

HOW FAR DOES THE EMPLOYMENT STANDARDS ACT, 2000, EXTEND AND WHAT ARE THE GAPS IN COVERAGE?

AN EMPIRICAL ANALYSIS OF ARCHIVAL AND STATISTICAL DATA

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Executive Summary

The Ontario *Employment Standards Act* (ESA) sets minimum terms and conditions in areas such as pay, working time, holidays and leaves, and termination and severance of employment. Together with the *Occupational Health and Safety Act* (OHSA), it provides the only floor of workplace standards for a growing proportion of non-unionized employees in the province. Yet the ESA entails numerous exemptions and special rules absent in other schemes, such as the OHSA, the Ontario Labour Relations Act and Employment Insurance, that limit the scope of its coverage, many of which seemingly lack principled rationales. Through original analysis of archival and Statistics Canada data, this study analyzes the scope and extent of exemptions, and special rules in the ESA.

Above and beyond the wholesale exclusion of self-employed workers, and the exclusion of those in the federal jurisdiction as their conditions are governed by the *Canada Labour Code*, exemptions or special rules embedded in the ESA or its regulations take several distinct forms. One series of exemptions and special rules are defined primarily by *industry or sector of work*; for example, exemptions targeting professional/white-collar employees, agricultural employees, construction employees or liquor servers. A second category of exemptions are those related to the *organization of working time* in specific occupations, typically irregular working hour occupations, long working hour occupations, combined long and irregular working hour occupations, and continuous working hour operations. A third category of exemptions relates to employees' *status within their workplace*, for example, those related to managerial/supervisory status, and job tenure, including short tenure and temporary agency employees. The final category of exemptions is associated with *employer or employee characteristics*, specifically firm size and student status.

Through an empirical analysis drawing primarily upon data from Statistics Canada's *Labour Force Survey (LFS) (2014)*, supplemented by data from the *Survey of Labour and Income Dynamics (SLID) (2011)*,¹ the study reveals that the majority of

¹ For a methodological overview covering a variety of definitional and technical issues, see Appendix A: Methodological Notes.

Ontario employees are affected by exemptions or special rules; only about two out of five (39%) – or just over 2,000,000 – are estimated to be fully covered by the provisions of the ESA (this figure does not account for those excluded from severance pay).² The legislation's coverage also varies widely by standard. The standards that provide full coverage for the highest proportions of Ontario employees are those for termination notice/pay, and for minimum wage. Almost nine out of ten Ontario employees are fully covered by the minimum wage provisions of the ESA. But almost 400,000 employees (8%) are exempt from minimum wage provisions, and an additional 178,000 employees (3%) have special rules for minimum wage. About 80% of Ontario employees are fully covered by the overtime pay provisions of the ESA, whereas almost 794,000 (15%) are exempt from these provisions, and the remainder have special rules that modify their coverage. Only about seven in ten Ontario employees (72%) are fully covered by the public holiday provisions of the ESA, making it one of the least universal standards. About 1,000,000 employees (20%) are covered by special rules, primarily those which mean that they can be required to work on a public holiday and receive premium pay or another day off in lieu. Even fewer Ontario employees are covered for severance pay. Only about two out of five (39%) Ontario employees are covered fully by the ESA's severance pay provisions, whereas just over 60% or 3,164,000 employees are exempt.

The study also demonstrates that the *ESA's* exemptions and special rules disproportionately affect some groups already disadvantaged in the labour market. Immigrants to Canada who have arrived within the past ten years are less likely to be fully covered by all of the *ESA's* provisions, and more likely to be subject to special rules, than more settled immigrants, or those who are Canadian-born. Ontario employees aged 15 to 29 are also less likely to be fully covered by the *ESA*, and more likely to be subject to special rules than middle-aged and older employees. More than a quarter of young employees (27%) have special rules relating to public holiday pay, compared to only 20% of employees overall. Young employees' relatively short job tenure also results in lower levels of access to vacation time as well as termination and severance pay.

² After accounting for those who are excluded from severance pay, fewer than a quarter of Ontario employees are estimated to be fully covered by the *ESA*.

Reflecting well-documented labour market insecurities faced by many workers in Ontario without full-time permanent employment (Noack and Vosko, 2011; on forms of employment often associated with precariousness, see also contributions to Vosko ed., 2006 and Vosko, 2010a), compared to full-time employees, part-time employees are less likely to be fully covered by the ESA, and are more likely to have special rules. Temporary employees are much less likely to be fully covered by the ESA, and are much more likely to have both special rules and exemptions than permanent employees. Similarly, low-wage employees are much less likely to be fully-covered by all of the provisions of the ESA, and are more likely to have special rules, compared to higher-waged employees. Only 23% of employees earning minimum wage or less are fully covered by all of the provisions of the ESA (not including severance pay).

After outlining a few principled concerns informed by scholarly literature and related to the importance of retaining universality as a foundational value of the ESA as well as to the problematic boundary between covered employees and excluded self-employed workers and the need to prevent exemptions and special rules from taking workers below established social minima, and concomitantly to ensure that they mitigate the situation of the most precariously employed (e.g., temporary agency workers) and those belonging to disadvantaged social groups, the study concludes by setting out options for gradual reforms (and estimates their projected effects). These options, while not seeking to alter fundamentally the ESA, aim to consolidate and affirm the role of the Ministry of Labour (MOL) in maintaining a strong set of ES for employees in the province, and are directed, in particular, at the most precariously employed and those belonging to disadvantaged social groups. Addressing exemptions in the core areas of wages, working time, holidays and leaves, and termination and severance, the options identified are directed at returning to the core principles of social minima, universality, and fairness that, according to the historical record, motivated and framed the development of the ESA.

Introduction

For the majority of employees in Ontario, the *Employment Standards Act* (ESA), 2000 establishes minimum standards in areas including wages, hours of work, overtime pay, vacations, public holidays, and termination and severance. The legislation was designed in principle to provide regulatory protection for employees with little bargaining power, and particularly for those not represented by a union. Reflecting the aim of promoting social minima, universality, and fairness, the enactment of the ESA can be seen as an important step, both normatively and in practice, in the movement towards ‘decent work’ (Vosko et al., 2011; Vosko and Thomas, 2014), understood as work that provides income and employment security and promotes equity and human dignity (ILO, 2002). These principles guided the initial development of the ESA, whereby legislators sought to establish socially desirable and non-exploitative conditions of employment for the greatest possible number of employees, while at the same time protecting employers from unfair competition through lower standards (AO, 1969a, 1975a, 1978). Notwithstanding the goal of universality, from the time of its enactment, the ESA has also included numerous exemptions and special rules that have limited the scope of its coverage and complicated enforcement practices by creating differential standards for many employee groups. These exclusions were developed largely in response to employer concerns over the effects of universality on industry; they thus attempted to account for the particularities of industry, sector, and occupation in the application of social minima. Ranging in form from the exclusion of certain workers (e.g., self-employed workers) and certain employee groups from the Act altogether, to exemption from or special treatment for employee groups under particular standards, these practices have meant that the ESA exists much more as a ‘patchwork’ of legislated standards, rather than a universal floor (Vosko et al., 2011).

The ESA’s system of exemptions and special rules, which has its origins in earlier minimum standards legislation in the province (Lane, 1977), has been subject to critique by those seeking to address exploitation in the labour market flowing from concerns that employees in Ontario are subject to differential employment standards (ES) and, moreover, that this patchwork approach to ES regulation may heighten forms

of marginalization experienced by groups of workers who are historically disadvantaged in the labour force (Ramkhalawansing, 1994; Thomas, 2009). Recommending abolition of legislative exemptions for minimum wages in early employment law, the Royal Commission on Price Spreads asserted that:

[t]o permit them raises problems of insuperable administrative difficulty, may easily divert the attention of officials from enforcement to exemption, and tends ultimately to defeat the whole purpose of the law. An employer who cannot afford to pay the minimum wage is in the long run a liability to the community (National Archives of Canada, 1935).³

In recent years, the rise of precarious employment – or forms of work characterized by high levels of uncertainty, low income, insufficient regulatory protection, and limited control over the labour process (Vosko, 2006) – has prompted further concerns that the patchwork approach to ES may contribute to precariousness, especially given that a well-documented feature of labour market insecurity in Canada and other industrialized countries is limited access to the statutory protections provided by ES (Davidov, 2014; Milkman, 2013; Pollert, 2010; Tailby et al., 2011; Vosko, 2006, 2010b; Weil, 2010, 2014). Beyond Ontario, researchers have documented the deepening mismatch between the scope of ES and changing employment norms that leaves growing numbers of workers partially or entirely outside the scope of labour and employment laws (Vosko et al., 2014). These include workers in so-called ‘new’ forms of employment, for example those (mis)classified as independent contractors,⁴ workers who are highly marginalized in more traditional forms of employment, such as temporary migrant workers in agricultural and domestic work, and many workers in between. Scholars researching these processes note the detrimental effects on workers from specific social groups (e.g., women, immigrants, and youth) because they are more likely hold precarious jobs (Fudge, 1991; Vosko, 2000; Fudge and Vosko, 2001; Vosko, 2010b). In the Canadian context, for example, scholarship examining exemptions of agricultural workers from occupational health and safety legislation (Tucker, 2006; Barnetson, 2009, 2012) and collective bargaining (Tucker, 2012), and of temporary migrant workers from labour

³ We are grateful to Eric Tucker for unearthing this archival material and directing us to it.

⁴ It should be noted that the misclassification of employees as independent contractors is not a new practice, but in fact has a long history in certain industries (see Cobble and Vosko, 2000).

relations and ES legislation (Suen, 2001; Fudge and MacPhail, 2010), observes such tendencies.

More broadly, Mitchell (2003) notes that the special rules for hours of work and overtime in Ontario's ESA contribute to the inadequacy of the legislation as they create differential thresholds for overtime pay. The effects of such exemptions and special rules are further compounded by provisions in the ESA that allow for employee 'consent' to circumvent the basic standards of the Act, such as by extending the weekly hours of work maximum (from 48 to 60), the averaging of overtime hours across multiple weeks, or scheduling work on public holidays. Such provisions heighten the pressure placed on employees to agree to employers' scheduling requests, as they enable employers to take advantage of power imbalances that exist in the employer-employee relationship, a dynamic that is intensified when such requirements are embedded into job applications and employment contracts. Such provisions may also heighten labour market insecurity, particularly when used in the context of temporary employment relationships, and the effect may still be present even in the context of more permanent forms of employment (see Thomas, 2007). This pressure is most acute among employees who face additional power imbalances due to immigration status, in addition to economic insecurity. Under such circumstances, for those in precarious jobs, the right to refuse an employer's request is not a reality, which calls into question the voluntary nature of such 'agreements'. After assessing the 'flexible' approach to regulating hours of work and overtime, Mitchell (2003, p. 400) concludes that "viewed in the context of the historical purpose of such legislation to protect vulnerable employees, the ESA 2000 is fundamentally flawed." She and others (Fudge, 2001; Thomas, 2007) base this assessment on the broader insight that the reliance upon employee consent in this, as well as other, domains falsely presumes an equitable relationship between employees and employers, neglecting power imbalances within workplaces, particularly those where employees lack union representation and are otherwise vulnerable on account of their social location. Moreover, according to Mitchell, the reliance on consent constitutes a shift towards firm- rather than state-driven regulation in ES, a practice that has the potential to severely compromise the role of the ESA in establishing and

enforcing social minima, thereby increasingly opening up the regulation of ES to market forces.

The regulation of ES, and the implications of ES exemptions and special rules, must be understood, on the one hand, in relation to the broader power imbalances inherent to the employment relationship. Although a fuller discussion is beyond the scope of this study, the larger question of this power imbalance has received substantial attention in the scholarly literature (see Commons, 1913; Hyman, 1975; Kelly, 1998). What is important to emphasize here is that, historically, institutional strategies have been sought in order to address this power imbalance.⁵ On the role of law in countering this power imbalance, Kahn-Freund (1977, p. 7) argues “[t]he main object of labour law has always been...to be a countervailing force to counteract the inequality of bargaining power which is inherent in... the employment relationship.” As noted above, ES were originally conceived partly, and developed subsequently, with a similar intention to mitigate inequalities in bargaining power; furthermore, this purpose has been recognized by the Supreme Court of Canada in the leading case on the interpretation of the ESA (*Machtinger v. HOJ Industries Ltd.* [1992]).⁶ The danger is that the presence of exemptions and special rules compromise this effort. On the other hand, while it is important to recognize these inequalities, clearly, social minima are necessary because inequality in the labour market leads some workers’ employment situations to fall below socially acceptable standards. Thus, the goal is not solely to mitigate inequality of bargaining power as such (albeit a central goal of collective bargaining) but to address its *effects* when the result is unacceptably poor terms and conditions of employment.

Although regulatory exemptions and exclusions clearly have a direct bearing on employees’ conditions of work and employment as well as their capacity to exercise workplace rights, detailed studies of their effects on particular jurisdictions are limited (for a few exceptions, see Golden, 2014; Herbert, 2003; Katznelson, 2005; National Employment Law Project, 2014; Palmer, 1995; Tucker, 2006). Through an analysis of

⁵ For example, in reviewing Canada’s system of industrial relations, Woods (1969, para 291) notes: “[t]he collective bargaining process becomes a means of legitimizing and making more acceptable the superior-subordinate nexus inherent in the employer-employee relationship.”

⁶ As the Supreme Court indicated, “[t]he harm which the Act seeks to remedy is that individual employees, and in particular non-unionized employees, are often in an unequal bargaining position in relation to their employers.”

archival and statistical data, this study describes the scope and extent of exclusions, exemptions, and special rules governing ES in the jurisdiction of Ontario, Canada and to assess how they affect employees from different social locations, in particular those historically disadvantaged in the labour force (for a more detailed description of the methodological approach, see Appendix A). To do so, it draws primarily upon data from Statistics Canada's *Labour Force Survey (LFS) (2014)*, supplemented by data from the *Survey of Labour and Income Dynamics (SLID) (2011)*, for employees who rely on provincial labour legislation.⁷ The analysis of these data sources reveals that the ESA's patchwork of exemptions and special rules results in levels of protection that vary by gender, age, visible minority status, immigration status, and labour force location.

While the concern about the impacts on business investment is sometimes raised when considering the implications of making improvements to ES, or expanding ES coverage, the research evidence on this question is inconclusive. Moreover, and of particular concern for the purpose of this study, there are considerable consequences of exemptions and special rules, in the form of both economic and social costs experienced by individual employees, their families, and the province as a whole. As they are defined in this study, economic costs capture the potential loss in earnings to employees as a result of ESA exemptions and special rules. This potential loss of earnings can be considered in both absolute and relative terms. The absolute economic costs to employees reflect the potential loss of income (in dollars) that is not received as a result of ESA exemptions and special rules. These costs are, of course, associated with a loss in revenue to the province as well, since these lost earnings are not taxed at the employee level (though they may be taxed at the corporate level). The relative economic costs to employees reflect the percentage of employees' current income that is potentially lost as a result of ESA exemptions and special rules (and thus could potentially be gained with the elimination of those exemptions and special rules).

The absolute economic costs to employees also represent the collective cost to employers should an exemption or special rule be removed. But, just as the economic costs of special rules and exemptions are not evenly distributed across employees, the

⁷ Workers in federally-regulated industries are excluded from the primary data analyses based on the LFS and the SLID below, but are included in the CANSIM data presented, as they do not provide the level of industrial and occupational detail needed to exclude these workers from the analysis.

costs of removing an exemption or special rule are not evenly distributed across employers. Since the available data do not provide information about how employees are clustered in relation to employers, nor much information about the characteristics of employers, it is not possible to estimate the relative costs to employers or what types of employers might be more or less affected by the costs of removing special rules and exemptions.

In this analysis, social costs refer primarily to those borne by the individual, but which have far-reaching effects on the well-being of families and communities. The social costs of exemptions and special rules include pressures on work-life balance, which may be particularly acute for employees with dependent children (those under age 16), and for single parents. Many of the social costs associated with ESA exemptions are those that make it difficult for employees to participate in family and community-based activities or collective holidays. There are also likely additional health costs associated with some ESA exemptions, such as those related to long working hours, as other research finds a clear link between working long hours and negative health outcomes including increased stress, illness, and risk of heart attack and stroke (see for e.g., Karasek and Theorell, 1990; Menzies, 2005; Lewchuk et al., 2011; Yates, 2015). A comprehensive cost-benefit analysis related to these and other social costs is beyond the scope of this study, and is limited by the available data.

Outline

The remaining analysis proceeds in four sections. Part One provides a portrait of the ESA, outlining the central principles underlying the legislation, specifically social minima, universality, and fairness. It also offers a brief description of ESA coverage in four key areas: wages (minimum wage and overtime pay), working time (daily and weekly hours of work, rest periods, eating periods), vacations and leaves (public holidays, vacation time/pay, and personal emergency leave) and job cessation (termination and severance), and details the numbers of employees fully and partially covered by ES in each of these areas. Against this backdrop, Part Two systematically describes and classifies exemptions and special rules using a four-fold analytic structure: those defined primarily by industry/occupation (professionals, agricultural employees, construction employees, liquor servers); those defined primarily by the

organization of working time within an occupation/industry (irregular working times, long-hour operations, continuous operation businesses); those defined primarily by an employee's status in their workplace (managerial/supervisory, short-tenure); and, those defined primarily by characteristics of the employer or employee (small firms, students). It then describes the demographic and job characteristics of the employees who are affected by each cluster of exemptions and special rules, and the costs of these exemptions to employees and society. Narrowing the analysis further, Part Three explores the effects of exemptions and special rules on historically disadvantaged workers in the labour force, again considering the costs to employees from these groups.⁸ Finally, informed by the preceding empirical analysis and findings, Part Four outlines a series of options for legislative and regulatory reform.

1. A Portrait of the ESA - Principles and Protections

At a normative level, ES aim to promote 'decent work.' In contemporary parlance, the concept of 'decent work' advanced by the International Labour Organization (ILO) refers to jobs that provide income and employment security, equity, and human dignity (ILO, 2002). This aim is the rationale for ILO standards (Vosko, 2002a; Vosko, 2010b).⁹ The notion of decent work also shapes regional labour standards agreements. For example, in North America, it informs the labour standards side agreement to the North

⁸ The economic costs to employees from historically disadvantaged groups also represent the collective costs of eliminating exemptions and special rules for those employers who employ people from these groups.

⁹ The notion of decent work is rooted in the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work* and the more recent 2008 *Declaration on Social Justice for Fair Globalization*. The 1998 Declaration defines these fundamental rights to be: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation (ILO, 2004). In 2008, the *Declaration on Social Justice for a Fair Globalization* built on this framework committing ILO member states to implementing the Decent Work Agenda through four interconnected objectives: (i) promoting decent work by creating a sustainable institutional and economic environment; (ii) developing and enhancing measures of social protection – social security and labour protection – which are sustainable and adopted to national circumstances; (iii) promoting social dialogue and tripartism; and (iv) respecting, promoting and realizing the fundamental principles and rights at work (ILO, 2008).

American Free Trade Agreement (NAFTA), the North American Agreement on Labour Cooperation, including its principles on ES, non-discrimination, prevention of, and compensation for, occupational injuries, and protection of migrant workers (Compa, 1999).

