

# Personal Emergency Leave Submission for the Changing Workplace Review

# by the

**Ontario Federation of Labour** 

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The Ontario Federation of Labour (OFL) represents 54 unions and one million workers. It is Canada's largest provincial labour federation.

## Consider Personal Emergency Leave in the Context of the Entire Review

The Changing Workplace Review (CWR) recognizes that the evolving nature of work in Ontario is an integrated issue in both unionized and non-unionized workplaces. For the first time, the government is considering making meaningful changes to two pieces of legislation at the same time: the *Employment Standards Act (ESA)* and the *Labour Relations Act (LRA)*.

The OFL is concerned that the government has requested that recommendations to Personal Emergency Leave (PEL) be considered in advance of—and in isolation from—the rest of the CWR process. As recently as the 2016 Ontario budget papers, the government reiterated its intention to "resolve concerns raised by business regarding the application of the emergency leave provisions of the *Employment Standards Act*" on an "expedited" basis. To separate out PEL from the other leave issues being discussed in the CWR process (e.g., paid sick days, small business exemptions from leaves), negates the purpose of conducting a comprehensive review. Instead, it is the position of the OFL that the government should not pass any reform measures to PEL beforehand; final recommendations on PEL should be considered in the context of potential legislative amendments to both the *ESA* and *LRA*.

#### Extend Personal Emergency Leave Coverage to All Workers

Both unionized and non-unionized workers are entitled to take up to ten days of unpaid job-protected PEL, which can be used by a worker for their own personal illness, injury, and/or medical emergency or for similar urgent matters concerning their family, including death. More than 1.7 million Ontario workers, however, are ineligible for this leave simply because they are employed at a firm with 49 or fewer employees. Ontario is the only jurisdiction in Canada to penalize employees on this issue based on business size. The OFL continues to advocate that the exemption based on business size be repealed (i.e., adopt Option 2 from the Interim report)—thereby extending PEL coverage to more than 20 per cent of Ontario's workforce.

#### The Employee Perspective

Regardless of the nature of employment or business size, no one is exempt from a personal emergency. It is inexplicable that more than 1.7 million Ontario workers are at risk of jeopardizing their jobs and their financial livelihoods to attend to an unforeseen and pressing matter. It is important to understand that this exclusion denies access to those who need it most.

Research shows that those working in small firms are more likely to be precariously employed (e.g., less likely to be unionized, more likely to be earning lower hourly wages, and more likely to engage in temporary and part-time work).<sup>2</sup> Denying job protection therefore adds another

<sup>&</sup>lt;sup>1</sup> 2016 Ontario Budget, p. 16

<sup>&</sup>lt;sup>2</sup> Leah Vosko, Andrea Noack and Mark Thomas. 2016. *How Far Does the Employment Standards Act* 2000 Extend, and What are the Gaps in Coverage? An Empirical Analysis of Archival and Statistical Data. p. 61 <a href="https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/research-projects/Vosko%20Noack%20Thomas-5-%20ESA%20Exemptions.pdf">https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/research-projects/Vosko%20Noack%20Thomas-5-%20ESA%20Exemptions.pdf</a>

layer of job insecurity for vulnerable workers. Without job-protected leave, those exempted will be forced to work while sick or going through family emergencies—which, at the very least, reduces productivity. More importantly, taking time off when sick speeds up recovery, deters further illness, and reduces health care costs. In fact, the Government of Ontario advises individuals to stay home when they are sick—without expressly exempting workers in small businesses. Moreover, most people without job-protected PEL work in retail, accommodation and food services, construction, health care, and social services—sectors where workers are most in contact with the public. It is also important to note the fact that PEL is unpaid already acts a barrier to access for those with a family or personal emergency. This is particularly pronounced for those individuals working in low-wage industries who do not have access to paid sick days and are struggling to make ends meet.

The reasons behind workers taking PEL are also changing. Using leaves for personal illness has declined from 84 per cent in 1976 to 54 per cent in 2015. An aging population, the increase in female labour force participation, and a rise in social policies that rely on families to provide child and elder care are some of the factors that have contributed to this shift. Furthermore, the need for women to access leaves to care for dependents has risen. In 2015, men took about a quarter of their leave for personal/family responsibilities (i.e., not personal illness) while for women, it was nearly 60 per cent. <sup>6</sup> Removing the flexibility inherent within PEL would disproportionally disadvantage female workers and run counter to the government's recent commitment to "require gender-based analysis in the government policy process". More—not less—flexibility is needed to accommodate changing demographic trends and social policies. Option 1 (i.e., maintaining the status quo) is unfair to workers, particularly females and those in low-wage sectors who predominantly work at enterprises of 49 or fewer employees.

