

Protecting Small Business from Unions & Red Tape

CFIB's response to the Special Advisors' Interim Report on the Changing Workplaces Review

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On behalf of our 42,000 small- and medium-sized member businesses in Ontario, representing approximately 500,000 employees, we welcome the opportunity to comment on the *Changing Workplaces* interim report.

While we understand that the report is in the interim phase and the suggestions provided are options rather than final recommendations, we have several pressing concerns about the tone and direction of the report, as well as the foundation upon which it is built. We are especially disappointed that the introduction of the report states that non-compliance is “simply a part of a business strategy” for some small employers (p. 29). We are unaware of what led the Review to this conclusion. If it was influenced by particular examples, they should have been included and properly explained in the same paragraph. The notion that small employers are strategically using non-compliance for business advantages is by no means representative of the small- and medium-sized business sector, and we caution against such generalizations when framing the final report. On page five of this submission, we expand on recent data provided by the Ministry of Labour where specific instances of non-compliance were quickly and effectively turned into full compliance as soon as the business owner was informed of their specific regulatory requirements.

We also reject the notions that the only way to avoid precarious employment conditions for workers is to unionize them, and that Ontario's employment standards require a more rigid legislative framework. Increased regulation will only lead to more red tape and less flexibility for both the employee and employer.

Small- and medium-sized businesses account for 98 per cent of all Canadian businesses and employ 87.3 per cent of Ontarians. The small business sector is the province's economic engine, and its importance, particularly during times of economic turbulence, cannot be

overstated. For small business owners, government regulation and paper burden is surpassed only by total tax burden as their most important business issue. In fact, it costs Ontario's businesses nearly \$15 billion annually to comply with regulations at all levels of government. This cost is borne not only in dollars, but also in time, as small business owners often have to deal with the regulatory requirements themselves, taking them away from what they do best: creating jobs and growing local economies. When we consider provincial regulations, **employment standards specifically rank as the third most burdensome area for small businesses.**

To meet the needs of the evolving workplace and workforce, it is essential that the provincial government create policies that support entrepreneurship and small business growth. We are deeply concerned by the large amount of focus in the interim report on regulatory back-peddling, in particular on rules and regulations that were in effect in the early 1990s. The focus should instead be on moving forward to find an innovative solution for 2016 and beyond. Small businesses across the province are being asked to innovate and modernize. We believe that government and organized labour should be required to do the same. We encourage you to look to the future of Ontario's changing workplace, not the past.

CFIB's positions are formulated entirely by the views and opinions of our small business members. Collaboration and active listening are at the heart of our work. We firmly believe that it is possible to support and protect employees while supporting small business. This submission outlines small business views on the interim report that should be taken into consideration when you prepare the recommendations for your final report to the Minister of Labour.

We strongly encourage that the final report recommend sector-by-sector consultations on the specific recommendations offered to the Minister of Labour before any government action is taken.

Straining Employer-Employee Relations and Removing Secret Ballot Voting

The realities of working relationships in Ontario's small- and medium-sized businesses are very different from those in large corporations. Small business owners often work alongside their employees, and consequently, the nature of these working relationships tends to be more flexible and informal.

As the employer-employee relationship is integral to small business success, we are disappointed and deeply concerned that much of the labour relations section of the report focuses on union submissions and recommendations, when only 14 per cent of the private sector is unionized. **Rather than assuming that these submissions represent the views of all employees, we strongly encourage you to proactively seek input from the 86 per cent of workers in the province who are not unionized.**

While employers are acknowledged as having made submissions and raised concerns, it is rare for their concerns to be reflected in the provided list of options, particularly in the labour relations half of the report. Offering the status quo as the best option does not help employers

in a modernizing workplace, especially those who seek to increase flexibility for the benefit of their employees.