1.1 Principles

In considering the historical rationale for ES in Canada as a whole and in Ontario in particular, the pursuit of decent work reflects three principles: social minima, universality, and fairness. Social minima refer to “ensuring that workers benefit from minimum acceptable conditions of employment and ... actively promot[ing] the adoption of socially desirable terms and conditions of employment” (AO, 1978). Historically, promoting this principle is a primary rationale for ES legislation, which is meant to establish a legislative floor below which conditions of employment are not to fall. Indeed, early precursors to the ESA, such the Factory Acts in Ontario and elsewhere in Canada, and especially the UK Factory Acts and early international labour regulations, were motivated by three core concerns: namely, that the exploitation of socially disadvantaged groups, specifically the failure to “protect women and children” (see for e.g., contributions to Wikander et al, 1995), undermines social norms and threatens to interfere with the reproduction of the working class (on the resultant efforts to forge a particular gender contract in early international labour regulations, see, Vosko, 2010b: Chapter 1; on the gendered significance of the UK Factory Acts, see also Lewis and Rose, 1995; Fredman, 1997); that the failure to address widespread abuses in the workplace might lead to social unrest; and, that competition based on low standards threatened to weaken the dominant market position enjoyed by “good apples” (i.e., responsible employers). Today, the first of these concerns is notably a source of inspiration for the ILO’s Decent Work initiative (Vosko, 2002a) and the third is a mainstay in public discourse; together, such concerns thereby remain powerful arguments for decent employment standards. Thus, as noted above, while there is an important role for ES to play in mitigating inequalities of bargaining power, the normative argument for socially acceptable minimum standards is distinct and not easily contested

by analyses professing to demonstrate that social minima may be unavailing and/ or may contribute perverse results.

The goal of ensuring social minima underpinned the development of Ontario's ESA, as during its development ES legislation was viewed as a means of "raising wages, improving working conditions, and opening up employment opportunities" as a step towards addressing conditions stemming from insecure and low-wage work (AO 1965). This principle was recognized by the Supreme Court of Canada in *Machtinger* (1992), where they quoted an earlier lower court judgment, *Pickup v. Litton Business Equipment Ltd.* (1983): "the general intention of this legislation [i.e. the Act] is the protection of employees, and to that end it institutes reasonable, fair and uniform minimum standards."

The second principle is universality. This objective involves "extend[ing] the minimum benefits of the legislation to the greatest possible number of employees" (AO, 1975a). In terms of the development of ES in Ontario, the principle of universality supported the aims of establishing social minima and recognized that many employees do not have a strong position vis-à-vis their employer. Universality too is a principle recognized by the Supreme Court of Canada in *Machtinger* (1992) both by its reference to uniform standards above and by their articulation of an interpretive principle to be applied to the ESA: "[a]ccordingly, an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not." As is documented in this examination of Ontario's ESA, however, whereas universality is a stated goal of legislated standards, certain exemptions and/or special rules are built into legislation to exclude particular employee groups from coverage of some or all standards depending on the circumstances of their employment absent additional compensation or alternative arrangements. Pressure for special treatment under the ESA based on industrial conditions or occupational characteristics, which as demonstrated by the archival record has emanated largely from the business community, has served to counter the principle of universality. In addition to particular employee groups, the self-employed, who constitute a growing share of the labour force, are also excluded from ESA coverage. This wholesale exclusion is of particular

concern to the solo self-employed (those without employees) in highly dependent relations more akin to that of employees than true entrepreneurs (Fudge, Tucker and Vosko, 2002; Federal Labour Standards Review Commission, 2006).

Finally, as the historical record shows, the principle of fairness refers to both “safeguard[ing] workers against exploitation” and “protect[ing] employers against unfair competition based on lower standards” (AO, 1969a). Underlying the principle of fairness is the imperative to address the fundamental power imbalance that exists between employers and employees, particularly those who are without union representation and engaged in the most precarious forms of employment (Machtinger, 1992). In the years shortly after its development, Ontario’s ESA was conceived by government administrators as “the collective agreement of the unorganized or as anti-exploitation legislation” for those with little bargaining power (AO, 1974b). In this regard, the principle of fairness must be understood as supporting the two aforementioned principles of social minima and universality, whereby fairness takes a substantive rather than procedural form, insofar as it works in conjunction with these other principles. As the “collective agreement of the unorganized,” the standards of the ESA themselves were/are meant to create conditions for fairness. Thus, when examining the question of coverage, this principle requires that, where they are necessary, exemptions and special rules – i.e., differential standards for select employees – be assessed to ensure that working conditions do not fall below the social minima. Moreover, and in line with recent studies of the role of differential standards in addressing inequalities in the labour market (see Davidov, 2015), the principle of fairness could be advanced in support of standards that surpass the legislated minima in order to account for and counter historical disadvantage.

These principles, which are inter-related, contribute to, and are reinforced by, the workplace policy objectives of assuring basic labour standards, protecting against major down side risks associated with employment and mitigating against power imbalances and resulting abuses (Weil, 2007, 2014). Such workplace objectives translate into, and are shaped by, ES.

There is, however, a central tension in ES regulation: despite a stated commitment to social minima, universality, and fairness, ES have also been designed to

account for the interests of industry (Thomas, 2009). Since the inception of Ontario's ESA, policymakers have acted in accordance with the assumption that the "social and economic implications of minimum standards are inter-related, and must be largely determined by that which is economically practicable" (Department of Labour (DL), 1967, p. 567). Efforts to improve social minima through ES have been accompanied by efforts to "keep industry and to attract new industries to the province" (AO, 1968).

Exemptions to ES emerge in the context of this tension. Previous studies of exemptions in Ontario's ESA have demonstrated how exemptions accommodate the different conditions of particular industries and occupations, which include: irregular, on-call or discontinuous hours; the inability to measure hours worked; variable workloads due to uncontrollable factors; emergency or urgent work; a strong bargaining position or independent status of exempted workers; the high cost of meeting particular standards; uncertainty regarding the employment status of the workers; and the predominance of self-employed workers within the industry or occupation (Deweese, 1987; Kinley, 1987a).¹⁰ Exemptions also are intended to account for factors including: the degree of bargaining strength of the affected employee group; the level of earnings and overall working conditions; the impact of ESA coverage on the affected industry and employee group in question; and, the "ease of administration and enforcement" (AO, 1975b, p. 1). Aside from practical concerns regarding the need to account for a lack of uniformity in business practices in the province, Dewees (1987, p.7) suggests that exemptions may have stemmed from reluctance on behalf of policymakers to regulate minimum standards in a manner that would impinge upon private negotiations between employers and employees:

It is at least possible that whatever the motive for legislating the limits in the first place, the government does not, in fact, wish to disrupt private contractual arrangements with respect to hours of work and overtime. The Act gives the appearance of providing wide protection; the exemptions remove that protection...

¹⁰ Both Kinley (1987a) and Dewees (1987) note that neither the legislation itself, nor relevant and accompanying documentation, contain specific details of the rationales for exemptions.

The existence of exemptions points to a deeper tension in terms of the overall aims of ES legislation, calling into question the underlying principles of ES themselves. In the early years after the enactment of the ESA, a report from Ontario's Ministry of Labour (AO, 1976a) raised this question, indicating a lack of consensus regarding the overall purpose of the ESA itself:

Much of the controversy that exists around the question of exemptions stems from a lack of consensus as to whether particular standards represent socially acceptable minimal conditions or are regarded as conditions which are desirable so long as they can be enforced practically and do not impose severe hardships on employers – that is, whether we regard these conditions as absolutes or as items for which we are willing to make trade-offs with other social values.

Given that the system of exemptions and special rules has persisted since (and in some cases even pre-dates) the inception of the ESA, it is evident that the concern to minimize 'hardships' on employers remains a key principle in ES regulation. Yet, the analysis below shows that exemptions and special rules carry a significant economic and social cost that undermines the inter-related principles of social minima, universality and fairness, thereby countering the fundamental role and effectiveness of ES legislation.

1.2 Provisions of the ESA

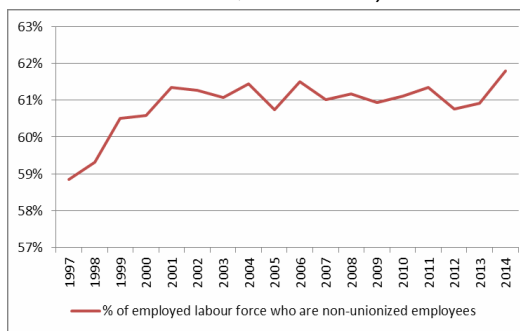
In Ontario, along with other protective laws, such as OHS, the ESA establishes minimum terms and conditions of employment for workers who are formally classified as employees. In practice, these terms are particularly important for non-unionized employees, who rely primarily on the ESA and other protective employment laws to structure their working conditions. The proportion of workers in the labour force who are formally employees (as opposed to the self-employed or unpaid family workers) has declined over the past several decades, from almost 90% in 1976 to only 85% in 2014. This rapid decline has resulted in a smaller proportion of Ontario workers who are formally covered by the ESA. In addition, declining rates of unionization mean that among workers who are formally covered, fewer have additional levels of protection that go beyond these regulatory minima. As a result, the total proportion of Ontario workers

who rely primarily on the ESA for workplace protection has grown from 59% in 1997¹¹ to 62% of workers in 2014, a phenomenon primarily affecting employees in the private sector given the higher rates of unionization among public sector workers.

Figure 1: Percentage of Employed Ontario Labour Force who are Employees (based on CANSIM Table 282-0012)



Figure 2: Percentage of Employed Ontario Labour Force who are Non-unionized Employees (based on CANSIM Tables 282-0012, 282-0078)



Employees in Ontario have characteristics that are slightly different than those who are not employees. Women are more likely to be employees than men, and young people (aged 15 to 29) are also more likely to be employees than older workers (see Appendix B, Table 1). Members of visible minority groups, as well as people living in low-income households are less likely to be working in a capacity where they are not formally employees. Among those workers who are not formally employees, 70% (12% of the labour force overall) are solo self-employed; that is, they do not have employees. The remainder are self-employed employers (29%; 5% of the labour force overall), and a very few are unpaid family workers (1%; 0.2% of the labour force overall).¹²

Among those who are employees in Ontario, there are also some key differences between those who are unionized and those who are not (see Appendix B, Table 1). Young employees are much less likely to be unionized than older employees. Not surprisingly, non-unionized employees tend to have lower hourly wages than unionized employees. Non-unionized employees are also more likely to work in small firms, and are less likely to be paid by the hour – a classification that captures both day labourers (and pieceworkers) as well as salaried employees. Finally, non-unionized employees

¹¹ The Labour Force Survey did not collect information about unionization prior to 1997.

¹² See Appendix A for a more detailed description of the population used in this analysis.

are more likely to report working paid overtime in the week before taking the LFS, though the same trend is not evident for unpaid overtime.

In addition to those workers outside of its scope, the ESA establishes different levels of coverage for different types of employees through both formal law and regulations that specify full and partial exemptions or special rules. As such, the universality of ESA coverage varies by standard. Before turning to the question of the specific clusters of exemptions and special rules found in the Act, therefore, an outline of the four central areas of ES coverage used in this analysis is warranted: employee pay, working time, holidays and leaves, and job cessation.

Employee Pay

The two ES provisions related directly to employees' pay are the standards for minimum wage and overtime pay. From January to May 2014, the year of the LFS data used in this analysis, the general minimum wage in Ontario was \$10.25 per hour, and from June onwards it was \$11.00 per hour.¹³ The general minimum wage applies to most employees, though a lower minimum wage exists for liquor servers and for students working under specific conditions. Overall, about nine out of ten Ontario employees (89%) are estimated to be fully covered by the minimum wage provisions of the ESA. But, almost 400,000 employees (8%) are exempt from minimum wage provisions, and an additional 178,000 employees (3%) have special rules for the minimum wage.¹⁴ Non-unionized employees are more likely to be fully covered by minimum wage provisions than unionized employees (see Appendix B, Table 2), but do not have the benefit of a bargaining agent in securing their wages.

To calculate the economic costs of ES special rules that permit a lower minimum wage, as well as exemptions to the minimum wage standard, we consider the situation of those employees who are exempt or have a special rule, and who report a usual hourly wage (including tips and commissions) below the general minimum wage.¹⁵ For

¹³ From June 1, 2014 to September 30, 2015, the general minimum wage was \$11.00 per hour, and from October 1, 2015 to the present it was \$11.25.

¹⁴ Detailed counts, percentages and costs can be found in the relevant tables located in Appendix B. In the text, rounded counts and percentages are reported for readability and to better reflect the level of precision that can be attributed to these estimates.

¹⁵ These calculations are not aimed at evaluating the potential effects of a minimum wage increase (adverse or favourable) on employment, changes to the costs of goods and services in those industries affected, or the relative purchasing power of employees.

each employee, we calculate the difference between their reported wage and the general minimum wage, plus the associated vacation pay for those additional wages, if the employees under consideration are so entitled. This difference is reported in terms of both the absolute and relative cost to the employee per week, based on their usual hours of work.

Among those employees with minimum wage special rules, almost two in five (38%) report actually earning less than the general minimum wage. The most notable special rules for minimum wage are those that permit the payment of a lower wage for liquor servers, who rely considerably on their earnings from tips and for students under age 18 who are enrolled in (or returning to) full-time studies, and who work no more than 28 hours per week. Among the approximately 45,900 liquor servers in Ontario, approximately 9,000 (20%) report earning less than the general minimum wage, even after reported tips and commissions. For these employees, the median cost of this exemption – the difference between their reported wage and the general minimum wage – is approximately \$21 a week, based on their usual hours of work. Across all liquor servers, the cost of this special rule is approximately \$258,900 in lost wages each week that are not adequately compensated for by tips. Student employees are also more likely to report earning less than the general minimum wage. Among students who are affected by the special rules for a student minimum wage, 52,000 (59%) report earning less than the general minimum wage, suggesting that employers are taking advantage of this provision to pay students a lower hourly wage. Since students work relatively few hours each week, the individual cost of this exemption is lower: a median of \$8 per week per employee, but because it affects more employees, the weekly cost to all student employees in Ontario is approximately \$482,000. Taken together, the special rules relating to minimum wage for liquor servers, and others such as harvesters and homecare employees who are homemaking or providing personal support services,¹⁶ cost the approximately 63,000 affected employees a total of \$804,000 a week as a

¹⁶ Harvesters have special rules related to minimum wages if they are paid by the piece, instead of by the hour. Homecare workers have special rules related to the minimum wage if they work longer than 12 hours a day. Neither situation is specifically identifiable in the data; thus, in these calculations, harvesters who are not paid by the hour and homecare workers are considered to be affected by these special rules if they report earning less than the minimum wage, based on their usual weekly hours of work and their usual weekly earnings.

result of not being entitled to the general minimum wage (see Appendix B, Table 3). The elimination of minimum wage special rules would amount to a median wage increase of approximately 7% for those employees affected.

Although there are some occupations with minimum wage exemptions – notably professionals and provincial employees – most of these employees report making at least the minimum wage. Only 4% of those who are exempt from minimum wage provisions report making a wage lower than the minimum, most commonly real estate salespersons and farm employees. The median weekly cost of minimum wage exemptions is \$10.40 per affected, exempt employee per week. Notably, however, there is substantial variation in the cost of minimum wage exemptions to each affected employee, depending on the number of hours worked and how low actual wages are in practice. Overall, the total cost of minimum wage exemptions to employees is approximately \$568,000 per week, and together, minimum wage exemptions and special rules cost employees approximately \$1.4 million per week in lost potential earnings.

Overtime pay is 1.5 times an employee's regular wages and, for most employees, is mandatory for each hour after s/he has worked 44 hours per week. Employers and employees may agree in writing on paid time off in lieu of overtime pay, and the rate of time off is 1.5 hours off for every hour of overtime worked. Overtime is calculated on a weekly basis or longer if an averaging agreement exists between the employer and employee. In regards to overtime pay, 84% of Ontario employees are estimated to be fully covered by the provisions of the ESA, whereas almost 794,000 employees (15%) are exempt from overtime provisions, and an additional 56,000 (1%) are affected by special rules.

To calculate the direct economic costs of special rules and exemptions to the overtime standard, we consider those employees who are exempt or have a special rule, and who report usually working more than 44 hours a week, and who did not report being paid for overtime hours.¹⁷ For the hours beyond 44 that would have been

¹⁷ This group includes those employees who only reported being paid for overtime beyond the threshold specified by the relevant special rule.

Since these calculations are based on employees' 'usual weekly hours', they likely provide an underestimation of these costs, since they do not account for the lost earnings of employees who

compensated at 1.5 pay in the absence of a special rule or exemption, we calculate the lost wages to employees: 0.5 times the usual hourly rate,¹⁸ for the usual number of hours beyond 44 per week, plus the associated vacation pay for those additional wages, if they are so entitled. Employees with special rules permitting them to work up to 50 hours per week¹⁹ are assumed to have been compensated with premium pay if they reached this threshold, and thus the lost premium pay wages are calculated for the hours of work between 44 and 50.

Special rules related to overtime pay typically provide a higher number of weekly hours that must be worked before an employee is eligible for overtime pay. For these employees, the cost of the special rule is the lost premium wage for those additional hours (typically six) that are usually worked each week. Among employees with special rules for overtime more than half (54%) report that they usually work more than 44 hours a week, 47% usually work more than 50 hours a week. For those with differential overtime thresholds who usually work overtime hours each week, the average cost is \$59 per week. Overall, this totals to about \$1.8 million per week in lost potential wages for Ontario employees as a result of overtime special rules. Based on these data, the removal of these overtime special rules would amount to a 5% weekly wage increase for those employees affected.

Among employees who are exempt from the overtime provisions of the ESA, only 8% report that they usually work more than 44 hours a week, but fully one in five (21%), report that they worked more than 44 hours in the week prior to taking the survey. Among those who are exempt from overtime provisions, those who were most likely to report that they usually work overtime included fishers, taxi cab drivers, growers of

occasionally work overtime hours. The costs to employees who have overtime averaging agreements is also excluded from these estimates, since the LFS does not collect information about such agreements.

¹⁸ Because the data gathered in the LFS combines wage earnings with tip/commission earnings, the estimation of the costs of overtime exemptions and other exemptions calculated based on an employee's 'regular wages' are inflated for the 7% of employees who have tip/commission income, since their regular earnings cannot be separated from their tip/commission earnings. The magnitude of the cost inflation depends on what proportion of each employee's earnings result from tips/commissions; for most employees, we anticipate that this proportion would be relatively small.

¹⁹ Highway transport truck drivers are eligible for overtime pay after 60 hours per week, whereas local cartage drivers are eligible for overtime pay after 50 hours per week, but it is not possible to distinguish between these two groups definitively in the available data; thus, all truck drivers are treated as if they have a 50 hour threshold for overtime pay. As a result, the lost potential earnings for truck drivers are likely underestimates.

trees/ shrubs/ flowers, harvesters, and employees in the film and television industry, as well as physicians/surgeons and lawyers. Whereas the cost of overtime special rules is constrained because overtime premium pay is usually required after 50 hours of work, overtime exemptions have no such restriction. As a result, the costs of overtime exemptions to employees are much higher. Among all employees who are exempt from the overtime pay provisions and who report usually working more than 44 hours each week, the median cost is \$80 per week, or approximately 6% of exempt employees' weekly pay. Across all Ontario employees, these overtime exemptions provide a substantial cost-savings to employers: about \$7.7 million per week in overtime premium pay that is not required.²⁰ This figure would likely increase substantially if it took into account not only those employees who usually work overtime, but also those who worked overtime on an intermittent basis. Taken together, overtime exemptions and special rules cost Ontario employees approximately \$9.5 million per week in lost premium pay.²¹

Working Time Provisions

The second set of ESA provisions we analyze are those related to working time. One grouping of provisions in this area limits employees' daily and weekly hours of work, while other groupings set out minimum rest periods and eating periods. The daily limit for most employees is 8 hours, or longer if the number of hours are part of an established regular workday, and the weekly limit is 48 hours. A written agreement and approval from the Ministry of Labour is required for hours in excess of weekly limits. The minimum daily hours free from work for most employees is at least 11 consecutive hours and, unlike the standard for the number of daily and weekly hours, cannot be exceeded through an agreement.²² Employees must receive 8 hours off between shifts but this provision does not apply if the total hours worked in both shifts is fewer than 13, and this provision can be exceeded when there is a written agreement between the employee and employer. Weekly time off work must be at least 24 consecutive hours

²⁰ The costs of overtime exemptions is equally high among both professional and non-professional employees; in fact, even non-professional employees have a median cost of \$82 per week, or approximately 6% of weekly pay.