### The Employer Perspective

Employers want to limit the scope and nature of PEL, resulting in workers not being able to access both company-based leaves (e.g., paid sick leave) and unpaid leave under the terms of PEL. This is reflected in both Options 3 and 4, which suggest breaking down the maximum tenday allotment into separate leave categories without increasing the total leave entitlement.

Although some employers argue that they provide more generous benefits packages and PEL is therefore an additional entitlement, it must be recognized that they may not cover all of the specific provisions of PEL (i.e., do not include the same family members or reasons for taking unpaid emergency leave).

Workers' Action Centre. 2015. Still Working On The Edge.

http://www.workersactioncentre.org/wp-content/uploads/dlm\_uploads/2015/03/StillWorkingOnTheEdge-WorkersActionCentre.pdf

<sup>&</sup>lt;sup>3</sup> American Public Health Association. 2013. *Support for Paid Sick Leave and Family Leave Policies*. https:// www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/16/11/05/ support-for-paid-sick-leave-and-family-leave-policies

<sup>4</sup> Government of Optorio, 2016. *Etc. Family* 

<sup>&</sup>lt;sup>4</sup> Government of Ontario. 2016. *Flu Facts*. https://www.ontario.ca/page/flu-facts

<sup>&</sup>lt;sup>6</sup> Researchers from Closing the Employment Standards Enforcement Gap: Improving Protections for People in Precarious Jobs. 2016. *Personal Emergency Leave: A Response to Options Identified in the Mid-Term Report of Changing Workplaces*.

<sup>&</sup>lt;sup>7</sup> 2016 Ontario Moving Forward to Close the Gender Wage Gap Press Release

As stated in the Interim report, "an employer cannot rely on a greater benefit with respect to one standard to offset a lesser benefit with respect to another". At its foundation, the *ESA* is meant to establish the minimum standards for decent work in the province. By allowing employers to opt out of the *ESA*, some workers will not be able to access these basic minimums, thereby setting a dangerous precedent moving forward. We strongly believe PEL should not be reduced in scope nor should any future amendments enable employers to opt out of PEL or any other employment standards.

In the Interim report, it was also mentioned that many employer stakeholders expressed concern over the complexity in navigating the various *ESA* leaves and the manner in which leaves are implemented. Both Options 3 and 4 increase the administrative and regulatory burden (i.e., "red tape") for businesses as they will be required to create a more onerous tracking system.

More importantly, for workers, these options can be considered a decrease in an already basic minimum. As mentioned, employers have called for restricting the ten-day allotment by defining how many days can be used for personal vs. family emergency, or how many days can be used for illness vs. bereavement, and so forth. In essence, this limits workers' access to—and number of days available for—annual entitlements (e.g., personal/family responsibilities and illness) by rigidly sectioning off time for personal emergencies that occur relatively infrequently (e.g., bereavement). Options 3 and 4 reduce workers' benefits.

It is also important to recognize that these options eliminate the kind of flexibility a personal emergency demands. The nature of these issues makes it impossible to determine its exact duration. Although PEL is an unpaid leave, which limits access to it, the leave does provide workers with some of the flexibility needed to balance work, family illness, and emergencies. We believe that it is important to maintain employee flexibility in emergency leave provisions and that job-protected emergency leave is a necessary standard to support work-life balance that all workers should be able to access.

#### Conclusion

This review has the potential to raise the floor for every Ontario worker, improve their job security, and provide dignity in their work. It is important that the government's first course of action demonstrate to Ontario workers that their wellbeing matters. With this in mind, the following recommendations from the OFL should be adopted:

**Recommendation(s):** Consider personal emergency leave in the context of the entire Changing Workplace Review process—not in advance or in isolation. Repeal the exemption for employers of 49 or fewer workers from providing personal emergency leave.

Respectfully submitted,

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<sup>&</sup>lt;sup>8</sup> 2016 Interim Changing Workplace Review, p. 254