Our top concern is the consideration of turning back the clock on Ontario's union certification requirements by re-instating card-based certification – with no secret ballot vote – as a means to successful organization. CFIB has long been a proponent of fair workplace rules that support and protect both employees and employers. An open, accountable and democratic working environment is crucial to healthy labour relations. The current secret ballot provisions, which allow employees to indicate their true desire to form – or not form – a union are integral to the legitimacy of any union organization effort. Card-based certification puts employees at too great a risk of union bullying and intimidation. If the desire to organize is legitimate, it should certainly be able to pass the most basic and fundamental of democratic processes: a secret ballot vote.

Furthermore, we have heard significant concern from our membership about the safety and well-being of their employees during union organization efforts. The idea that small business owners might be compelled to hand over employee lists that contain employees' personal contact information and home addresses to facilitate organization is an alarming one. We are also troubled by the idea that unions could take advantage of small business employees by forcing them to pay dues they cannot afford to fund larger, more lucrative negotiations in other unrelated workplaces and/or partisan political objectives.

As such, we would encourage you to **recommend retaining the current system of labour union ratification, which includes secret ballot voting, and maintaining the employee's right to keep their personal information private and confidential.**

Too often we have found that a union's existence is predicated on ensuring the relationship between employer and employee is an adversarial one. Without anyone to fight, a workplace union becomes obsolete. The premise behind a collective bargaining agreement is that after a period of time, both sides will have to come back to the negotiating table. It becomes planned instability, which can have a significant impact on the business, industry and Ontario economy as a whole. We have seen this battle demonstrated in recent labour negotiations between Canada Post and the Canadian Union of Postal Workers (CUPW). While any work stoppages instigated by either side were ultimately avoided, the constant high-profile threat of a stoppage caused permanent behavioural shifts in the economy. Canada Post is a large enough company to absorb at least some of the impact. A small business in Ontario cannot. The recurring threat of strike or lockout could wipe out a small business and have serious consequences for Ontario's economy.

Harmonious labour relations, as called for in the Minister of Labour's most recent mandate letter, are the result of a strong relationship, not an adversarial one, in the small business environment.

Destroying the Franchise System, While Increasing Union Membership

We have heard significant concern about the interim report directly from franchise owners. Franchisees do not decide to go into business to simply become an arm of the corporate brand. They are independent operators who invest their own time and capital into their business. These are small business owners. We urge you to **recognize the independence of franchisees by exempting them from any joint-employer recommendations.**

Changes to legislation around franchising, particularly around joint-employer rules, could have serious ramifications to Ontario's economy, including the possibility of ending the franchise model in the province. Making it easy for all of a franchise's franchisees to collectively bargain under a single unit with the corporate head office is nothing more than a quick and easy way for unions to increase their membership and money made through union dues.

Over-Regulating the Workplace

Small business owners know that their employees are the key to their success and prosperity. In fact, in a recent CFIB survey on the state of the Canadian workforce, **two-thirds of Ontario's employers identified their employees as the most important element of their success**, the highest response of any available option.

Employment standards, rules and regulations impact the vast majority of businesses with employees in the province. Any changes to these policies would have widespread implications for Ontario's small businesses.

We continue to be gravely concerned by the language that has been used throughout the review process and in the interim report, suggesting that Ontario requires a more rigid legislative framework around employment standards.

The vast majority of Ontario's small businesses are already compliant, and many of the non-compliances are due to lack of awareness. We are concerned about the precedent that would be set if your final report were to call for legislating behaviour that is already common in Ontario's work environment. Such legislation would only add to the red tape and regulatory burden faced by Ontario small business owners, to the detriment of the province's productivity.

Small businesses are about relationships, not regulations. Any changes to the legislation that governs these relationships must be approached with precision. The realities of running a small business in Ontario and the impact new rules and regulations would have on the small businesses in every sector should be critical considerations as you draft your final recommendations.

The abuse of employment standards is a serious issue. Small employers take great pride in the businesses and the working environments they create for their employees. Any business that abuses standards gives the rest a bad name. Government should use the tools already at its disposal to close legislative loopholes and enforce current rules, rather than legislate new rules that would only serve to punish employers who provide good work environments. A

minority of infractions does not warrant a full overhaul of the system. The Review, and subsequently the government, should take a precise approach to the problem and not seek to use a legislative sledgehammer where a scalpel is warranted.