²¹ We acknowledge that some employees who are exempt from overtime pay may be compensated implicitly with higher hourly wages than those without exemptions, though it is impossible to address this tendency within the data available.

²² This rule does not apply to employees on call and called into work.

each work week or 48 consecutive hours in a two-week period, and can only be exceeded in exceptional circumstances (MOL, 2015a).²³ Finally, employees are entitled to an unpaid eating period of 30 minutes free from work every five hours.²⁴

Overall, about four out of five employees (78%) are estimated to be fully covered by the working time provisions of the ESA. The provision with the highest level of coverage is for eating periods, for which nine out of ten (91%) of employees are fully covered, and the provision with the lowest level of coverage is for daily rest periods (with 78% having full coverage). For each of the remaining working time provisions on hours of work, time off between shifts, and weekly/bi-weekly rest periods, about 80% of employees are fully covered by the provision. The working time provisions of the ESA include few special rules, and where they are present, they affect only a very small proportion of employees. In general, working time special rules are more likely to apply to unionized employees, meaning that non-unionized employees are more likely to be fully covered by working time provisions than unionized employees.²⁵

It is difficult to quantify the economic cost of working time provisions, though the effect of long hours, shorter time off between shifts, and reduced daily and weekly/bi-weekly rest periods may have substantial social costs in the forms of stress and health and safety, for example (Anxo and O'Reilly, 2000; Basso, 2003; Thomas, 2008; Hermann, 2015). To consider the social costs related to working time exemptions, we factor in whether working time exemptions are associated with taking part-week absences, and the family status of those with working time exemptions.

Employees with an exemption for at least one of the ESA provisions related to hours of work, time off between shifts, daily rest periods, and weekly/bi-weekly rest periods were more likely to report an employee-initiated part-week absence²⁶ from work

²³The “exceptional circumstances” exception also applies to rules regarding daily rest and rest between shifts and rules governing maximum daily and weekly hours.

²⁴ The 30 minutes may be split into two 15-minute breaks if there is an agreement between the employer and employee.

²⁵ This finding, however, should be interpreted with caution as the data available provide no information on the degree to which special rules on working time are mitigated by collective agreements. Moreover, it is important to note that due to declining union power, certain provisions in collective agreements increasingly reflect minimum legislated standards (Vosko and Thomas 2014).

²⁶ Employee initiated absences refer to those for holidays (legal or religious), vacations, weather, illness, or personal/family responsibilities, including childcare and elder care. This analysis does not capture

in the week prior to taking the survey. Overall, only 19% of employees without working time exemptions or special rules report an employee-initiated absence in the previous week, compared to 24% of employees with at least one working time exemption. Employees with working time exemptions were much more likely to report taking absences for weather, and slightly more likely to report taking absences because of a legal or religious holiday. For employees with working time exemptions, weather-related absences were particularly prominent among those working in road construction or other types of construction, harvesting or other farm labour, and landscape gardening.²⁷ Working time exemptions may be particularly challenging for employees with children. Notably, employees with children under the age of 16 were more likely to be exempt from ES provisions related to hours of work, time off between shifts, daily rest periods, and weekly/bi-weekly rest periods, although this tendency does not extend to single parents, who are slightly more likely to be working in jobs where they are fully covered by the working time provisions of the ESA.

Holidays and Leaves

A third set of ESA provisions are related to holidays and leaves. These provisions include public holidays, personal emergency leave, and vacations. The ESA includes provisions allowing most employees not to work on Ontario's nine public holidays and to receive holiday pay. Employees can agree to work public holidays and receive a premium pay of 1.5 times their regular wage, or they can choose another day off and receive holiday pay for that day.

Only about seven in ten Ontario employees (72%) are estimated to be fully covered by the public holiday provisions of the ESA, making it one of the least universal standards. About 1,000,000 employees (20%) are covered by special rules, primarily those that mean they can be required to work on a public holiday and receive premium pay or another day off in lieu. A further 427,000 employees (8%) are fully exempt from the public holiday provisions of the ESA. As public holiday exemptions and special rules

employees with absences of one week or longer, which are more likely to be associated with long-term disabilities or illnesses.

²⁷ In this analysis, we have classified weather as an 'employee-initiated' absence, since employees may be absent because weather makes it difficult for them to reach their place of work. Some of these weather-related absences, however, may reflect that a job cannot be completed in specific weather conditions, and thus could also be initiated by the employer or a supervisor, and not the employee themselves.

are more likely to apply to unionized employees, non-unionized employees are more likely to be fully covered by public holiday provisions than unionized employees but, once again, do not have the benefit of an additional bargaining agent in securing their entitlements.

The economic costs to employees that result from exemptions from the public holiday standards are based on the calculation of public holiday pay set out by the Ministry of Labour. For employees who receive public holiday pay, this amount is calculated as four weeks of wages and vacation pay (if entitled), divided by 20, for each of the nine public holidays per year. The cost calculations in this analysis are premised on the assumption that those employees who are exempt from this standard do not receive this form of pay. For those employees exempt from the ESA's public holiday provisions, this calculation translates into an average loss of \$244 dollars for each of Ontario's nine public holidays each year; across all Ontario employees, the public holiday exemptions are associated with about \$104 million in lost wages for each holiday day. For this analysis, the yearly cost of public holiday is divided by 52 weeks in order to estimate a weekly cost to employees as a result of being exempt from public holiday pay. The public holiday exemptions translate into an average weekly loss of \$42 per employee; the elimination of these exemptions would result in a 3.5% increase in affected employees' pay.

There are also social costs associated with public holiday pay special rules and exemptions. The inability to spend time with family or participate in collective leisure activities applies to both those who are completely exempted from the public holiday provisions, as well as those with special rules. The requirement to work on statutory holidays may be particularly detrimental for those with children, since schools are not open on public holidays, and hence child care may need to be arranged. Employees who are fully exempt from the public holiday provisions are slightly more likely to have children under 16, though this is neither the case for those with special rules nor for single parents. Whereas 28% of employees overall have children under 16, 42% of those who are exempt from public holiday provisions have children under 16.

Separate from public holidays, the ESA provides most employees with an entitlement of two weeks of vacation after 12 months of job tenure. It also stipulates that

employees receive vacation pay equal to 4% of gross wages. Employees with less than 12 months of job tenure are treated as if they have modified coverage in this regard, since although they are entitled to or are accruing vacation pay, they are not entitled to any time away from work. In addition, harvesters are not entitled to a vacation with pay unless they have been employed by the same employer for 13 weeks or more, though this rule affects only a very small proportion of employees overall. About three quarters of Ontario employees (73%) are estimated to be covered fully by the ESA provisions on vacation pay, whereas about 1,000,000 or 20% of employees have modified coverage and a further 357,000 (7%) are fully exempt.

The economic cost of exemptions to the vacation pay/time provision of the ESA is based on the additional 4% of income that employees are entitled to receive as vacation pay, which those who are exempt do not receive. This is represented as a weekly cost to employees, based on their usual wages and their usual hours of work each week. Across all Ontario employees, vacation pay exemptions total approximately \$16 million dollars in lost potential earnings per week, with an average weekly loss of \$56 per exempt employee.

In addition to the economic costs of exemptions, employees who are not fully covered by the vacation pay provisions of the ESA may find it more difficult to spend a protracted period of leisure time with their families or friends. In addition to public holidays and vacations, personal emergency leave not exceeding ten days each calendar year is available to employees who work in establishments that regularly employ 50 or more people.²⁸ Reasons for personal emergency leave are illness, or other urgent matters such as the death or illness of an immediate family member. Overall, about three-quarters (74%) of Ontario employees are estimated to be fully covered by the personal emergency leave provisions of the ESA. About 8% of employees have special rules for emergency leave, largely professional employees who are not permitted to take personal emergency leave if doing so would constitute professional misconduct or dereliction of duty. An additional 971,000 employees – or 19% – are exempt from the personal emergency leave provisions, since they work in

²⁸ Data limitations mean that it is only possible to identify employees who work in firms with fewer than 20 workers. As a result, the effect of personal emergency leave exemptions will be underestimated, since they do not include employees of firms that employ 20-50 people.

small firms. Among non-unionized employees, the proportion exempt from the personal emergency leave provisions of the ESA is substantially higher, at 24%, since non-unionized employees are more likely to work in small firms. Exemptions from the personal emergency leave provisions lead to social costs for employees. Specifically, the inability to take personal emergency leave can cause substantial hardship to those who are parents or have other unpaid caregiving responsibilities, and who may not be able to take time off when a dependent is ill.

Termination and Severance

The final set of ESA provisions subject to exemptions and special rules relate to termination pay and severance pay. Termination notice/pay is designed to provide employees with advance notice of termination or monetary compensation in lieu of notice. Thus, termination pay is available for employees who were entitled to, but did not receive, written notice of termination, and it is calculated as one week of regular wages multiplied by the number of weeks of written notice the employee is entitled to on the basis of his or her job tenure (for employees who have been employed for three months or longer) up to a maximum of eight weeks. Severance pay, designed to provide compensation for the loss of seniority and job benefits, is available to former long-term employees of an establishment with a payroll of at least \$2.5 million, or of an establishment that laid-off at least 50 employees in a period of six months (MOL, 2015a). Severance pay is calculated by multiplying the regular weekly wage of an employee by the number of years of employment (and the months of employment divided by 12 for years not completed) up to a maximum of 26 weeks. Temporary help agency employees also have special rules that limit their access to termination and severance pay, regardless of their job tenure.

Nine out of ten (91%) of Ontario employees are covered fully by provisions for termination pay/notice under the ESA, whereas less than 1% are affected by special rules²⁹ and 9% are fully exempt. Employees exempt from the termination pay/notice provisions of the ESA are estimated to lose out on a median amount of roughly \$3,200 or its working time equivalent (with notice). These employees include those with less

²⁹ Employees who work in shipbuilding and repair have a special rule that depends on the presence of a supplementary unemployment benefit plan.

than three months of job tenure, and those construction workers with occupational exemptions. This amount of potential loss in compensation is substantial, especially considering that its absence accompanies job loss.³⁰

Consistent with the decline in job tenure since the 1980s, only about two out of five (39%) Ontario employees are covered fully by the ESA's severance pay provisions, whereas just over 60% – or 3,164,000 employees – are exempt. These employees include those with less than five years of job tenure, and those construction workers with occupational exemptions.³¹ Very few employees have special rules that apply to the severance pay provision of the ESA: primarily temporary help agency employees with five years of service or longer (the number of respondents in this situation was too low to be independently reported and maintain confidentiality). Furthermore, only long-tenure employees in the construction industry are exempt from the severance pay provisions on the basis of their occupation.

Overall Coverage

Taking into account all of the various exemptions outlined above, excluding severance pay provisions, only about two out of five (39%) – or just over 2,000,000 – Ontario employees are fully covered by the provisions of the ESA.³² A further 1,200,000 or 23% have some modified coverage, but no exemptions, while another 2,000,000 or 38% are exempt from at least one ESA provision. Non-unionized employees are more likely to be exempt from one or more ESA provision: 42% of non-unionized employees have at least one exemption, compared to only 26% of unionized employees. When severance pay is included, full coverage under the ESA extends to only about a quarter (24%) of all Ontario employees, with 7% of employees having some modified coverage, but no exemptions. Notably, when severance pay is taken into consideration, a total of 3,585,000 Ontario employees, or 69%, are exempt from at least one ESA provision. Taken together, these results clearly challenge the notion that ESA sets out a series of universal social minima.

³⁰ This estimation is based exclusively on what is lost under the ESA; of course, some workers may be entitled to contractual or common law entitlements that, to different degrees, may offset these losses.

³¹ In the absence of payroll information in the data, employees of firms that employ fewer than 20 people are also considered ineligible for severance pay, given that they are unlikely to meet the \$2.5 million threshold.

³² When the total Ontario labour force – including the self-employed and unpaid family workers – is taken into consideration, only one third (33%) of workers are fully covered by the ESA.

For the one in ten (10%) Ontario employees who experience a direct economic loss as a result of ES special rules and exemptions, the cumulative costs are substantial. Taking into consideration the exemptions and special rules associated only with minimum wage, overtime pay, holiday pay, and vacation pay, the median estimated weekly cost to employees is \$67.³³ The elimination of these special rules and exemptions would be the equivalent of increasing these employee's wages by a median of 8%. Taken together, the cumulative costs of ES exemptions and special rules for minimum wage, overtime pay, holiday pay, and vacation pay are associated with a loss of approximately \$45 million to Ontario employees each week.

While a detailed consideration of the merits of each ES exemption or special rule is beyond the scope of this inquiry, in certain cases exemptions from the ESA are justifiable (e.g., special rules which may require hospital employees to work on public holidays). Yet there are a host of other ESA exemptions that have a much weaker justification in terms of either the public good or business necessity, and that have been controversial (e.g., overtime and working time exemptions for information technology employees, among others),³⁴ thereby giving weight to the critique that ES exemptions erode the legislative intent behind the ESA (LCO, 2012). In what follows, we develop a systematic clustering of exemptions in order to more closely examine their respective impacts and implications.

³³ For minimum wage and overtime pay, this cost is based only on employees who report earning below the general minimum wage, based on their weekly pay and hours of work, or who report working unpaid overtime hours, respectively. For public holiday pay and vacation pay, those employees who are exempt are assumed not to receive these payments (however, the data do not make it possible to assess whether or not this is the case in practice).

³⁴ Employer associations continue to advocate for differential coverage for employees in their respective industries. For example, the Canadian Restaurant and Foodservices Association recently lobbied the provincial government to maintain the lower minimum wage for liquor servers and students (Canadian Restaurant and Foodservices Association, 2010). The Ontario Federation of Agriculture, Ontario Greenhouse Vegetable Growers and the Ontario Fruit and Vegetable Growers' Association recently pressed for a separate minimum wage for farm workers in light of the recent increase to the minimum wage (Antonacci, 2014).

2. Clusters and Categories of ES Special Rules and Exemptions

In this section, we turn our focus to a more detailed description and understanding of the specific special rules and exemptions found in the ESA regulations. We pursue this detail through an analysis of clusters, each of which characterizes a specific pattern of exemptions, which we divide into four distinct analytic categories. Our chosen clusters and analytic categories are not inherent to the ESA. Rather, they reflect an effort to group and compare conceptually the exemptions and special rules that have been implemented in a more piecemeal way over time. The first category of exemptions embedded in the ESA encompasses those that relate primarily to an employee's industry or sector of work. These include the constellation of special rules and exemptions relating to professional/white-collar employees, agricultural employees, construction employees, and liquor servers. The second category of exemptions addresses those related to the organization of working time in specific occupations. Although these exemptions tend to be occupationally specific, they are addressed in four clusters: irregular working hour occupations; long working hour occupations; combined long and irregular working hour occupations; and continuous working hour operations. A third category of exemptions relates to (covered) employees' status within their workplace, regardless of their labour force locations. The main clusters in this category are related to managerial/supervisory status, and job tenure, including short tenure and temporary agency employees. The final category of exemptions covers those associated with characteristics that are inherent to an employer or an employee, specifically firm size and student status.³⁵

³⁵ Four occupation-specific sets of special rules are not discussed below as they do not fit the general pattern of major exemptions. Homeworkers are entitled 110% of the minimum wage, even if they are a student, and the employers of homeworkers have additional record keeping requirements, and must convey certain work requirements and payment information to homeworkers in writing. Domestic workers employed by a householder have a special rule related to the calculation of the minimum wage when a room is provided; as well, the householder must convey the regular hours of work and hourly rate of pay to the employee in writing. Commissioned automobile salespeople have a special rule allowing the calculation of the minimum wage to be reconciled over a three-month period. Finally, a special rule exempts employees working in shipbuilding and repair from termination notice/pay if they are covered by a supplementary unemployment benefit plan, and this is agreed to by the employee or their union in writing.

2.1 Exemptions and Rules Related to Industry or Sector

One series of exemptions and special rules embedded in the ESA regulations are defined primarily by industry or sector of work. These exemptions, most of which are detailed in regulation 285/01 of the ESA, apply to employees in a diverse range of occupations and have been incorporated into the ESA over time and on a piecemeal basis (LCO, 2012, p. 42). In these cases, the differences created by executive action in coverage between occupations within each industry or sector are of particular interest. Below we address four main industry or sector-based clusters of exemptions: i) professional and white-collar employees; ii) agricultural employees; iii) construction employees; and iv) liquor servers.³⁶

Professional and White-Collar Employees

Some professional and white-collar employees are exempt from all of the ESA standards related to wages, overtime, working time, vacations and public holidays, and, among those standards being considered in this study,³⁷ covered only by the termination and severance provisions of the Act. These exemptions apply to a range of medical and paramedical professionals – physicians and surgeons, dentists, psychologists, pharmacists, optometrists, physiotherapists, massage therapists, naturopaths, chiropodists, chiropractors, and veterinarians – as well as to a select group of white-collar professionals – lawyers, architects, engineers, surveyors, public accountants and teachers. These employees are implicitly denoted as 'professionals' in the Act through the inclusion of a special rule indicating that they are not entitled to personal emergency leave when “taking the leave would constitute an act of professional misconduct or a dereliction of professional duty.”³⁸ In addition to these professionals, two further groups of white-collar employees are exempt from all of the ESA standards under consideration in this study except those related to termination and

³⁶ The number and share of employees in each group are shown in Tables 4 & 5.

³⁷ It should be noted that professionals are covered by other general provisions of the ESA, including protection for leaves and equal pay for equal work, which are not under consideration in this study.

³⁸ Other workers who are marked as professionals by the provision limiting personal emergency leave where it might constitute professional misconduct or dereliction of duty remain fully covered by the ESA. These include: audiologists, dental hygienists, dental technologists, denturists, dieticians, medical laboratory technologists, medical radiation technologists, midwives, nurses, occupational therapists, opticians, respiratory therapists, and speech-language pathologists.

severance: real estate salespersons and brokers and commissioned travelling salespersons.

The rationales provided for these exemptions vary considerably and relate to either arguments surrounding occupational status or the nature of the work performed. For example, with regards to professionals, archival records show that an overarching rationale provided by the Ministry of Labour historically for their exemption is that “workers would consider coverage as an infringement on their status in the occupational hierarchy” (AO, 1974a). In addition, because of their generally high levels of education and strong bargaining position in the labour market, it was presumed that professionals would not likely be subject to exploitation. During the review of the professional exemption in the 1970s, professional associations largely requested that their exempt status remain unchanged, a position that the Ministry of Labour has maintained. Yet, for a variety of reasons including the waning of occupational prestige, factors that impact professional autonomy in some occupations, as well as pressures in the labour market, this rationale for the exemption of professionals would appear in need of reconsideration. While some exempt professionals retain relatively high occupational prestige, such as physicians, dentists and lawyers, other exempt professionals have substantially lower occupational prestige, such as surveyors, chiropodists, naturopaths and massage therapists.³⁹ The exemption for both real estate salespersons and commission salespeople stems from the commission-based nature of the work (i.e., ‘no sales, no pay’), where the salesperson largely establishes their own hours of work and does not work on an employer’s premises. Exemptions from vacation with pay have been maintained as, in the years following the introduction of the ESA, industry representatives consistently lobbied for that exemption, claiming that commission scales would be adjusted should ESA coverage be extended, meaning there would be no net gain for salespeople (AO 1974a).⁴⁰ The feasibility of enforcement was also considered by the Ministry as a factor that justifies the exemption of commission-based salespeople (AO, 1975b).

³⁹ For rankings of occupational prestige in the Canadian context, along with a discussion of the challenges associated with determining occupational prestige, see Boyd (2008).

⁴⁰ Coverage under vacation pay was extended to commission salespeople briefly in 1970-71, during which time some experienced reduced commission rates to make up for the benefit (AO, 1975d).

