

Comments on the Changing Workplace Review Interim Report: Personal Emergency Leave Provisions

Submitted by

Metro Toronto Chinese & Southeast Asian Legal Clinic

Introduction

The **Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC)** is a community based legal clinic which provides free legal services to low income Chinese, Vietnamese, Cambodian, and Laotian communities in the Greater Toronto Area.

MTCSALC was one of many community organizations who made submissions to the Changing Workplace Review (CWR) panel with a view to strengthening protection for vulnerable workers in Ontario.

The following are our comments on the Personal Emergency Leave (“PEL”) section of the CWR Interim Report as informed by MTCSALC’s many years of experience working with low income workers.

Comments on Personal Emergency Leave (PEL)

The Terms of Reference for the CWR states, among other things:

The objective of this review is to improve security and opportunity for those made vulnerable by the structural economic pressures and changes being experienced by Ontarians in 2015.

Since the review began, the review panel has engaged in broad public consultation with various parties, such as employers and employees, in order to get a balanced picture of the changing labour market.

Notwithstanding its stated objective and the substantive input the CWR panel has received from many groups representing vulnerable workers, the perspectives of employees or organizations that advocate on their behalf are absent from the PEL portion of the Interim Report. Rather, the Interim Report appears to have only set out various employer perspectives on how PEL can be abused and its alleged costs on the employer. Missing from the Interim Report are the experiences of employees, many of whom are low wage workers in small companies and are thus not eligible for PEL under the current *Employment Standards Act (ESA)*.

As the Interim Report has noted, 95% of businesses in Ontario have fewer than 50 employees and are thus not covered by the current PEL provision. Further, the Interim Report confirms that Ontario is the only Canadian jurisdiction to have an employer-size (50+) eligibility threshold for PEL provisions.

While the Interim Report did not provide any statistics in this respect, other studies, such as the Law Commission of Ontario’s Vulnerable Workers and Precarious Work Report suggest that

vulnerable workers are more likely to be working in small businesses. The same Report confirms that women, immigrant and racialized workers are among the most vulnerable on the labour market.

MTCSALC submits that PEL should not be reserved for employees of larger companies only. The right to take protected time off work to attend to a personal emergency such as death of a family member should be made available to all workers. Restricting PEL to companies with 50 or more employees further marginalizes immigrant and racialized workers, who are over-represented among small businesses such as restaurants and nail salons.

MTCSALC is thus not in favour of maintaining the status quo, nor are we in favour of options #3 and #4 which seek to impose further restrictions on the already limited PEL entitlement. These options simply do not make sense as they fail to take into account the unpredictability of life. The very definition of “emergency” is that these events cannot be planned ahead and as such it is impossible for employees to carve out specific days for specific events.

Further, under these options, families of different sizes and with different composition will be affected in different ways depending on how the PEL is being divided up among different categories. As such these options may be in breach of the *Human Rights Code* of Ontario.

It is worth noting that, at the end of the day, the PEL is an *unpaid* leave. Nor is an annual leave of 10 days by any means excessive. Employers do not have to pay employees who, due to tragic family circumstances, need to take time off to look after their loved ones. Having the option of an unpaid leave provides limited job security for workers who work in non-unionized workplaces. The cost to employees who may lose their job without the protection of PEL far outweigh the cost, if any, to employers for having to keep the position open for up to 10 days a year.

Recommendations

We recommend the CWR to adopt option 2 by removing the 50 employee threshold for PEL.

Conclusion

These comments address only a fraction of the multitudes of employment related issues confronting vulnerable workers in Ontario. We ask the CWR panel to incorporate and consider the perspectives of employees and organizations advocating on their behalf in the final report.