In the Ministry of Labour's latest report (May 2-June 30, 2016) on workplace blitzes focusing on young workers and temporary foreign workers (TFWs), the most common Employment Standards Act (ESA) infractions concerned pay for public holidays, overtime and vacation, as well as record-keeping and hours of work. **Voluntary compliance upon being informed of the infraction was near absolute (98 per cent for young workers, and 100 per cent for TFWs).** This is not indicative of any legislative or regulatory problem, or any "non-compliance as a business strategy", as the interim report implies. The provincial government doesn't have a compliance problem; it has an education problem. In cases where the employers are unaware of their responsibilities, they are also overwhelmingly willing to comply once they are informed. This doesn't require a legislative or regulatory change – which might create greater confusion and lead to greater non-compliance by virtue of overly-complicated rules and requirements – but better outreach from the Ministry of Labour to inform employers of their responsibilities under the ESA.

That's why we strongly urge you to recommend that the government be required to better educate small business owners on their legislated responsibilities, and work more collaboratively with small businesses to replace the Ministry of Labour's current inspection-based, adversarial compliance and enforcement approach.

Ignoring Youth in Non-Unionized and Unionized Workplaces

We are discouraged by the Review's lack of recognition and attention to young Ontarians. The evolving demands of the young employee are very different than those of previous generations. Young employees tend to place greater value on flexibility in the workplace, particularly when it comes to part-time work and scheduling during their schooling years. Small businesses often provide young people with their first job, giving them much-needed experience and training to excel in the workforce. It is important for young Ontarians to be directly consulted on any relevant recommendations.

Studies indicate that young workers will, on average, seek out new challenges and move jobs every five years. This sort of employment flexibility becomes virtually impossible in the highly-unionized private sector envisioned in the options provided throughout your interim report. Unionized workplaces, which place high value on seniority and internal hiring and promotion, are extremely difficult for young workers to break into once, let alone every few years. Furthermore, employees seeking new opportunities would generally fail to receive the benefits of a unionized workplace, which tend to be accrued over the long term.

To recognize the value of part-time employment, we recommend that greater flexibility be allowed to pursue part-time work for youth, seniors and others who rely on part-time work for the latitude it currently provides.

Increasing Red Tape through Scheduling

Maintaining scheduling flexibility is a key recommendation from the small business community. Eighty-four per cent of business owners agree that both the Employment Standards Act and the Labour Relations Act should be made more flexible to better support businesses in the modern economy.

Because most small businesses do not have Human Resources departments, scheduling duties fall to employers. Mandating that all schedules be set two weeks in advance has the potential to put significant added stress on business owners by increasing their regulatory burden. We are also perplexed by the interim report going as far as exploring options to fine employers who have to make changes to schedules, when these changes are often triggered by employees.

Positive employer-employee relationships are important to small business success, so it is important for both employers and employees to feel they can communicate openly with one another. Legislating conversations about scheduling hours of work, as suggested in your interim report, would be damaging to these relationships and conversations, and would add even more red tape.

Penalizing Temporary Employment Agencies

The recently passed Stronger Workplaces for a Stronger Economy Act, 2014 amended the Employment Standards Act, adding additional requirements and responsibilities for temporary employment agencies (or “temporary help agencies”). The changes were enacted to get at “underground” operators and “level the playing field”.

Temporary employment agencies are a prime resource for businesses looking to meet unexpected and other staffing needs. Further restrictions on these agencies could greatly slow down or discourage hiring.

The additional, proposed legislative measures noted in your report, such as licensing temp agencies or legislating new standards of conduct, would only penalize these agencies. The vast majority of them are law-abiding businesses that provide convenient and flexible labour solutions, as well as increased employment in their communities. Recent legislative changes have already reduced the value of the services they provide by increasing the risk for the contracting employer, making the agencies less competitive in the marketplace and threatening to put many of them out of business altogether.