Overall, about one-third of people in the professional occupations exempt from the ESA are self-employed. The effects of these ESA exemptions on each individual profession are inconsistent because of the widely different proportions of self-employed within them. Whereas some professions are marked by high levels of self-employed workers, who are by definition excluded from protection under the Act, other occupations have high-levels of employees. For instance, almost all optometrists and real estate salespeople report that they are self-employed, as do more than half of physicians. In contrast, teachers, pharmacists, and engineers are much more likely to be employees.

Overall, professionals affected by ESA exemptions constitute about 5% of Ontario employees. Professional employees affected by ESA exemptions are more likely to be unionized than employees overall; almost half of such professionals are unionized or covered by a collective agreement (46%; see Appendix B, Table 5). As expected, compared to employees overall, exempt professionals tend to have full-time, permanent employment, with long job tenure, and work in larger firms. As professionals, they are less likely to be paid by the hour, and more likely to earn higher wages, than employees overall. They are less likely to report working paid overtime but more likely to report working unpaid overtime, an expected result given this groups' exclusion from overtime provisions.

Not surprisingly, on account of the educational credentials required for many professional occupations, exempt professionals tend to be older than employees overall. Because of both their own wages, and because they are likely to partner with others with a similar socio-economic status, they also tend to be a part of high-income families. Notably, exempt professionals are also more likely to have children under the age of 16, suggesting that their exemptions from working time provisions may affect their family life. Among the exempt professionals, those who are more likely to have children under 16 include: optometrists, chiroprodists or naturopaths, pharmacists, chiropractors, teachers, and physiotherapists.

Agricultural Employees

In general, agricultural employees are exempt from the standards related to overtime pay, working time (including hours of work, eating periods, time off between

shifts, daily rest periods, and weekly/bi-weekly rest periods), and public holidays. Harvesters become eligible for public holiday pay if they have been employed by the same employer for at least 13 consecutive weeks, but they are then treated as if they are employed in a continuous operation business, which means that an employee may be required to work on a public holiday (but will receive either premium pay, or an alternate day off with public holiday pay). Harvesters are also only entitled to a vacation with pay if they have been employed by the same employer for 13 weeks or more, though unlike for public holiday pay, the weeks do not need to be consecutive. Farm employees and fishers have fewer entitlements under the ESA: they are neither eligible for minimum wage nor vacation time/pay. A special rule applies to harvesters paid by the piece, such that the piece rate must be generally recognized as high enough that an employee using reasonable effort could earn at least the minimum wage (harvesters also have special rules related to the provision of accommodations as part of their payment).

Scope of ESA Coverage for Agricultural Employees

| | Wages | | Working time (all standards) | Holidays & Vacation | | Termination & Severance |
|--|-----------|--------------|------------------------------|---------------------|--------------------|-------------------------|
| | Min. Wage | Overtime Pay | | Public Holidays | Vacation Time/ Pay | |
| Farm Employees* | X | X | X | X | X | -- |
| Fishers | X | X | X | X | X | -- |
| Harvesters of Fruit/Vegetable or Tobacco | S | X | X | S | S | -- |
| Flower Growing | -- | X | X | X | -- | -- |
| Growing, Transporting & Laying Sod | -- | X | X | X | -- | -- |
| Growing Trees & Shrubs | -- | X | X | X | -- | -- |
| Horse Boarding & Breeding | -- | X | X | X | -- | -- |
| Keeping of Furbearing Mammals | -- | X | X | X | -- | -- |

-- indicates full coverage, S indicates a special rule, and X indicates an exemption

* other than those engaged in Harvesting or Horse Boarding/Breeding

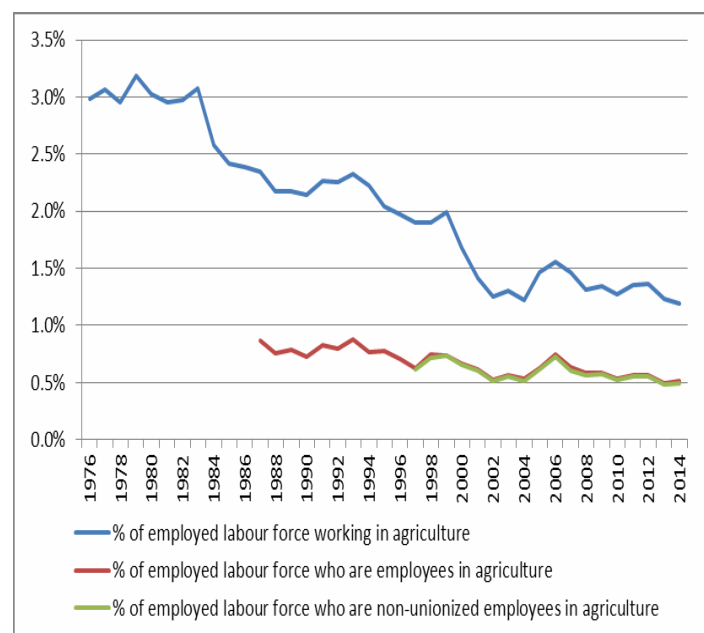
The exemption of agricultural employees was established in the 1944 Hours of Work and Vacations with Pay Act (HWVPA) (Thomas et al., 2015). Agricultural employees were first exempted via the wartime industry exemption. When that exemption was terminated following the cessation of conflict, farm employees were

included in a new regulation governing occupational exemptions effective as of 1945. In 1952, persons employed in the cultivation of flowers, fruits, or vegetables were added to this regulation. The primary rationales for these exemptions include variability of weather, perishability of products, difficulties in recording hours, and cost factors (AO, nd; Kinley, 1987b). However, in past reviews of the agricultural exemption, the Ministry of Labour has also indicated that improving statutory protection of farm employees should: eliminate the discriminatory status of farm employees under the legislation (created by exemptions); eliminate unfair wage competition in the industry; provide assurance of minimum earnings and working conditions; and, improve the status of farm workers (AO, nd).

The proportion of the employed Ontario labour force working in agriculture has been dropping steadily, from about 3% in 1976, to just above 1% in 2014. Notably, these statistics likely do not include the experiences of temporary foreign workers in this industry, who are not clearly captured in Canada's official labour force statistics but nevertheless represent a sizable subset of agricultural workers well-documented to confront high levels of labour market insecurity (Suen, 2001; Sargeant and Tucker, 2010).⁴¹

Only about two out of every five agricultural workers (41%) are formally employees, and thus have access to any protection under the ESA; the remainder are

Figure 3: Percentage of Workers, Employees, and Non-Unionized Employees in Ontario Working in Agriculture (based on CANSIM 282-0002, 282-0008, 282-0078)



⁴¹ Statistics Canada (2015) notes that the LFS does not contain questions asking whether someone is a temporary foreign worker. If contacted for the LFS, temporary foreign workers will be included only if they identify the selected dwelling as their usual place of residence.

self-employed (see Figure 3).⁴² Twenty percent of the agricultural employees affected by ESA exemptions and special rules earn the minimum wage or less, and an additional 43% earn hourly wages of less than \$15 (but more than the minimum wage).

Predictably, on account of the seasonal character of work in this sector, more than a quarter (27%), hold temporary positions and hence job tenure among this group tends to be shorter than employees overall. Furthermore, fully 50% of the employees in this cluster work in firms of fewer than 20 employees, a notable industrial characteristic. Agricultural employees are disproportionately men and more likely to be young, patterns that apply equally to the non-unionized subset of employees. Vis-a-vis their family status, they are less likely to have children, and not surprisingly given their low wages, they are more likely to live in low-income families.

Construction Employees

Construction employees are subject to a range of ES exemptions and special rules, which vary based on the infrastructure being built/created, and whether the task is classified as 'construction' or 'maintenance' related. Different ES provisions are also in effect for non-construction employees who work on construction sites. Given the near universality of occupational coverage for termination and severance, the most notable feature of this cluster is the exclusion of construction employees from both the termination and severance provisions of the Act and the exclusion of maintenance employees from its severance provisions. Employees in construction (all types) and road maintenance workers are also exempt from the ESA's working time provisions related to hours of work, time off between shifts, daily rest periods and weekly/bi-weekly rest periods. Additionally, this group of employees is not entitled to public holidays or public holiday pay if they receive 7.7% or more of their hourly wages for vacation and holiday pay. There are also a complex series of special rules related to when many construction employees become eligible for overtime pay. Employees engaged in sewer/watermain construction or maintenance, sewer/watermain construction site guarding, or work that is not maintenance work on a road maintenance site, are eligible for overtime after 50 hours a week. Employees engaged in road construction and

⁴² In figures 3, 4 & 5, workers, or the employed labour force, include employees, the self-employed, and unpaid family workers.

maintenance, or work that is not construction work on a road construction site have different overtime rules depending on their activities: if they are engaged at the site of road construction in relation to streets, highways or parking lots, they are entitled to overtime pay for hours worked in excess of 55 in a work week whereas if they are engaged at the site of road construction in relation to structures, such as bridges or tunnels, they are entitled to overtime pay for hours worked in excess of 50 in a week. In either case, limited averaging of hours over two successive work weeks is permitted without Ministerial approval.

Scope of ESA Coverage for Construction Employees

| | Wages | | Working Time | | Holidays & Vacation | | Termination & Severance | |
|---|-----------|---------------|-------------------------------------|----------------|---------------------|----------------|-------------------------|---------------|
| | Min. Wage | Overtime Pay | Hrs of Work, Time Off, Rest Periods | Eating periods | Public Holidays | Vac. Time/ Pay | Term. Notice/ Pay | Severance Pay |
| Road Construction | -- | S (55/50 hrs) | X | -- | S | -- | X | X |
| Sewer/Watermain Construction | -- | S (50 hrs) | X | -- | S | -- | X | X |
| Construction Employees* | -- | -- | X | -- | S | -- | X | X |
| Road Maintenance | -- | S (55/50 hrs) | X | -- | S | -- | -- | X |
| Sewer/Watermain Maintenance | -- | S (50 hrs) | -- | -- | -- | -- | -- | X |
| Maintenance Employees† | -- | -- | -- | -- | -- | -- | -- | X |
| Sewer/Watermain Construction Site Guarding | -- | S (50 hrs) | -- | -- | -- | -- | -- | -- |
| Road Construction Sites: Work that is not Construction Work | -- | S(55/50 hrs) | -- | -- | -- | -- | -- | -- |
| Road Maintenance Sites: Work that is not Maintenance Work | -- | S (50 hrs) | -- | -- | -- | -- | -- | -- |

-- indicates full coverage, S indicates a special rule, and X indicates an exemption

*Other than Road Construction and Sewer/Watermain Construction

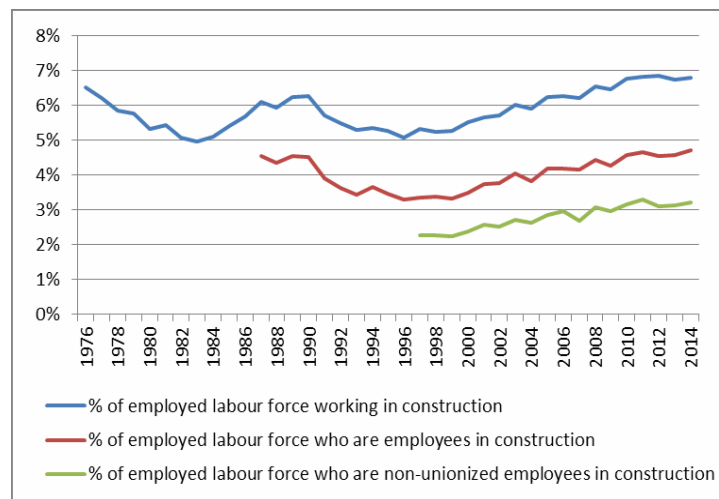
† Other than Maintenance of Roads, Structures Related to Roads, Parking Lots and Sewers/Watermains

An overarching rationale for construction exemptions relates to the sensitivity of the industry to seasonality and weather conditions, and the cost factors employers would face without the capacity for some flexibility in scheduling longer hours (Rose, 1987). To compensate for irregular hours and intermittent work, construction unions have sought to achieve high wage rates and the presence of unions has also been considered as part of the rationale for maintaining ESA exemptions (Rose, 1987). In addition to the difficulty in scheduling regular hours due to weather factors, employer associations in the construction industry have sought working time exemptions on the bases that: safety factors

necessitate that work be completed such that a structure is not left in an unsafe condition and the continuous nature of some operations that must be performed to completion (e.g. pouring of concrete). Archival documents indicate that the factor of safety has constituted a significant area concern for the Ministry of Labour historically when reviewing the hours of work exemptions in construction (AO, 1974a). Finally, the special rules governing road construction and sewer and watermain construction were designed to reflect prevailing conditions in collective agreements, the need to conduct work during daylight hours, and to reduce the cost impact on government (as the major costs to improving overtime standards for these employees would be borne by provincial and municipal governments) (Rose, 1987).

After downturns in the mid-80s and mid-90s, the proportion of Ontarians working in construction has been steadily rising, and currently stands around 7% (see Figure 4). About two-thirds of construction workers are employees, while the remaining third are self-employed. Among those who are employees, about two-thirds again are non-

Figure 4: Percentage of Workers, Employees, and Non-unionized Employees in Ontario Working in Construction (based on CANSIM 282-0020, 282-0008, 282-0078)



unionized. As a result, about 45% of employees engaged as construction workers overall rely primarily on the ESA for workplace protections.

Employees in the construction cluster, and thereby affected by ESA exemptions, have higher levels of unionization than employees overall; 37% are unionized or covered by a collective agreement. Despite unionization rates that are higher than in the labour force overall, the majority of construction employees are not subject to the direct protection of unions; thus, the rate of unionization provides only a weak rationale for the presence of exemptions across this industry.

Rates of unionization in the construction industry, however, clearly do have some structural effects. Construction employees tend to make higher wages than employees overall. They are also more likely to work paid overtime (15% of construction employees did so in the week prior to the survey), and less likely to work unpaid overtime (only 4% did so in the week prior). Almost all construction employees hold full-time jobs (96%), although 28% percent have job tenure of a year or less. Small firms are also common in this occupational cluster, with about two in five (39%) construction employees working in firms of fewer than 20; furthermore, more than half (53%) of those that are non-unionized work in such small firms. Construction employees affected by ESA exemptions are also disproportionately men (97%) and are less likely to be visible minorities.

Liquor Servers

Liquor servers are not entitled to the general minimum wage, but instead have a lower minimum wage, which was \$8.90 per hour from January to May 2014, and \$9.55 per hour from June onwards.⁴³ This hourly rate applies to employees who serve liquor directly to customers or guests in licensed premises as a regular part of their work. In part, the lower minimum wage reflects the perception that liquor servers are tipped workers.⁴⁴

Following the enactment of the ESA the hospitality industry lobbied regularly for a 'tip differential'; however, the Ministry of Labour was initially reluctant to introduce such

⁴³ As of October 1, 2015, the minimum wage for liquor servers is \$9.80.

⁴⁴ In this analysis, all servers and bartenders working in 'alcoholic beverage drinking places' were considered liquor servers, regardless of whether or not they were tipped. Bartenders and tipped servers aged 19 or older in full-service restaurants were also considered to be liquor servers, since most full-service restaurants in Ontario hold a liquor license.

a differential due to concerns that it could result in employees working for less than the minimum wage. For example, a year before its introduction, the Director of the Employment Standards Branch expressed the concern that:

[t]he purpose of the minimum wage is to guarantee a minimum level of income for all employees and the introduction of a 'tip differential' may well defeat that purpose. It is extremely difficult to ensure that every employee in an occupation where tips are usually received actually does receive a certain amount in tips...[as] tipping is generally at the discretion of the customer...(AO, 1975c).

Nevertheless, the differential minimum wage for workers who serve alcohol in licensed establishments was introduced in Ontario in 1976, with a twofold rationale; first, following significant lobbying from the hospitality industry it was introduced “in recognition of the substantial tip income received by such workers” (AO, 1976b, p. 1). Second, it was characterized by government officials as a strategy to assist the industry in maintaining price stability, with the rationale that wage rates impact significantly on pricing in the industry (AO, 1976c, p. 1).

The concerns expressed by the Director of the ESB seem well founded: about one in five (20%) of tipped liquor servers report earnings below the general minimum wage, even after tips. In general, the liquor servers identified in this analysis overwhelmingly tend to be precariously employed. They have extremely low levels of union coverage, and three-quarters (74%) report earning \$15 an hour or less. Almost all of them are paid by the hour. Adding to this wage insecurity is job insecurity, as 58% percent work part-time and these employees generally have shorter job-tenure than employees overall. They are also much more likely to be working multiple jobs (13% hold more than one job, compared to 5% of employees overall). Liquor servers also tend to work in smaller firms than employees overall. The effects of the liquor server exemptions are all the more concerning given the high proportion of employees in this cluster that belong to historically disadvantaged or marginalized social groups: 72% of employees in this cluster are women and nearly 61% fall into the youngest age group (15 to 29 years).

2.2 Exemptions and Rules related to the Organization of Working Time

A series of exemptions and special rules apply across a range of industries and occupations in order to accommodate a particular organization of working time. In many cases, these regulations have been incorporated piecemeal into the ESA regulations, without a clear concern for comparability or standardization. We divide these exemptions conceptually into four occupation- or industry-based groups: i) irregular working-hours ii) long working-hours iii) combined long and irregular working-hours and, iv) continuous working hours operations.

A number of the working time exemptions present in the ESA have their origins in previously existing working time legislation that was brought under the scope of the ESA upon its enactment.⁴⁵ The first minimum standards working time legislation designed to cover most workers in the province was the 1944 HWVPA, which established an eight-hour day and 48-hour workweek, with the right to refuse overtime, as well as one annual week of paid vacation for most employees in the province (Thomas, 2009). Reflecting the prevailing concern to accommodate the variations in industry, a number of exemptions were built into the HWVPA through its regulations.⁴⁶ In addition, special rules also mitigated the coverage of the HWVPA, as employers could exceed the maximum hours of work in the case of accidents, urgent repairs, or emergency work (AO, 1944).⁴⁷ While this working time legislation was a major advancement for the establishment of minimum working time standards in the province, the overall impact of the legislation was moderated by the system of exemptions and special rules. In evaluating the HWVPA four decades after its enactment, Ontario's Task Force on Hours

⁴⁵ Early working time legislation in Ontario dates to the 1884 *Factories Act*, which applied only to working women and children and excluded male workers (Thomas, 2004; Tucker, 1990).

⁴⁶ Reflecting patterns and tendencies in common and civil law contexts elsewhere (Vosko, 2010b Chapters 2 and 3), exempted groups included managers, supervisors, professionals, persons employed in farming, commercial fishing, firefighting, domestic service, and the growing of flowers, fruits and vegetables, persons employed in funeral directing and embalming, and persons employed as fishing and hunting guides, live-in caretakers, or police (Ontario, 1987a).

⁴⁷ The Industry and Labour Board was empowered to authorize longer hours (daily or weekly) in cases where employers and employees (or their representatives) were in agreement. The eight hour daily maximum could be exceeded if "an employer has by custom or practice established a working week of 48 hours or less...but the daily hours are in excess of eight hours," for example in cases where a 48-hour work week was scheduled over fewer than six days (AO, 1944). Up to 120 hours of overtime per employee per year were permitted (the legislation did not set an overtime premium rate, however).

of Work and Overtime noted that “the greater stringency of the vastly extended coverage and the more stringent maximums at eight hours per day and 48 per week were offset, in part at least, by greater flexibility through extensive exemptions and by downplaying the 8-hour-per-day maximum where longer hours were the custom” (Ontario, 1987a, p. 25).

