors justify the difference.

**Option 3:** Provide benefits to part-time, temporary, and casual workers. Benefits should be equivalent above a threshold and pro-rata below. The threshold must be sufficiently low to reduce limits on part-time hours.

**Option 5:** Limit the number or total duration of limited term contracts.

***Just Cause (5.3.8.3)***
Currently, Ontario's ESA does not require employers to have "just cause" for terminating an employee's employment. The recent Supreme Court of Canada ruling in Wilson v. AECL upheld the interpretation that, under the *Canada Labour Code*, dismissing an employee without cause is unjust and not permitted.

The CLC believes that workers that fall under the jurisdiction of Ontario's ESA should be granted similar protections and thus encourages the Government of Ontario to pursue the following options as outlined in section 5.3.8.3 (p.235) of the Interim Report:

**Option 2:** Implement just cause protection for TFWs together with an expedited adjudication process to hear unjust dismissal cases.

**Option 3:** Provide just cause protection for all employees covered by the ESA.

***Temporary Help Agencies (5.3.9)***

Assignment workers in temporary help agencies commonly experience lower pay, difficulty understanding and exercising employment rights, vulnerability in making complaints, increased risk of injury on the job-site, job instability, the deterioration of health, unpredictable hours and income insecurity, and barriers to permanent employment.

Clients are increasingly using such agencies to avoid paying costs associated with employment regulations, contributing to the growing trend of precarious work.

In order to provide fairness and protection to all workers, the CLC encourages the Government of Ontario to pursue the following options, with the amendments indicated, as outlined in section 5.3.9 (p.252) of the Interim Report:

**Option 2(b):** Expand client responsibility: Make the client the employer of record for <u>all</u> employment standards. Alternatively establish joint employer liability.

**Option 3(a):** Same wages for same/similar work: Provide the same pay to an assignment worker who performs substantially similar work to workers directly employed by the client, <u>without exception</u>.

**Option 5(b):** Reduce barriers to clients directly hiring employees by changing fees agencies can charge clients: Eliminate agency ability to charge fees to clients for direct hire.

**Option 6:** Limit how much clients may use assignment workers.

**Option 7(b):** <u>Require</u> transition to direct employment: Deem assignment workers to be permanent employees of the client after a set amount of time.

**Option 8(b):** Expand termination and severance pay provisions to individual assignments: Require that clients compensate assignment workers' termination <u>and</u> severance pay (as owed) based on the length of assignment with that client. Assignment workers would continue to be eligible for separate termination and severance if their relationship with the agency is terminated.

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