As such, we recommend that no further restrictions be applied to temporary employment agencies, and that greater flexibility be allowed to businesses filling jobs through these agencies to help better respond to changing staffing needs.

Confusing Businesses with Numerous Unclear, Unpaid Leaves

From the small business perspective, existing vacation and public holiday provisions under the Employment Standards Act should be maintained. Any increase to current provisions would likely be met with strong opposition from our members, as the administrative, compliance and financial costs would be significant. For example, our members are still feeling the impact of the designation of Family Day as a statutory holiday.

We would support examining Ontario's 10 unpaid, job-protected leaves of absence together to simplify and consolidate them, so they are clear to both business owners and employees. As per the Review's request, we submitted separate comments on unpaid [Personal Emergency Leave on August 29, 2016](#).

Toying with Industry-Specific Exemptions

Ontario currently provides Employment Standards Act (ESA) exemptions for a number of industries, including agriculture. The very nature of this industry – in particular, the seasonality of agricultural work (harvest, calving seasons) – calls for special consideration, since the ESA cannot be easily administered or monitored, especially during peak-production periods. The exempted industries do not fit with the norms of a traditional workplace, and **therefore should continue to be exempted.**

A one-size-fits-all approach to employment standards in all industries would fail to recognize the unique demands of the currently-exempted sectors. Imposing new and/or further ESA restrictions would not only deter investment and growth in areas like agri-business and transportation – significant contributors to Ontario's economy – but would also cause a ripple effect in other areas the Review has not considered. Areas including workplace health and safety, payroll processes and immigration would all likely require updates to legislation and regulations, further increasing the already-large red tape burden on Ontario's small business owners.

We recommend that all current industry-specific ESA exemptions remain intact.

Summary of CFIB's Recommendations

The potential impact on small business of your interim report's policy options, especially those that encourage easier union organization and more red tape, cannot be overestimated. Such changes would make it more difficult for small firms to operate, keep current employees and hire new ones, and grow local economies. To reflect the realities of running a small business in Ontario, we recommend that the Ontario government:

1. **Pursue sector-by-sector consultations on specific recommendations in the final report before any government action is taken.**
2. **Retain the current system of labour union ratification, which includes secret ballot voting, and maintain the employee's right to keep their personal information private and confidential.**
3. **Proactively seek input on labour union ratification from the 86 per cent of workers in the province who are not unionized.**
4. **Recognize the independence of franchisees by exempting them from any joint-employer recommendations.**
5. **Better educate small business owners on their legislated responsibilities, and work more collaboratively with small businesses to replace the Ministry of Labour's current inspection-based, adversarial compliance and enforcement approach.**
6. **Allow greater flexibility for youth, seniors and other people to pursue part-time work.**

7. **Apply no further restrictions on temporary employment agencies, and permit greater flexibility to businesses filling jobs through these agencies to help better respond to changing staffing needs.**
8. **Preserve existing industry-specific exemptions in the Employment Standards Act (e.g., agricultural exemptions).**
9. **Develop a suite of free tools to help small businesses comply with the Employment Standards Act.**
10. **Recognize the needs of small business by considering options that are better than the status quo and not mentioned in the interim report, including a legislated requirement for employees to provide at least two weeks' notice to the employer, regardless of their length of employment.**

We appreciate the opportunity to outline our members' views on employment standards, labour relations, and the modern workplace. Our members remain very concerned about most of the options presented in the interim report which, if implemented, would clearly have devastating and lasting effects on our small- and medium-sized businesses – Ontario's job creators. These effects would be felt throughout the province's economy.

We urge you to focus on a balanced approach – one that creates a level playing field for small employers and employees, without being slanted in favour of union interests. Your recommendations should modernize labour legislation to keep Ontario moving forward, not backward. Any final recommendations should encourage government to simplify rather than increase requirements, so that employers are allowed greater flexibility to manage their relationships directly with their employees.

We hope that you will seriously consider the points we raised in this submission and that your next steps will reflect the needs of small businesses in the modern workplace.