This approach to the regulation of working time within the HWVPA set the basis for the system of exemptions and special rules that came to be integrated into the ESA when enacted in 1968. When the ESA was enacted, exempted groups included managerial and supervisory employees, farm employees, horticultural, veterinarian, and agricultural workers, persons engaged in commercial fishing and farming, domestic servants, commission salesmen, secondary school students in work-experience programs, professionals, and students of enumerated professions. The construction industry was exempted from hours of work limits. Sewer and watermain construction and road building were given a special overtime exemption, while taxi drivers, along with ambulance drivers and their helpers, were not entitled to overtime (DL, 1969b, 1969c; Thomas, 2009). In addition to the exemptions, a number of special rules were also included. Hours in excess of the daily maximum were permitted, so long as the weekly maximums were not exceeded. The right to refuse overtime did not apply in cases where an employer had established a ‘normal’ work day in excess of eight hours in a workweek of 48 hours or less. Hours in excess of the weekly maximum were also permitted through a permits system to a maximum of 100 hours of overtime per year, which could be further exceeded in cases where the ‘special nature of the work performed’, or the ‘perishable nature of the raw material being processed’, required hours in addition to this (DL, 1969a).⁴⁸

Irregular Working-Hours

These exemptions are specific to occupations and industries that have irregular work schedules that make it difficult for employees to get the requisite hours of work, rest periods, and eating periods – but who remain fully covered by other provisions of the ESA. The most notable group that these exemptions apply to are employees in the

⁴⁸ In addition, the averaging of overtime hours over multiple weeks was permitted, subject to the Director’s approval, and substitute days for statutory holidays were allowed, subject to employee approval.

film and television industry⁴⁹ – an industry wide exemption that excludes these employees from protection relating to maximum daily and weekly hours of work, daily and weekly/bi-weekly rest periods, time off between shifts, and eating periods. Those working as embalmers and funeral directors are similarly exempt from all of the working time standards except the requirement to provide eating periods (30 minutes free from work every five hours). Employees in mineral exploration and mining are fully covered by the ESA, except for a special rule related to weekly/bi-weekly rest periods that specifies a maximum of 28 days of consecutive work, and a distinct formula for calculating the number of required days free from work. Employees working at live performances, trade shows, and conventions, as well as public transit employees, are only required to have a daily rest period of eight consecutive hours free from work, instead of the 11 hours to which most employees are entitled. This special rule is similar for employees in automobile manufacturing, but is limited to one day per week. Public transit employees are also not always entitled to an eating period, depending on the configuration of their scheduled shifts.

⁴⁹ This exemption applies to those employed in the industry of producing visual or audio-visual recorded entertainment that is to be replayed in cinemas or on the internet, television or a VCR or DVD player. In the LFS, this group is defined as those employed in the 'motion picture and video industries', which includes motion picture, and television production, post-production, distribution and exhibition.

Scope of ESA Coverage for Irregular Working-hours Employees⁵⁰

| | Min. Wage & Over-time Pay | Working Time | | | | | Public Hol. & Vac. | Termination & Severance |
|---|---------------------------|---------------|--------------------|---------------------|----------------------------|----------------|--------------------|-------------------------|
| | | Hours of Work | Daily Rest Periods | Time Off b/t Shifts | Wkly/ Bi-Wkly Rest Periods | Eating Periods | | |
| Film and Television Industry | -- | X | X | X | X | X | -- | -- |
| Embalmers and Funeral Directors | -- | X | X | X | X | -- | -- | -- |
| Mineral Exploration | -- | -- | -- | -- | S | -- | -- | -- |
| Mining | -- | -- | -- | -- | S | -- | -- | -- |
| Live Performances, Trade shows, and Conventions | -- | -- | S (8 hrs) | -- | -- | -- | -- | -- |
| Public Transit Employees | -- | -- | S (8 hrs) | -- | -- | S | -- | -- |
| Automobile Manufacturing | -- | -- | S (8 hrs)* | -- | -- | -- | -- | -- |

-- indicates full coverage, S indicates a special rule, and X indicates an exemption

*A shortened daily rest period is permitted one day per week

The vast majority of employees in occupations and industries in which the ESA permits irregular working time are full-time employees. They also tend to be unionized (32%) and have longer job tenure than employees in general (though this varies by occupation: relatively few embalmers/funeral directors or those working in live performances/ trade shows/ conventions are unionized). Not surprisingly given their rates of unionization, employees in this cluster are also more likely to work paid overtime than employees overall, and less likely to work unpaid overtime. Employees in these occupations/ industries are much more likely to be men, and less likely to be visible minorities.

Long Working-Hour Occupations

Working time, especially, long working-hours, has been a key site of exception for the standards legislated by the ESA. Historically, one of the main ways the ESA dealt with long working-hours was through a system of special permits that enabled the scheduling of 'excess' hours beyond weekly maximums.⁵¹ More recently, the ESA 2000

⁵⁰ The exemptions for embalmers and funeral directors are a longstanding feature of the professions.

⁵¹ The permit system was divided into four categories: longer-days permits allowing for work up to 12 hours in a day; excess hours permits enabling up to 100 hours of additional overtime per employee per year; extended excess hours permits, permitting additional overtime due to the perishable nature of raw

introduced a process that enables the scheduling of hours exceeding 48 in a week (to a maximum of 60) if employee consent is secured, a process that as discussed above has raised serious concern regarding its potential to exacerbate power imbalances in the workplace (see Mitchell, 2003; Thomas, 2007). It is, however, beyond the scope of this study to examine either the excess hours permit system or the excess hours provisions of the ESA 2000.

Exemptions related to long working hours are specific to occupations that typically require employees to work longer than standard full-time hours. While most employees are fully covered by the other aspects of the ESA, there are some special rules and exceptions also related to long work hours. Ambulance drivers and unionized paramedics are exempt from the overtime pay regulations, as are taxi cab drivers. Rather inconsistently, paramedics have a special rule allowing a shorter than usual daily rest period (8 hours instead of the usual 11), and the ability for their union to negotiate eating periods different from the ESA. Given the continuous nature of the work of taxi-drivers, they are also exempt from public holiday regulations. Employees in truck transportation have special rules that only entitle them to overtime pay after 50 hours per week (for local cartage drivers) and 60 hours per week (for highway drivers), instead of the typical 44 hours per week. Seasonal employees involved in the canning, processing, packing or distribution of fruits and vegetables also have a special rule such that overtime pay is only available after 50 hours of work per week.

materials; and, industry permits for industries that required additional hours flexibility, largely due to demand cycles, such as in construction and service industries (for a detailed discussion, see Ontario, 1987a).

Scope of ESA Coverage for Long Working-hours Employees

| | Wages | | Working Time | | | Holidays & Vacation | | Termination & Severance |
|---|-----------|--------------|--|--------------------|----------------|---------------------|----------------|-------------------------|
| | Min. Wage | Overtime Pay | Hrs of Work, Time Off, Wkly Rest Periods | Daily Rest Periods | Eating Periods | Public Holidays | Vac. Time/ Pay | |
| Paramedics & Emergency Medical Attendants* | -- | X | -- | S (8) | S | -- | -- | -- |
| Ambulance Drivers, Ambulance Driver's Helper or First-aid Attendant on an Ambulance | -- | X | -- | -- | -- | -- | -- | -- |
| Taxi Cab Drivers | -- | X | -- | -- | -- | X | -- | -- |
| Highway Transport Truck Drivers | -- | S (60 hrs) | -- | -- | -- | -- | -- | -- |
| Local Cartage Drivers & Driver's Helpers | -- | S (50 hrs) | -- | -- | -- | -- | -- | -- |
| Canning, Processing, Packing or Distribution of Fresh Fruit or Vegetables (seasonal)† | -- | S (50 hrs) | -- | -- | -- | -- | -- | -- |

-- indicates full coverage, S indicates a special rule, and X indicates an exemption

* only applies to those who are represented by a union

† only applies to those who are employed by an employer for no more than 16 weeks in a calendar year

When the ESA was enacted, special rules were established for occupations normally involving long hours. For example, overtime was payable after 60 hours in the highway transport industry, 55 hours in the local cartage industry, 55 hours in road building, 50 in sewer and watermain construction, 55 in seasonal hotel, motel, tourist resort, restaurant and tavern work, and 60 in seasonal fruit and vegetable processing (DL, 1969c). The local cartage rate for overtime pay after 55 hours was initially based on a standard set by collective agreements, the role of municipalities in establishing cartage rates, and the particularities of the industry, which included substantial 'unproductive time' (including time spent waiting for pick-up calls and time spent in traffic). Despite industry lobbying in the 1970s to retain the 55-hour threshold, it was reduced to 50 hours due to changing conditions including significant improvements to overtime thresholds in collective agreements (AO, 1974a). With respect to trucking and

transport, a number of rationales have been provided for special treatment under the working time provisions generally, and the overtime pay provisions specifically, all of which relate to the nature and organization of the trucking industry (Ontario, 1987b). These rationales include that the industry is subject to cyclical and seasonal variation, as well as intense competitive pressures. Moreover, the diverse nature of the industry, which includes short and long distance carriers, as well as trucking companies and independent owner-operators, has given rise to multiple working time regulations that reflect this variation, with different regulations for hours of work and overtime for these different groups.⁵² The industry is often subject to environmental constraints, including weather and the seasonal nature of some goods, creating the general need in the industry for greater flexibility in working time, and in particular long hours of work. In terms of the overtime pay exemption, the avoidance of overtime pay is also commonly justified due to the expectation and assumption that long hours are a necessary part of the work, particularly in highway transport (Ontario, 1987b). Additionally, employers in the industry have voiced concerns that excessive working time regulation (i.e. through limits to weekly hours and/or a lower threshold for overtime pay) could hamper competitiveness. Combined, these factors have prompted the development of special provisions in overtime regulation (Lazar, 1987). It is nevertheless also important to underscore that in numerous jurisdictions both within and beyond Canada, persistent occupational health and safety concerns about the detrimental impact of long hours and fatigue on not only employees' health but also public safety, particularly for long-distance truck-drivers, have long served as an argument to counter flexibility effectively facilitating long hours (on Canada in the federal jurisdiction, see for e.g., Traffic Injury Research Foundation, 2005; on Australia, see for e.g., Quinlan, Mayhew and Johnstone, 2006; on the United States, see for e.g., Belzer, 2006).

As with construction, seasonality has also provided a rationale for exemptions for some long working-hour occupations. For example, exemptions for workers employed in the processing of fruits and vegetables are justified due to the "seasonality and

⁵² Because of the cross-border nature of the trucking industry, there is potential overlap with coverage under the Canada Labour Code, which sets minimum standards for workers in federally regulated industries, including those engaged in work of an inter-provincial nature. For transport workers covered by the Code, the ESA does not apply.

perishability of the product,” and the fact that they are subject to weather conditions (AO, 1974a). For these employees, additional factors include a shortage of available workers and the typically short tenure of the workforce.

Historical opposition from industry groups has also shaped these exemptions. In the 1970s, extension of ESA coverage to fruit and vegetable processers was opposed by the Ontario Food Processors Association, as well as by smaller employers, due to the nature of the industry (seasonality, unpredictability of production, perishability), labour force characteristics, and the potential for rising costs (AO, 1974a; AO, 1975d). In the taxi industry, overtime pay and statutory holiday exemptions for taxi drivers stem largely from opposition from the taxi operators, who have cited cost factors as the primary reason for opposing the extension of the ESA to taxi drivers (AO, 1974a). At the time, the perception of the Ministry of Labour was that extending coverage could work to the detriment of drivers, for example through forced reductions in hours to avoid paying the overtime premium.⁵³

Employees in occupations that the ESA permits to work long working hours by virtue of its exemptions tend to have lower union coverage (20%) than employees overall. Among this group, however, very high percentages hold full-time (96%) and permanent (92%) jobs. These jobs tend to be clustered in smaller firms. Employees in the long working hours cluster were also more likely to work paid overtime hours (15%), and likely to work longer paid overtime hours (an average of 9.3 hours per week), than employees overall. They were less likely to report working unpaid overtime hours (5%) and likely to work fewer unpaid overtime hours (an average of 6.9 per week), than employees overall. Within this cluster of occupations, truck drivers and taxi drivers reported higher average usual hours each week, by a substantial margin. Not surprisingly, on account of women’s continuing responsibility for unpaid caregiving, a relatively high proportion of people engaged in the occupations in this cluster are men (93%). Employees engaged in these occupations also tend to be older, and are more likely to be visible minorities.

⁵³ The Ministry of Labour also cited problems in administering the ESA in the taxi industry due to difficulties in determining hours worked as a rationale for exemption (1975d).

Combined Irregular and Long Working-Hours

A final group of exemptions are for occupations and industries that have hours that are both long and irregular. These may be further subdivided into pseudo-residential/on-call occupations, seasonal occupations, and information technology occupations. The first group of occupations in this cluster are for those employees who reside in their place of work, or may spend very long hours there in a pseudo-residential or on-call situation: residential building superintendents, janitors & caretakers (who live on the premises); homecare employees who provide homemaking or personal support services; residential care workers; and firefighters. These employees are all exempt from overtime pay, and many of the working time standards. Residential building staff are also exempt from the minimum wage and public holiday provisions of the Act. Firefighters are also exempt from the public holiday provisions. Residential care workers and homecare employees who provide homemaking and personal support services are only entitled to the minimum wage for a maximum of 12 hours of work per day. If they work more than 12 hours per day, they are only entitled to be paid for 12 hours.⁵⁴ Residential care workers also have a special rule related to weekly rest periods: they are entitled to at least 36 consecutive hours free from work each work week, or to be compensated with pay at 1.5 times the usual rate, or to receive time in lieu during a subsequent rest period. Employers are not required to keep a record of a residential care worker's hours of work. In addition to these pseudo-residential/on-call occupations, three seasonal occupations have exemptions from the wage and working time provisions: landscape gardeners, swimming pool installation/maintenance, and hunting and fishing guides. Employees in landscaping and swimming pool installation/maintenance are exempt from the overtime pay, hours of work, and public holiday provisions of the Act. Hunting and fishing guides have a special minimum wage rate (calculated daily), and are exempt from overtime pay, most working time standards, and public holiday standards. Finally, and most anomalous in this cluster, information technology professionals are exempt from overtime pay, and all of the working time

⁵⁴ Time that the employee spends at the workplace eating, sleeping, resting or attending to his or her own affairs is not counted as hours of work, even if the employee is on call.

provisions of the Act – though their work is neither pseudo-residential/on-call nor seasonal.

Scope of ESA Coverage for Combined Long and Irregular Working-hours Employees

| | Wages | | Working Time | | | | | Holidays & Vacation | | Termination & Severance |
|--|-----------|---------------|--------------|--------------------|---------------------|----------------------------|----------------|---------------------|----------------|-------------------------|
| | Min. Wage | Over-time Pay | Hrs of Work | Daily Rest Periods | Time Off b/t Shifts | Wkly/ Bi-Wkly Rest Periods | Eating Periods | Public Holidays | Vac. Time/ Pay | |
| Residential Building Superintendents, Janitors & Caretakers* | X | X | X | X | X | X | -- | X | -- | -- |
| Homecare Employees Who Provide Homemaking or Personal Support Services** | S | X | X | X | X | X | X | -- | -- | -- |
| Residential Care Workers | S | X | X | X | X | S | X | -- | -- | -- |
| Firefighters | -- | X | X | X | X | X | -- | X | -- | -- |
| Landscape Gardeners | -- | X | X | -- | -- | -- | -- | X | -- | -- |
| Swimming Pool Installation and Maintenance | -- | X | X | -- | -- | -- | -- | X | -- | -- |
| Hunting and Fishing Guides | S | X | X | X | X | X | -- | X | -- | -- |
| Information Technology Professionals | -- | X | X | X | X | X | X | -- | -- | -- |

-- indicates full coverage, S indicates a special rule, and X indicates an exemption

*Applies only to those who reside in the building

** exemptions marked with "X" apply if the employee is paid the minimum wage hours worked in a day to a maximum of 12.

Seasonality is again a major factor in shaping the rationales for exemption amongst some of these groups of employees. With respect to seasonal employees who are not agricultural workers, there was initially some reluctance on the part of the Ministry of Labour to grant exemptions to all seasonal employees, as "it is often those employees who have little or no other choice but to work in these seasonal industries

who most need the protection of our legislation” (AO, 1969b). This comment notwithstanding, seasonal employees in the hospitality (hotel, restaurant, tourist resort) industry have historically been exempt from public holiday provisions, and have been subject to a differential overtime rate of time and a half after 55 hours per week.⁵⁵ When the ESA was enacted, the majority of these workers were students employed at tourist resorts. In addition to justifying the exemptions due to seasonality, cost factors were also a matter given recognition by the Ministry of Labour, with industry representatives drawing attention to the competitive nature of the industry and the fact that many operations are maintained on tight profit margins (AO, 1974a).

The character of work and work arrangements is another key factor shaping exemptions for occupations in this grouping. For ‘employees of private households’ and apartment superintendents, specific aspects of this factor include: “complex and variable work arrangements; difficulties in determining hours worked; [and] problems in administration and enforcement” (AO, 1974a).⁵⁶ With respect to apartment superintendents specifically, “considerable employer opposition” (AO, 1974a) was noted due to concerns over difficulties in determining hours worked, the unstructured and unsupervised nature of the work that resulted in a blending of working and non-working time during any given day, and the potential for increased labour costs, which could then be transferred to increased costs for tenants (AO, 1975d). In 1974, the Ministry of Labour recommended that resident superintendents should have coverage under the ESA; however, insufficient information regarding the working conditions, work arrangements, and the implications of coverage were cited as reasons for not extending coverage at that point. More recently, during the review of the ESA in 2000, the character of work and work arrangements was invoked by industry representatives in the IT sector as justification for an hour-of-work exemption for IT workers. The exemption was sought as many IT employees were characterized as engaged in forms of work that involve “professional knowledge-based tasks” and that the ESA’s hours of

⁵⁵ Currently, hospitality employees are entitled to the overtime rate after 50 hours per week (in cases where the employee is provided room and board and works no more than 24 weeks in a calendar year) (O. Reg. 285/01, s. 14).

⁵⁶ Additional aspects include “definitional problems in identifying the groups” and “potentially severe impact on workers and the public” (AO, 1974a), as well as difficulties in administering the Act for these employees.

work requirements “are inconsistent with the way work is typically carried out and compensated” in the industry, running counter to the “‘self-directed’, ‘entrepreneurial’ culture of high-tech industries” (CATA *Alliance*, 2000). The adoption of this approach suggests that the Ministry of Labour accepted this characterization.

Because of difficulties identifying employees in those occupations with combined long and irregular working-hours in the Labour Force Survey,⁵⁷ in this analysis this group is dominated by IT professionals (who constitute almost three-quarters of employees in this cluster). Those employees in occupations and industries that the ESA, by way of its exemptions, permits to work combined long and irregular hours, and who we are able to identify in the LFS, have very low rates of union coverage (8%) and shorter job tenure, though relatively high rates of pay. More than half of employees (59%) in these occupations and industries are not paid hourly. Almost a third (29%) work in firms with fewer than 20 employees. Furthermore, a higher proportion of these employees work unpaid overtime than employees overall (17% compared to 13%), a trend that is even sharper among those that are non-unionized. In terms of their demographic composition, employees in these occupations and industries are more likely to be men, more likely to be recent immigrants, and more likely to be visible minorities than employees overall.

Continuous Operations

Several types of establishments have special rules related to the public holiday standards of the ESA because of the continuous nature of the work that is required: retail business employees, hospitality industry employees, hospital employees, and other continuous operation⁵⁸ employees. Employees in continuous operation retail businesses that primarily sell prepared meals, rent living accommodations, or provide educational, recreational or amusement services to the public do not have the right to refuse to work on a public holiday. Hospital employees, hospitality industry

⁵⁷ Residential care workers, swimming pool installers/maintenance workers and hunting and fishing guides cannot be reliably identified using the industrial and occupational classifications available in the Labour Force Survey.

⁵⁸ A continuous operation is a business or a part of a business that continues in operation 24 hours a day and either never shuts down or shuts down no more than once a week.

employees,⁵⁹ and other continuous operation employees may be required to work on a public holiday if the day on which the holiday falls is normally a working day for the employee and the employee is not on vacation on that day; they must be compensated for this work via premium pay or an additional day off in lieu of the public holiday. Notably, these special rules for hospital employees, hospitality industry employees, and continuous operation employees apply regardless of the type of work performed. For example, hospital employees may include healthcare workers, but also cleaning/maintenance workers, administrative workers, and any others who are employed in a hospital. Except for the material related to seasonal hospitality workers described above, there is a dearth of archival information on the rationale for these changes.

The proportion of workers in hospitality industries (accommodation and food services) has been rising steadily as a proportion of the total employed population in Ontario, from 5.5% in 1987 to 6.5% in 2014. The vast majority of workers in accommodation and food services are employees, and the vast majority of these employees are non-unionized. No similar contextual information is available for hospital workers, or workers in continuous operation retail businesses.

The Labour Force Survey does not collect information specifically about whether a business is a continuous operation, and thus only employees of hospitals or employees in the accommodation industry can be identified in the data. These workers are treated as continuous operation employees for the purpose of this analysis. These employees working in what the ESA deems continuous operations tend to be part-time (34%) and to have relatively short job tenure. They also earn lower wages than employees overall, with almost a quarter (23%) earning minimum wage or less. They are, somewhat incongruously, slightly more likely to be unionized – though there are relatively high rates of unionization in the hospital sector, and declining working conditions have led to more union organizing in the accommodation industry. The majority (72%) of these employees are women, and they are more likely to be young

⁵⁹ These public holiday rules apply to all people working in a hotel, motel, tourist resort, restaurant or tavern even if the employee is not directly employed by the owner or operator of the business. Similarly, special rules for public holidays apply to employees working in hospitals, regardless of their direct employer.

workers than employees overall. Almost a quarter (23%) are from low-income families, reflecting the economic insecurity confronting this group of employees.

2.3 Exemptions and Rules Related to Employees' Workplace Status

A third category of clusters of exemptions relate to (covered) employees' status within their workplace, regardless of their occupation, industry, sector, or the type of work that they perform. The broadest of these exemptions are for individuals in supervisory or managerial roles in any workplace. In addition, two other clusters of exemptions are related to an employee's job tenure: a short tenure of less than 5 years, and temporary help agency employees (regardless of the length of their assignment).

Managerial/Supervisory Employees

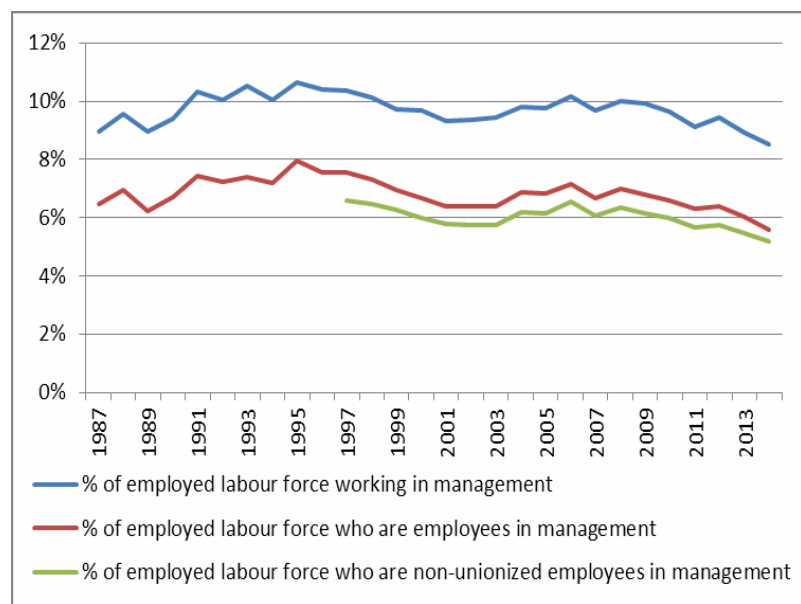
Employees who are classified as managerial or supervisory workers are exempt from the ESA standards related to overtime pay and the working time standards related to maximum daily and weekly hours of work, daily and weekly/bi-weekly rest periods, and time off between shifts (i.e., they only remain covered by the eating period provision).

As discussed above, the managerial working time exemptions stem from the exemptions established in the earlier HWVPA, which exempted persons whose duties “are entirely of a supervisory, managerial or confidential character and do not include any work or duty customarily performed by an employee...”(HWVPA, s. 3). Similarly, when the ESA was enacted, exemptions were established for “employee[s] whose *only* work is supervisory or managerial” by statute (for hours of work) and regulation (for overtime) (Thomas et al., 2015, emphasis added). Rationales related to the managerial exemptions include strong bargaining position, maintenance of independence, power to control their own hours of work, and cost (Kinley, 1987a; Thompson, 1994; Thomas et al., 2015). Referencing the inclusion of the word “only” in the language of the exemption, the Ministry of Labour has described the rationale for this exemption as follows: “[w]ith this narrow interpretation of the application of the exemption and the freedom available to most supervisors and managers with respect to their own time and method of operation, *it would seem there would not be a great area of exploitation*” (emphasis added) (AO, 1975d). Nevertheless, there is reason for concern regarding the

potential erosion of the standard initially intended with this definition through more expansive interpretation of the category of ‘manager’. This erosion contributes to a problem of misclassification, whereby some who are classified as managers may be performing non-managerial work and improperly covered under the exemption, a practice noted in the Ontario Ministry of Labour’s 2013 retail enforcement blitz. An expansive application of the managerial exemption has been supported by Ontario Labour Relations Board decisions, which have interpreted the regulation to this effect (see Thomas et al., 2015). This practice is also supported through the rewording of the exemption in 2001 (O. Reg 285/01 s. 8 (b)), which permits the application of overtime exemptions for individuals “whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis”. Thus, the managerial exemption may capture those who are not exclusively performing managerial work, contributing to the spread of this practice (Thomas et al., 2015).

The number of workers in the labour force who report working in management occupations has remained relatively consistent, and even declined over time, ranging from a high of 10.7% in the mid-1990s to a low of 8.5% in 2014. Of particular note, however, are the low-levels of unionization among managers given especially the commonplace concern across

Figure 5: Management Employees in Ontario (based on CANSIM Table 2820024 and LFS Microdata)



common law jurisdictions that many employees are misclassified as such, thereby excluding otherwise eligible employees from overtime pay (Levine and Lewin, 2006).⁶⁰

Only 6% of managerial employees are unionized, a much lower proportion than employees overall. This figure, however, reflects S.1(3)(b) of the *Labour Relations Act*, which prevents those who, in the opinion of the Ontario Labour Relations Board, “exercise managerial functions” from being considered employees able to unionize under the terms of the Act. Almost all are full-time (98%), permanent employees (97%). They typically earn higher wages and tend not to be paid by the hour. Like professionals, many such employees have long job tenure (61% of more than five-years). Managers are much more likely than other employees to report working unpaid overtime in the previous week: 39% report doing so, and those so engaged report working an average of 9.8 hours of unpaid overtime. Although these full-time permanent employees are often well compensated through their job security and wages (e.g., 85% of managers make above median hourly wages), they are effectively contributing an additional 10 hours a week (a 25% increase, if we assume a 40 hour work week) of labour that is not directly compensated. Not surprisingly, given their relative status in the workplace, managers tend to be men, and tend to be older employees. Of somewhat concern, given their long working hours, these employees are much more likely to have children (38% have children under 16, compared to 28% of employees overall).

Short-tenure Employees: Less than Five Years with the Same Employer

Employees with job tenure of less than five years are ineligible for severance pay. Severance pay provisions were first introduced into the ESA in 1981, with the exemption from severance pay initially defined only by job tenure. Specifically, in cases of mass termination employees with a minimum of five years of service became entitled to one week’s pay for each year worked up to a maximum of 26 weeks (AO, 1982a; AO, 1982b; AO, 1982c). In 1987,⁶¹ the severance pay provisions were modified to cover

⁶⁰ This analysis relies solely on the category of managers (A level occupations) in the National Occupational Classification, and thus may underestimate the number of employees who have been classified as managers in their workplaces.

⁶¹ In 1987, provisions for termination notice (originally introduced in 1971) were also amended, requiring employers to provide termination notice as follows: one week notice for any employee employed longer than three months but less than 1 year; two-weeks notice for those employed for one year, but less than three years; and, for those employed beyond three years, an additional week’s notice for each year of employment, up to a maximum of eight weeks.

employees with five years of employment at a business with an annual payroll of at least \$2.5 million (Ontario, 1987c).⁶² When the provisions for severance pay were first enacted, 56% of employees had job tenure of 5 years or less and this proportion remained roughly the same when the protection was extended to a wider range of employees in 1987.

Based on data from the 2014 LFS, 52% of employees working outside of federally-regulated industries have job tenure of less than 5 years. Not surprisingly, short-tenure employees share many features with the precariously employed more generally. They are less likely to be unionized, as well as less likely to hold full-time permanent jobs. In addition, they are more likely to be paid hourly, and to earn relatively low wages: about one in five short-tenure employees (19%) earn the minimum wage or less. As expected, many short-tenure employees are in the youngest age group: 47% of short-tenure employees are under aged 30, compared to 28% of employees overall.

Short-tenure Employees: Temporary Help Agency Assignment Employees

A final group with special rules in areas of public holidays, notice of termination/termination pay and for the calculation of severance pay is known technically as assignment employees of temporary help agencies (ESA s. 74 s. 10 and 11; MOL, 2015b). For example, the public holiday provisions of the ESA apply to assignment employees of temporary help agencies (THAs); however, there is a special rule that applies where a public holiday falls on a day that is not ordinarily a working day for an employee and the employee is not on assignment on that day. In that case, the employee is typically treated as being on lay-off, which means that he or she will be entitled to public holiday pay for the day but will have no other entitlement under the public holiday provisions. Special rules also modify the provisions related to termination notice/pay and severance pay. These rules affect the determination of when termination occurs, how the “mass termination” provisions apply and what the employee must be

⁶² Despite their importance, information about the payroll size and previous layoffs of each respondent's employer is not available in either the LFS or the SLID, and so the effect of these employer characteristics cannot be assessed directly. Those with a firm size of fewer than 20 are treated as ineligible for severance pay, based on the assumption that these firms would be unlikely to meet the \$2.5 million payroll threshold.

paid during the termination period or in lieu of notice.⁶³ The calculation of severance pay also varies for assignment employees, though few have long enough job tenure to be eligible for severance pay at all. Interestingly, these rules are also not applied universally: for example, if their assignment is made under a contract they or their employer have with a Community Care Access Corporation, homecare employees who provide homemaking or personal support services are not covered by special rules for temporary help agency employees.

Overall, fewer than half a percent (0.3%) of employees can be identified as THA employees in the Labour Force Survey.⁶⁴ Few employees defined as assignment employees of THAs (henceforth THA employees) under the 2009 amendments to the ESA are unionized. All are paid hourly, and more than a quarter (28%) report making minimum wage or less, and an additional 60% report making less than \$15 per hour (but more than minimum wage). More than three in five (63%) have job tenure of a year or less. Given the low wages and short job tenure, it is unsurprising that they are much more likely to be multiple jobholders, with fully 30% reporting that they worked two or more jobs in the previous week. These precarious employees tend to be a part of low-income families: two out of every five (39%) report that their household income is in the lowest quintile. They are slightly more likely to be men, and much more likely to be recent immigrants to Canada (28% have been in Canada for 10 years or less, compared to 8% of employees overall). Consistent with this profile, they are also much more likely to be visible minorities: 74% of are visible minorities, compared to 25% of employees overall. Despite the small size of this group as a proportion of the labour

⁶³Generally speaking, a temporary help agency is considered to have laid off an assignment employee for a week if the employee is not assigned to perform work for an agency client during the week. However, this rule does not apply to excluded weeks; these are weeks during which, on one or more days, the employee: is not able to work; is not available for work; refuses an assignment offer (unless the offer would be a constructive dismissal); is subject to a disciplinary suspension; or is not assigned work because of a strike or lock-out at the agency. The rules that are used to determine when an employee who does not have a regular work week is considered to have been laid off do not apply to assignment employees (ESA, s. 74.11 par. 1- 8).

⁶⁴ Likely employees of temporary help agencies were identified in the LFS as those whose job was temporary, whose employer's industrial classification was 'Employment Services', and who were in a clerical or low-skill occupation. This selection is thus highly imprecise. For consistency, the same criteria were used to identify likely in the SLID, although the SLID permits respondents to indicate that their work is done through a THA. In general, this classification criteria was relatively consistent with employees' own reports of working for a THA, although it also included additional employees who reported that they were engaged in 'casual' (but not THA) work.

force, in general, they are highly marginalized, and thus it is worthwhile attending to their level of protection under the ESA specifically. Arguably, moreover, the temporary employment relationship (TER), as the flipside of the standard employment relationship (SER), is also a window into the changing workplace (Vosko, 2000) and thus the implications of exemptions and special rules for temporary agency workers merit scrutiny.

2.4 Exemptions and Rules Related to Employer/Employee Characteristics

A final – though bifurcated - category of exemptions relates to employer and employee characteristics. These exemptions apply across industries and occupations, regardless of an employee's status in their workplace, or the type of work in which they are engaged. The ES exemptions to employer characteristics relate to firm size: for example, ESA provisions on personal emergency leave apply only to employees in a workplace that regularly employs more than 50 individuals. As noted above, an employer's payroll size affects whether or not long-serving employees are entitled to severance pay: employees with job tenure of five years or more are only entitled to severance pay if the employer has a payroll of at least \$2.5 million or has laid off fifty or more staff over the course of six months. The ES exemptions and special rules that relate to employee characteristics are those that apply to students, regardless of their occupation, industry or workplace status.

Employees in Small firms

The ESA provisions on personal emergency leave apply only to employees in a workplace that regularly employs 50 or more individuals. In Ontario, such small firms are overrepresented in some industries, notably agriculture, construction, and 'other services', a category that includes repair and maintenance services, personal and laundry services, religious, grant-making, civic, and professional and similar organizations, and services to private households. The rationale for small firms' exemption from this standard is the assumption that they have fewer staff available to cover absences. That is, the exemption reflects a concern to limit these firms' regulatory burden (Fudge 2001, p. 19). Nevertheless, the number of employees working in small

firms⁶⁵ in Ontario has remained relatively constant across time, with but a few fluctuations likely related to changing economic circumstances and business conditions in the province more generally.

Based on data from the 2014 LFS, about a fifth (19%) of Ontario employees working outside of federally regulated industries work in a small firm with fewer than 20 employees. Small firms are much less likely to be unionized: whereas about 25% of employees overall are unionized, only about 5% of employees in small establishments are unionized. Compared to employees overall, relatively large percentages of employees in small firms are engaged on a part-time (25%) or temporary (17%) basis, and are likely to have shorter job tenure. Employees of small firms also tend to have lower hourly wages: 44% earn \$15 per hour or less, reflecting the economic challenges that small businesses face. Given the tendency towards low-wage, part-time and temporary work, however, it is not surprising that employees of small firms are more likely to live in low-income families: more than a quarter (26%) are members of an economic family with earnings in the bottom quintile. Employees of small firms are also slightly more likely to be young employees. Overall, these characteristics suggest that employees of small firms are more likely to be precariously employed.

Students

Employees who are students are not entitled to the general minimum wage rate if they are under the age of 18 and work fewer than 28 hours per week. Instead, they have a lower minimum wage, which was \$9.60 per hour from January to May 2014, and \$10.30 per hour from June 2014 until the end of the year of analysis.⁶⁶ The weekly 28-hour limit does not apply during school holidays. Students of any age and with any hours of work are also exempt from what is known as the “three hour rule,” which establishes minimum pay for employees whose shifts are normally longer than three hours, but are sent home after working fewer than three hours. Full-time students (or those on holiday from full-time studies) who are employed at a job where they instruct/supervise children, or at camp for children, or by a recreational program

⁶⁵ As noted above, Statistics Canada does not collect information about firms with 20-50 employees, only firms with 20-99 employees. Only firms with fewer than 20 employees are treated as small firms in this analysis.

⁶⁶ As of October 1, 2015, student employees' minimum wage was \$10.55.

operated by a registered charitable organization, are exempt from the minimum wage, overtime pay, and public holiday pay provisions of the Act, regardless of their age and weekly hours of work.

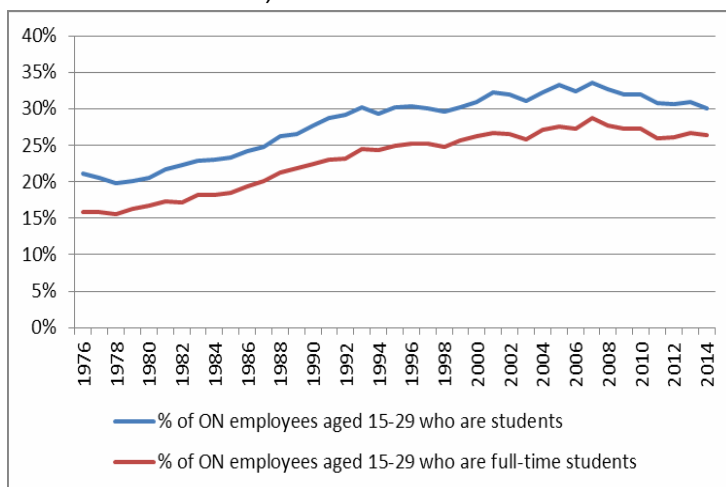
According to the ESA interpretation guide, the rationale for the student minimum wage is “to facilitate the employment of younger persons, recognizing their competitive disadvantage in the job market relative to older students who generally have more work experience and may be perceived by employers as more productive” (MOL, 2013, p. 13-17). This exemption is notable because it relates directly to an employee’s personal characteristics: that is, his or her age and activities outside of the labour force.

Like some of the exemptions discussed above, student-based exemptions have also been supported through a ‘cost-to-business’ rationale. For example, the exemption for students employed at camps for children arose out of concerns expressed by the industry

association that ESA coverage would increase operational costs, thereby compromising the viability of the industry. To compensate for increased labour costs, camps would need to decrease the counselor labour force, thereby compromising service and supervision through alterations to the camper to counselor ratio (AO 1974a). The same rationale motivated the exemption for students employed by a charitable organization in a recreational program, and students employed as instructors or supervisors of children, with the concern being that ESA coverage could become cost prohibitive, leading to the closure of programs and/or reduction in services.

Among Ontario employees aged 15 to 29, the proportion who are students and who are full-time students, has steadily increased over the past 30 years. This trend likely reflects the increasing number of Ontarians who are pursuing post-secondary

Figure 6: Percentage of Ontario employees who were students and full-time students (based on CANSIM 282-0095)



education or additional credentials following high school. In 2014, fully 30% of Ontario employees aged 15-29 were students and the vast majority were enrolled full-time.

Among all Ontario employees, only 2.5% are subject to the student exemptions of the ESA, as a result of the combination of their student status, their age, their weekly hours of work, and their place of work. They are overwhelmingly young workers. Fewer than one in ten (8%) are unionized. Not surprisingly, given the lower minimum wage for students, fully three-quarters (75%) earn the general minimum wage or less. An overwhelming majority of student employees are part-time employees (94%) who are paid hourly (95%). Interestingly, however, more than half of student employees (57%) report that their job is permanent, despite their relatively short job-tenure.

Taken together, this analysis of clusters of exemptions and special rules provides a useful framework for understanding the breadth of special rules and exemptions promulgated by the ESA, their historical rationale, as well as the types of employees who are affected. By placing these clusters of exemptions and special rules in context, it becomes easier to identify those that appear to be inconsistent, as well as those that primarily affect employees who have been historically disadvantaged or marginalized in the labour force. In the section below, we identify the effects of ES exemptions and special rules more generally on these specific groups of employees.

3. The Effects of Exemptions and Special Rules on Those Historically Disadvantaged in the Labour Force and the Precariously Employed

In this section, we assess how the ESA's exemptions and special rules have a differential effect on some groups of employees. In large part, this is a result of the varying industrial and occupational location of workers. We probe, in particular, the relative levels of coverage for Canada's four employment equity groups (women, visible minorities, Aboriginal people, and people with disabilities), as well as for young employees, recent immigrants and non-immigrants living in Canada. We also identify the effect of ES exemptions and special rules on those who may be precariously

employed, focussing specifically on the situation of part-time employees, temporary employees, multiple job holders, and low-wage employees. Weekly costs capture the potential loss of earnings each week for the four standards that can be conceptualized as part of an employee's regular pay: minimum wage, overtime pay, vacation pay, and public holiday pay. These weekly costs are presented in relation to both the absolute cost to employees, and the employers they work for, and a relative cost to employees in relation to the percentage of income that they could potentially gain if special rules and exemptions were eliminated. The absolute costs for termination pay and severance pay are presented separately, as lump-sum figures.

Women

In some of the areas of the *ESA*, women experience differing levels of coverage, exemptions and special rules than men. Overall, women are more likely to be affected by ES special rules, and less likely to be affected by ES exemptions (see Appendix B, Table 6). Women are particularly likely to be affected by the special rules for minimum wage and personal emergency leave, reflecting their prominence among liquor servers (minimum wage) and in the health care professions (many of which have special rules for personal emergency leave). Overall, the relative loss in potential earnings as a result of ES exemptions is about the same for women and men. The absolute weekly cost of ES exemptions (for minimum wage, overtime pay, public holiday pay and vacation pay) are slightly lower for women than men, reflecting women's typically lower wage rates and hours of work. In practice, the social costs of exemptions relating to public holiday pay/time, vacation pay/time, and other working time standards may be higher for women, since they are typically responsible for caregiving, though this cannot be assessed fully using the empirical data available.

Members of Visible Minority Groups

In general, employees who identify as a member of a visible minority group⁶⁷ have roughly equal or better rates of coverage for the *ESA*'s provisions than non-visible minority employees. One exception is in the area of minimum wage: 7% of visible

⁶⁷ Although visible minority status it is an imperfect indicator of the effect of racialization in the labor market, Statistics Canada uses this classification in compliance with the Federal *Employment Equity Act*, which defines visible minorities as "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour."

minority employees have special rules for minimum wage provisions, compared to only 3% of employees who are not visible minorities. In large part, this is the result of the very high proportion of visible minority employees working in homecare, providing homemaking or personal support, which has a special rule in this regard.

Furthermore, employees who are members of visible minority groups are less likely to be fully covered by the severance pay provisions of the ESA: only 29% of visible minority employees are entitled to severance pay, compared to 37% of employees who are not visible minorities. This discrepancy results from two phenomena which may intersect: the shorter job tenure of visible minority employees, which may reflect larger patterns of discrimination in the workforce, and the overrepresentation of visible minority workers among temporary help agency employees. The weekly cost of ES exemptions and special rules (for minimum wage, overtime pay, public holiday pay, and vacation pay) to visible minority employees is roughly equivalent to those for employees who are not visible minorities.

Aboriginal People

Employees with North American Aboriginal status⁶⁸ constitute 2% of Ontario employees who rely on the ESA for labour protection. Overall, Aboriginal employees are more likely to have one or more special rules that modify their coverage under the Act, and are less likely to be fully covered. In particular, Aboriginal employees are more likely to have special rules for public holiday pay and vacation time/pay. The differential coverage under public holiday pay provisions is partially related to Aboriginal employees' over-representation in the construction industry, as well as in continuous operation occupations. The high proportion of Aboriginal employees with vacation pay/time special rules reflects the relatively high proportion of these employees who have short job tenures (and are thus not eligible for time away from work), and also their overrepresentation among harvesters. Employees with Aboriginal status are also less likely than other employees to be fully covered by termination and severance pay provisions of the Act. Aboriginal employees' higher likelihood of exemption from the termination provisions of ESA are again related to their overrepresentation in the

⁶⁸ The Labour Force Survey does not include information on Aboriginal peoples born outside of North America.

construction industry. The higher likelihood of exemption from the severance provisions of the Act is related to Aboriginal employees' overrepresentation among short-tenure employees, a situation that partly reflects the fact that Aboriginal employees are generally younger than employees overall. Taken together, the absolute weekly cost of ES exemptions and special rules relating to minimum wage, overtime pay, public holiday pay and vacation pay is lower than for non-Aboriginal employees; notably, however, the relative weekly cost of these exemptions (the proportion of earnings potentially lost) is slightly higher, reflecting the lower earnings of Aboriginal employees overall.

People with Disabilities

Across the board, employees who identify as having a disability⁶⁹ have slightly higher rates of full coverage under the ESA's provisions than those who do not report a disability. This finding suggests that workers with disabilities who have been able to find formal employment are not systematically disadvantaged by ES special rules and exemptions. However, not only are people with disabilities less likely to be in the labour force, those that participate are more likely to report being self-employed, suggesting that they may have more difficulty finding an accommodating employer.

Young People

In general, Ontario employees aged 15 to 29 are less likely to be fully covered by the ESA, and more likely to be subject to special rules than middle-aged and older employees. This tendency is particularly prominent in relation to the minimum wage, where young employees are affected by both special rules pertaining to students, and the special rules relating to liquor servers (who are overwhelmingly young workers). In addition, young employees are more likely to be affected by special rules that modify their coverage for public holiday pay and vacation pay. More than a quarter of young employees (27%) have special rules relating to public holiday pay, compared to only 20% of employees overall. This is, in part, a result of young people's overrepresentation in continuous operation businesses (particularly in the hospitality sector) and in

⁶⁹ Workers with disabilities were identified in the SLID with the question "Do you have any difficulty learning, hearing, seeing, communicating, walking, climbing stairs, bending or doing any similar activities?", with those responding "yes" classified as persons with disabilities. This analysis does not incorporate information about the severity of the disability, or its effect on work activities.

construction, both of which have special rules relating to public holiday pay. Young employee's lack of full vacation pay coverage relates to their relatively short job tenure, such that they are less likely to have been employed for a year or more, and thus are not eligible for vacation time. Young people's short job tenure is also related to their lower levels of full coverage for termination and severance pay, for which eligibility begins at three months and five years, respectively. Overall, however, the relative weekly cost of exemptions and special rules relating to minimum wage, overtime pay, vacation pay, and public holiday pay are no higher for young employees than their older counterparts.

Recent Immigrants and Non-Immigrants Living in Canada

Broadly, immigrants to Canada who have arrived within the past ten years are less likely to be fully covered by all of the ESA's provisions, and more likely to be subject to special rules, than employees who are more settled immigrants, or who are Canadian-born. Similar to young employees, recent immigrants are more likely to have special rules for public holiday pay, and vacation time/pay. Recent immigrants tend to be overrepresented among those with special rules for holiday pay because of their prominence among temporary help agency employees, as well as among hospitality employees. The relatively short job tenure of many recent immigrants also limits their full coverage under vacation time/pay provisions. Not surprisingly, this short job tenure among recent immigrants is also related to lower levels of full coverage under the severance pay provisions of the Act. Taken together, the relative weekly cost of ES exemptions and special rules relating to minimum wage, overtime pay, public holiday pay and vacation pay is slightly higher for recent immigrants. The elimination of these special rules and exemptions would result in a 8% increase in earnings for these employees, compared to only a 7% increase for Canadian-born employees.

Though not a specific focus of this analysis, it is particularly interesting to also consider the situation of non-immigrants living in Canada, a somewhat amorphous group comprised of both citizens born outside of Canada (but who are Canadian via their parents' status) as well as non-citizens. In other words, this group includes temporary foreign workers who consider Canada to be their "usual place of residence", relatives of immigrants to Canada who reside here, people residing in Canada with

study and work permits, refugees, and Canadian citizens born outside of Canada. Only limited information about this group can be reported because of its relatively small size. Still, just 28% of non-immigrants are fully covered by the ESA (even after excluding coverage for severance pay), and half (49%) are subject to one or more ESA exemption. (Comparatively, 40% of immigrants and the Canadian-born are fully covered). Non-immigrants are more likely to be subject to special rules for minimum wage, due in large part to their overrepresentation in homecare work. Non-immigrants are also much more likely to be exempt from the personal emergency leave provisions of the Act, since these employees are much more likely to be employed in small firms. Finally, the relatively short job-tenure of this group means that they are more likely to have special rules relating to vacation pay/time, and to be exempt from the ESA's severance pay provisions.

Part-time Employees

While some employees may work-part time⁷⁰ by “choice”, albeit constrained,⁷¹ about a third do so involuntarily. Compared to full-time employees, part-time employees are less likely to be fully covered by the ESA, and more likely to have special rules. They are more likely than full-time employees to be exempt from at least one provisions of the ESA. Specifically, part-time employees are more likely to have special rules for minimum wage, reflecting the over-representation of part-time employees among students and liquor servers. The over-representation of part-time employees in continuous operation businesses, particularly in the hospitality industry – means that they are also more likely to be subject to special rules related to the public holiday provisions of the Act. Fully 44% of hospitality sector employees report that they work part time. Part-time employees are also much more likely to be exempt from the personal emergency leave provisions of the Act, reflecting the higher proportion of part-time employees who work for small firms. Finally, the shorter job-tenure of many part-time employees means that they are more likely to have special rules relating to

⁷⁰ The LFS classifies those who usually work fewer than 30 hours per week at their main job as part-time workers.

⁷¹ Reasons for working part-time routinely deemed voluntary include (unpaid) childcare and/or caregiving responsibilities. Thus, definitions of “choice” or “voluntarism” should be approached with caution (Vosko, 2002b; on the relationship between precariousness in employment and choice, see also Vosko and Zukewich, 2006).

vacation pay/time, and to be exempt from the ESA's severance pay provisions. Despite their lower rates of full coverage, the relative cost of ESA exemptions and special rules relating to minimum wage, overtime pay, vacation pay and public holiday pay are not greater for part-time employees than for full-time employees, though the reasons for those costs differ.

Temporary Employees

Temporary employees⁷² are much less likely to be fully covered by the ESA, and are much more likely to have both special rules and exemptions than permanent employees. In particular, temporary employees are more likely to have both special rules and exemptions relating to minimum wages. Similar to part-time employees, the special rules relating to minimum wages are associated primarily with the overrepresentation of students, liquor servers, and harvesters among temporary employees. The higher prevalence of exemptions from minimum wage is associated primarily with the very high proportion of fishers who are temporary employees, as well as higher levels of temporary job holding among some professionals (such as physicians and massage therapists). Temporary employees are also more likely to have both special rules and exemptions related to public holidays. The high prevalence of employees exempt from the public holiday provisions of the Act is again related to the high proportion of agricultural employees who are temporary employees. Additionally, the relatively high proportion of temporary employees with special rules relating to the public holiday provisions of the ESA reflects the overrepresentation of temporary employees in both the construction industry and the hospitality industry, both of which have special rules in this area. Temporary employees are also much more likely to be exempt from the personal emergency leave provisions of the Act, reflecting the particular reliance on temporary employees in small firms. Finally, as expected, the shorter tenure of temporary employees means that they are less likely to be fully covered by the ESA's provisions on vacation time/pay, termination pay, and severance pay. Much like part-time employees, the relative cost of ESA exemptions and special rules relating to minimum wage, overtime pay, vacation pay and public holiday pay are

⁷² The LFS classifies those employees who define their job as 'not-permanent' as temporary, providing respondents with the examples of seasonal, temporary, term or casual to assist them in asking questions related to permanency.

not substantially greater for temporary employees than for permanent employees, though the reasons for the costs differ.

Low-wage Employees

Low-wage employees are much less likely to be fully-covered by all of the provisions of the ESA, and are more likely to have special rules, compared to higher-waged employees. Only slightly more than one-fifth (23%) of low-wage employees are fully covered by all of the provisions of the ESA, compared to 39% of employees overall (excluding severance pay coverage). Not surprisingly, low-wage employees are likely to have special rules relating to minimum wage, reflecting the high proportion of liquor servers and students in this group. This result illustrates how special rules for minimum wage support and perpetuate low-wage work in Ontario. Low-wage employees are also likely to be subject to special rules in the areas of public holidays and vacation time/pay. In part, this situation is a by-product of the prevalence of low-wage employees in the hospitality industry, which is subject to special rules for public holiday provisions because of its continuous nature. Low-wage employees also tend to have short job tenures. Thus, they are more likely to have special rules for vacation time, and are also less likely to be fully covered by the severance pay provisions of the Act. For low-wage employees especially, the relative cost of ESA exemptions and special rules for minimum wages, overtime pay, vacation time/pay and public holiday pay is high. Though the median absolute weekly cost of these exemptions is low (\$10), the elimination of these exemptions would potentially lead to a median, relative earnings increase of 7% per week, thus substantially increasing the purchasing power of these disadvantaged workers. Underlining this disadvantage is particularly important since, contrary to some prevailing perceptions, low-wage employees are not merely students living with their parents or part-time employees seeking extra disposable income; instead, many low-wage employees (38%) are part of low-income economic families.

Multiple Job Holders

Multiple job-holding suggests that workers may not be able to meet their needs through the income provided by a single job. Five percent of Ontario employees reported working in more than one job in the week prior to taking the LFS. Employees with multiple jobs are less likely to be fully covered by the ESA in their main job, and

more likely to have special rules for one or more provisions. In particular, multiple job holders were slightly more likely to be subject to special rules relating to public holiday pay, particularly because of their overrepresentation among hospital employees. Furthermore, multiple job holding is associated with low-wage and precarious employment. Since multiple job holders had relatively short tenure in their main job, they are less likely to be fully covered by the vacation pay/time and severance pay provisions of the ESA. Nonetheless, the weekly costs of ESA special rules and exemptions relating to minimum wages, overtime pay, vacation time/pay and public holiday pay are not substantially different between employees with multiple jobs and employees with single jobs. This finding suggests that ESA special rules and exemptions do not necessarily prompt workers to take on additional jobs; rather, multiple job holding is more directly related to the conditions of work in an employee's main job (such as low wages or insufficient hours).

Predicting ESA Coverage

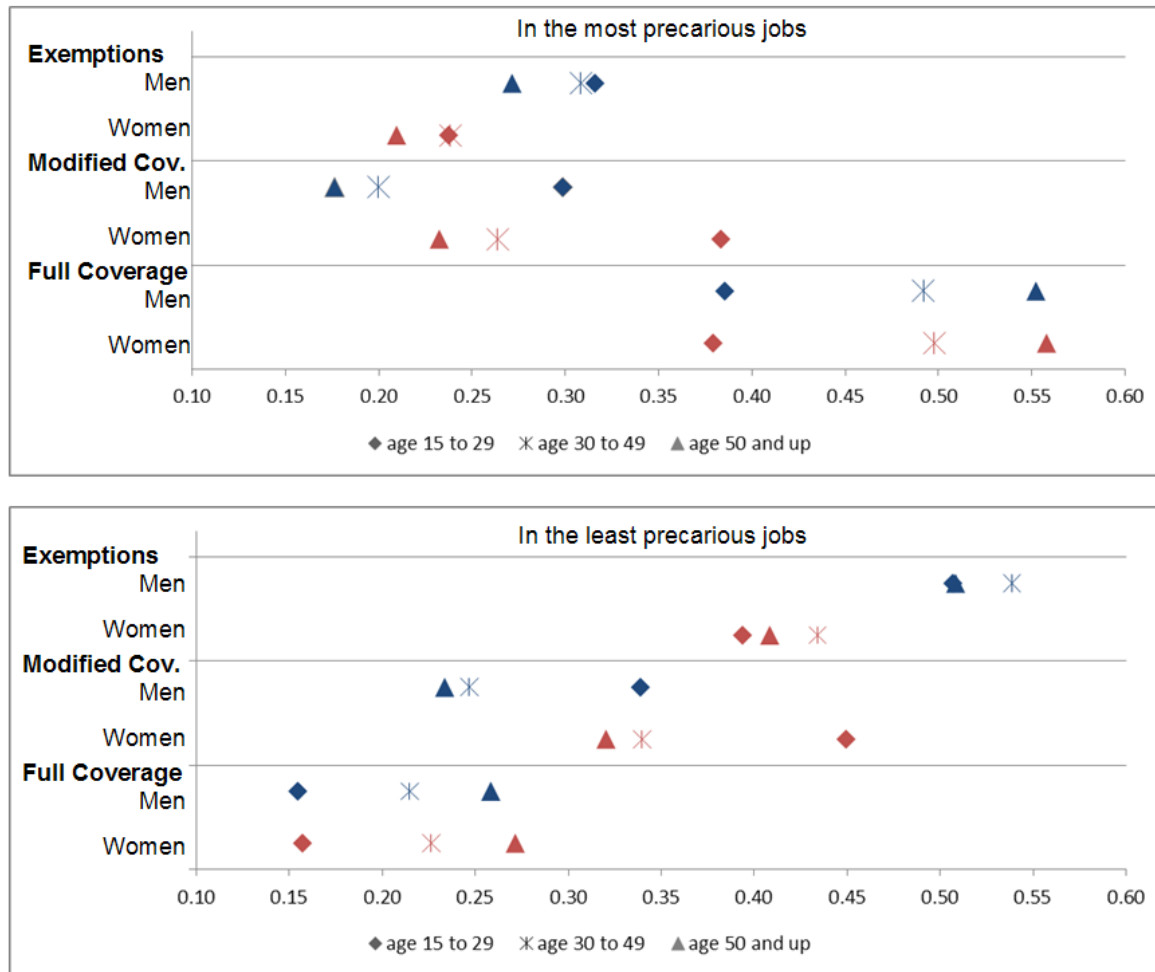
In this analysis, we use a multinomial regression model to predict the level of ESA coverage experienced by Ontario employees, based on three socio-demographic characteristics (sex, age group, and recent immigrant status) and four job characteristics (full-time/part-time status, job permanency, unionization, and low-wage earning (\$15 per hour or less)). The value of such a model is that it calculates the independent effect of each of these characteristics, and their relation to ESA outcomes. In particular, the model estimates the effect of each of these characteristics in predicting whether an employee is exempt from one or more ESA provisions, or whether an employee has one or more special rules or modified coverage (but no exemptions), compared to having full coverage under the ESA (not including severance pay). The results of the model generally mirror the results of the bivariate analysis presented throughout the remainder of this study, and thus confirm these results (see the full model in Appendix B, Table 10). Of particular note with regard to how exemptions and special rules affect employees belonging to historically disadvantaged social groups is that the directional effects of age, gender and recent immigrant status persist, even after accounting for job characteristics.

In general, while women are less likely to have one or more ESA exemptions, they are more likely to be affected by special rules or to have some other form of modified coverage. Young people are, in turn, more likely than older people to be affected by both ESA exemptions and special rules (and other modified coverage). Compared to both the Canadian born, and settled immigrants, recent immigrants are, moreover, much more likely to be working in jobs affected by special rules or to have other modified coverage, and are slightly more likely to be subject to exemptions.

As expected, labour force location (e.g., form of employment and dimensions of labour market (in)security) is also strongly related to ES coverage. Employees in temporary jobs, as well as those in part-time jobs, are less likely to be fully covered. Interestingly, low-wage work is associated with more ES special rules or modified coverage, but fewer outright exemptions from one or more ES provisions. Unionized employees are also more likely to have ES special rules or modified coverage, but less likely to have ES exemptions, when other dimensions of precariousness or labour market insecurity are taken into account.

The figures below illustrate the complex intersection of age, gender, and labour force precariousness in predicting the probability of ESA coverage for different groups. The top panel illustrates the predicted probability of having one or more ES exemption, having one or more special rule or other modified coverage (but no exemptions), and having full ES coverage, for the most precariously situated employees: non-unionized, temporary, part-time employees, with low-wages (\$15 an hour or less), depending on their age and gender. It is clear that overall, both men and women have high probabilities of being in a job with one or more ES exemptions, though middle-aged men in precarious jobs have the highest probability of this outcome. The probability of being subject to ES special rules or other modified coverage is highest among young employees in precarious jobs. This group also has the lowest likelihood of full ES coverage (though young men are more likely to be in jobs with ES exemptions, whereas young women are more likely to be in jobs affected by special rules).

Figure 7: Predicted Probability of ESA Coverage



The lower panel, showing the probabilities of ES coverage for the least precarious employees (unionized, full-time, permanent, higher-wage employees), exhibits the opposite pattern. Middle-aged and older employees, especially, have a high probability of being fully covered under the ESA, with little difference between men and women. But, once again, even among this relatively secure group, young employees are less likely to be fully covered and are more likely to be affected by special rules or to have modified coverage than their older counterparts, especially young women. Though age effects are less pronounced in predicting exemptions, a clear gender effect is manifest: men are more likely to be affected by one or more ES exemptions, whereas women are more affected by special rules or to have modified coverage.

4. Conclusions and Options for Legislative and Regulatory Reform

Unlike most other studies commissioned for the Changing Workplace Review, whose goals are to scan the literature in a given area, the proceeding analysis is based on original empirical research, using archival and statistical data. The options that emerge from the analysis of these data were developed in recognition of the need to accurately reflect the conditions of Ontario's labour market overall and to reflect the principles of social minima, universality, and fairness that archival research demonstrates to have first motivated and ultimately framed the development of the ESA. Yet, as the empirical research in this study demonstrates, the widespread use of exemptions and special rules undermines these principles. On this score, the preceding analysis illustrates, for example, how the substantial disadvantage of certain groups is magnified by such exemptions and special rules⁷³ that lower the floor for these employees.

Regarding universality, which as the historical record suggests, refers to the principle of extending social minima to the maximum number of employees possible, exemptions and special rules create strong potential for the evasion and erosion of ES. Here, the exclusion of self-employed workers' stands out as particularly problematic, due to the percentage of solo self-employed who are excluded from ES notwithstanding that they often find themselves in work relations that more closely resemble

⁷³ This is the case for groups such as assignment employees of temporary help agencies who are subject to special rules in the areas of public holidays, notice of termination/termination pay, and for the calculation of severance pay, an empirical finding for which we thank Harry Arthurs for urging us to draw out.

To counter such circumstances, some scholars (e.g., Davidov, 2015) argue that ES should contribute to mitigating the situation of the most precariously employed and those belonging to disadvantaged social groups, and could include standards that exceed the legislated minimum for select groups of workers particularly disadvantaged in the labour market. Indeed, the magnitude of precariousness confronting assignment employees of temporary help agencies, both in terms of their low wages and limited job security, as well as the clustering of recent immigrants and visible minorities in these jobs, suggests that they might benefit from the implementation of standards that would help to mitigate their labour force disadvantage. Furthermore, there are already precedents in the ESA, that is, provisions that compensate for disadvantage among particular occupational and social groups. For instance, the general minimum wage rate and the student minimum wage rate do not apply to homeworkers: to address their well-documented low income levels, the minimum wage for a homemaker is 110% of the general minimum wage rate, even if he or she is a student (O. Reg. 285/01, s. 5(1.3) par. 4). Similarly, in recognition of migrant workers' precarious residency status, the *Employment Protection for Foreign Nationals Act* (2009) (c. 32, s. 20 (4)) gives complainants three and a half years to complain about a contravention as opposed to the two-year time limit under the ESA (c. 41, s. 139).

employment than entrepreneurship. Though it is impossible to determine the precise magnitude of this problem with the data available, if the solo self-employed are among the group potentially eligible for ESA coverage, the rate of full coverage under the ESA (excluding severance pay) falls to 34%. This problem is not new and has long been recognized both in collective bargaining statutes (e.g., LRA, s. 1) that commonly define dependent contractors as employees, and the common law, which has also recognized a category of dependent contractors who, like employees, are entitled to notice of termination (*Carter v. Bell & Sons* [1936]; *McKee v. Reid's Heritage Homes* [2009]). Moreover, the problem of patrolling the boundary between covered employees and excluded self-employed workers has become increasingly difficult due to the proliferation of practices of misclassification, which produce the exclusion of workers who should be considered employees and thereby covered by the Act. Thus, the foregoing empirical analysis underlines the importance of devising criteria justifying any exemption or special rule and incorporating them in the statute. Based on its findings, broadly, these criteria might include: a presumption in favour of universality; identifying acceptable bases for making exceptions and asserting expressly that cost-saving is an insufficient rationale; placing the onus on the person (e.g., the employer or industry) seeking to use an exemption or special rule to justify the exception; providing equal or greater benefit in compensation or alternative arrangements in instances where exceptions are permitted.

Finally, with regards to fairness, as illustrated empirically, the effects of the ESA might usefully be considered in substantive rather than procedural terms given especially the well-documented power imbalances present in the context of the employment relationship in general and more so in the context of non-unionized and precarious employment relationships.

Below, we set out specific options for reform related to the ESA, and assess their utility in relation to the number of employees affected, their absolute and relative economic value to employees, their social value to employees (in other words, the reduction of social costs), and their effect on historically disadvantaged workers in the labour force.

In addition to the six specific options we present below, the preceding empirical analysis requires that careful attention be paid to seemingly poorly-justified industrial/occupational exemptions. When the ESA exemptions are viewed through the lens of the clusters outlined in Part Two of this study, it is apparent that there are a number of industry/occupational exemptions that may well undermine principles of universality and fairness associated with the intentions of the Act. In particular, there is a lack of coherence to the exemptions that are based on professional/ occupational status. While some exemptions are clearly justifiable, others are questionable, indicating that these categories should be subject to a careful review. Harmonizing standards across employers in related industries and occupations can help to level the playing field to ensure that businesses can remain competitive. For instance, the distinctions within the construction industry, based on the type of infrastructure being built/created, and whether the task is classified as 'construction' or 'maintenance' related, open the door for employee misclassification as a means of accessing specific exemptions and special rules.

Further, many of the professional exemptions are premised on the notion that these employees are autonomous, high-status workers with significant bargaining power relative to their labour, either independently or via a union. While this characterization is clearly true for some of the occupations in this group (physicians, dentists, lawyers, teachers), other occupations have lower levels of prestige, as well as lower wages. As an option, all such groups could be covered, or occupations with lower levels of prestige, lower levels of self-employment and/or lower wages – such as surveyors, pharmacists, chiropodists, naturopaths and massage therapists – could be removed from this group, and thus able to access the protections of the ESA.

Among the irregular working-hours employees, the inclusion of those in the film and television industry is notable, both for the breadth of exemptions and the fact that their work is not necessarily seasonal, nor related to the provision of emergency services. This industry wide exemption captures a wide swath of employees in a range of both high- and low-skill occupations. Compared to other employees, these employees are more likely to be young and engaged on part-time and temporary bases, as well as to report usually working long hours.

Similarly, among the combined long and irregular working hours employees, the inclusion of IT workers appears inconsistent, as their work is neither seasonal nor residential. The rationale for IT workers, for example, posits that working time regulations are not suited to the nature of this work. Yet, based on the Ministry of Labour's archival records, the exemption appears to be the result of industry lobbying in attempt to avoid cost burdens, rather than a principle related to professional identity. These employees include programmers, software engineers, and IT technicians. Compared to other employees, they are much more likely to be middle-aged men, with full-time, permanent work, though they are also more likely to be recent immigrants.

The six specific options for legislative and regulatory reform are presented below with accompanying rationale.

Options for Legislative and Regulatory Reform and their Projected Effects⁷⁴

| | Number of employees potentially affected | Effect on absolute economic costs to employees | Effect on relative economic costs to employees | Effect on social costs to employees | Effect on dis-advantaged groups | Potential cost to employers |
|---|--|--|--|-------------------------------------|---------------------------------|-----------------------------|
| 1. Eliminate minimum wage special rules and exemptions | Medium | Low | High | Low | High | Low |
| 2. Eliminate overtime pay exemptions | High | Medium | Medium | Medium | Low | Medium |
| 3. Review and consolidate the working time exemptions | High | -- | -- | High | Low | -- |
| 4. Eliminate the public holiday exemption | Medium | Low | Low | High | Low | Low |
| 5. Eliminate the vacation time/pay exemption | Medium | Low | Low | High | Low | Low |
| 6. Eliminate personal emergency leave exemptions for small firms | High | -- | -- | High | High | Medium |

Furthermore, to retain Ontario's status as a best-practice jurisdiction in this area along with the federal jurisdiction, an important feature given the size of its labour force, it should be emphasized that the threshold of five years of job tenure for accessing severance pay reflects outdated norms, especially those regarding the typical duration of jobs. Given the prevalence of precarious employment, especially the uncertainty it entails, reducing the job tenure threshold needed to access severance pay is worthy of consideration. The extension of severance pay to employees with shorter job tenures, while maintaining the same costing formula, would help to provide workers with a measure of economic security during the transition between jobs. Extending severance

⁷⁴ The symbol -- conveys no data available.

pay coverage may have particular benefits for more marginalized workers, who may experience longer times until re-employment.⁷⁵ A further rationale for this type of measure is that existing ESA termination entitlements are significantly below those that would be available to most employees under the common law as it is now interpreted, including “low-status” workers whose common law entitlement used to be below what the ESA guaranteed, but who are now likely to be entitled to more than the ESA minimum. One way to partly address this anomalous situation is to make severance pay more widely available.⁷⁶

Option 1

Eliminate Minimum Wage Special Rules and Exemptions and Establish a General Minimum Wage for All Employees

The role of the minimum wage is to establish a social minimum for an hourly wage, below which rates of pay should not be permitted. Exemptions and special rules that permit differential rates of pay below the social minimum arguably undermine the very purpose of having a minimum wage, which should reflect the bare minimum value of an hour of labour, and should not be reduced based on personal characteristics of the employee (i.e. student status), or the occupation in which they are engaged. The social benefits of establishing a general minimum wage include addressing the extreme precariousness of the lowest paid workers in the province.

The absolute costs to employers of eliminating this provision are relatively low, whereas the evidence shows that it would potentially make a substantial difference in relative wages to those affected. This change would affect many of the most historically disadvantaged groups of workers in precarious jobs and industries. With regard to special rules, in terms of the rationale for the differential student minimum wage, whereas in the past students principally worked during school breaks, they are increasingly employed in permanent, part-time jobs, including during the course of their studies on account of the rising cost of education and limited access to familial support,

⁷⁵ While periods of unemployment post-termination are variable and dependent upon a wide range of factors, it is beyond the scope of this study to review research on labour market transitions.

⁷⁶ Increasing ESA notice and severance entitlements represents another complementary option but one that we are unable to explore through the data available.

shaped by the expansion of precarious employment. Currently, more than half of students affected by this ESA provision (56%) report earning less than the general minimum wage.

The differential wage for liquor servers, because they are tipped workers, should also be re-examined. These workers are assumed to make up the lower wage rates through their tips; however, the statistical analysis demonstrates that for some 20% of liquor servers this is not the case. Unless tipping is made mandatory (with a minimum tip automatically added to a patron's bill), there is no assurance that a minimum wage level will be reached among such groups. And even then it might not be reached if business is slow.

Another group particularly adversely affected by the special rules is residential care workers. This group is subject to a special rule that entitles them only to be paid the minimum wage for the lesser of 12 hours or their actual hours of work, meaning that, if they work more than 12 hours in a day, they are only entitled to be paid for 12 hours. Homecare employees who provide homemaking or personal support services have a similar special rule. This special rule stands out in compromising the principle of entitlement to a minimum wage for hours worked. It is applied to a group of employees that are typically historically disadvantaged on the bases of immigrant status and gender, owing to the many women and recent immigrants that populate this occupation (Eckenwiler, 2012; Valiani, 2012). Moreover, this rule operates in conjunction with other exemptions from working time and overtime pay provisions, creating a situation of multiple jeopardy for this group of workers. Although residential care workers cannot be identified in the LFS, homecare workers were more likely than other workers to report earning less than the minimum wage, and are also more likely to be members of visible minority groups. In addition, almost one in ten (9%) agricultural employees who have special rules or exemptions for minimum wage report earning less than minimum wage. These occupations are overwhelmingly filled by men, who tend to be young, and recent immigrants, or non-Canadian citizens living in Ontario, who have not immigrated (including temporary foreign workers and/or refugees).

Option 2

Eliminate Overtime Pay Exemptions

The rationale for the application of the overtime pay exemption largely revolves around the cost to industry.⁷⁷ The benefits to industry gained through the overtime pay exemption must be weighed against the cost to workers, economically through lost potential wages, socially through lost time with family, and in health terms. The overtime pay exemption disproportionately affects employees with children, thus placing family responsibilities directly at odds with workplace responsibilities. Employees who are exempt from the overtime provisions of the Act are much more likely to work long hours than those who are not. In particular, workers in occupations with special rules are much more likely to report that they usually work overtime. It would appear that, for the sake of consistency, long-hour workers should be compensated with an overtime premium (of 1.5 time) for all overtime hours. Furthermore, in the interest of consistency, consideration should be given to standardizing the threshold across long-hour industries. The elimination of the overtime pay exemption, along with differential thresholds for different occupational groups, also relates to concerns regarding health and safety. For instance, both truck and taxi drivers report the highest average number of usual weekly hours. Providing an economic incentive for drivers to work longer hours than other employees runs counter to public safety interests. The elimination of overtime exemptions and the implementation of premium pay requirements for all employees over 44 hours a week would ensure that workers are only required to work long hours when it is truly necessary, thereby acting in accordance with the principle of establishing a social minima in terms of reasonable or 'social' hours of work.

With regard to managers, as demonstrated above, there is a legitimate concern regarding the problem of managerial misclassification, despite the need, articulated by some commentators, to recognize the unique nature and conditions of managerial work. To this end, one option is to eliminate the overtime pay exemption for managers paid on an hourly basis while leaving it intact for those paid a salary above a threshold of 2.5

⁷⁷ Though often cast as providing firms with 'flexibility,' specifically, the to respond to variability in production cycles or seasonality, some scholarship suggests that this 'flexible' approach to working time places the burden of managing such variability on employees (see for e.g., Fudge, 2001).

times the minimum wage, now indexed in Ontario,⁷⁸ assuming that the appropriate legal tests of managerial misclassification are applied.⁷⁹ Such measures would discourage the intentional misclassification of employees as managers. They also align well with the U.S. Department of Labor's current plan to raise the salary threshold beyond which executive, administrative, and professional salaried employees (often deemed 'white collar' employees) are exempt from the *Fair Labour Standards Act's* overtime provisions to \$50,440 (USD), where the proposed means of doing so involves either adjusting to inflation or tying the salary threshold to the 40th and 90th percentiles of weekly earnings.⁸⁰

Option 3

Review and Consolidate the Working Time Exemptions with a View to Standardization

Working time exemptions take a variety of forms, including allowance of excess hours, elimination of the requirement for rest periods and breaks, and special rules regarding the application of the overtime pay premium (addressed separately in Option 2 above). The foregoing empirical review of these exemptions illustrates a considerable lack of consistency in their logic, and their application across various occupations. The analysis of the clusters outlined in Part Two of this study illustrates the inconsistencies across similarly situated employees, as well as the inclusion of some occupations/industries that do not fit with the general trend. For example, travelling salespersons and commissioned automobile salespersons are similarly situated white-collar occupations; yet each is subject to different working time exemptions. At the present juncture in Ontario's labour market, due to the variety and inconsistency with respect to working time exemptions, there is an inequality in these regulations that

⁷⁸ The rationale for this multiplier, together with indexing, is to bring Ontario on par with developments afoot elsewhere, such as in the U.S., as described below.

⁷⁹ As of November 2015, assuming a 40 hour work week, implementing this measure would mean that managers paid an annual salary of \$58,500 or above would be subject to the current overtime pay exemption. An advantage of linking this threshold to the minimum wage is that it assumes adjustments for inflation and prevailing economic conditions.

⁸⁰ The U.S. Department of Labor's proposed overtime exemption threshold is equal to the 40th percentile of weekly earnings for full-time salaried workers (U.S. Department of Labor, 2015).

arguably works to benefit some industries over others. In certain ‘demand-based’ industries (i.e., those that do not run on a regular production schedule, such as embalmers and funeral directors and emergency workers), there appears to be some justification for working time exemptions. However, archival research demonstrates that the inclusion of other industries, specifically those relating to employees in the film and television industry, and IT professionals, reflects the effects of lobbying rather than sound public policy justification as neither group is seasonal nor “requiring” of long-shift work. Among film and television employees, in particular, more than one in ten (12%) report usually working more than 50 hours a week. Others, such as those in the construction industry, arose at a time of relatively high rates of unionization, and were applied based on the understanding and explicit recognition that collective bargaining would be the primary mechanism through which industry standards would be set. Declining rates of unionization thereby necessitate a rethinking of such exemptions.

While recognizing that some industries require longer hours of work than others due to industry-specific conditions (e.g. seasonality), often there is an outright exemption from any hours of work limit which is arguably contrary to the idea of social minima, and may not be in the public interest given concerns regarding health and safety both for workers and for the general public. Both of these concerns could be addressed, for example, through the requirement of a minimum rest period of 12 hours per day to allow for sufficient bodily rest and recovery from work as well as for caregiving responsibilities.⁸¹ Furthermore, in cases where excess hours cannot be avoided, constraint in the scheduling of long hours can be achieved through the removal of the overtime pay exemption.

In addition to a minimum rest period in between shifts, arguably consistency should be sought in the application of break times during working hours, as currently there is a mishmash of people who potentially are required to work without breaks. Even in those industries that reflect seasonality – such as agriculture and construction – employees still require breaks for health and safety. Live-in workers – in residential and building care and firefighting – may not get breaks but can still be scheduled for rest

⁸¹ This option is not intended to encompass two half-hour meal breaks during work time. Rather, it is designed to cover time outside of work.

periods and time-off between shifts in order to protect the public. Employees with children are more likely to be exempt from working time standards, and thus these exemptions may have social costs in that they limit parents' ability to be effective caregivers.

Option 4

Eliminate the Public Holiday Exemption

Exempting employees from public holidays (or public holiday pay) creates a situation in which some employees are required to work on a holiday at regular wages, whereas others are either not required to work or are compensated through a holiday premium if they are required to work. For the approximately 427,000 employees who are exempt from the ESA's public holiday provisions, this translates into an average individual loss of \$244 for each of Ontario's nine annual public holidays. Removing this exemption would also provide a greater number of employees with a common day-off with positive effects for community life.

There are rationales for the public holiday exemption that relate to occupational- or industry-specific conditions, for example in the cases of agricultural workers, taxi cab drivers, landscapers, swimming pool installers, firefighters, hospital employees, and professionals. In cases where it is necessary to schedule work on a public holiday, employees engaged in these occupations or industries could be compensated through a holiday premium. The creation of a holiday premium would ensure that work on public holidays is scheduled only in those situations where it is genuinely required.

Option 5

Eliminate the Vacation Exemption

There is no clear justification for exempting a small segment of employees (289,000) from entitlement to a minimum vacation period from work, or compensation in lieu. The social minimum in vacation time provides a minimum time away from work to enable rest, rejuvenation, personal development, and time for family and community. In the case of employees exempted due to seasonality, there is no effect in terms of lost

working time. The exemption simply means they lose further income through lost vacation pay. The cost of removing the vacation exemption for agricultural employees, in particular, is quite modest: a weekly average of \$24 per employee.

Option 6

Eliminate Personal Emergency Leave Exemptions for Small Firms

In terms of the impact on individual employees, it is somewhat arbitrary to deny personal emergency leave to employees based on characteristics of their workplace that are beyond their control (e.g., firm size). Indeed, employees in small firms are just as likely, or potentially more likely given women's considerable representation in small firms and typically higher burden for unpaid caregiving, to require access to personal emergency leave as are employees in larger firms (an emergency is an emergency).

The rationale for this exemption, according to the Ministry of Labour records, is that small firms have insufficient staff to cover for someone who is away on emergency leave. In the absence of this protection, however, employees in small firms who are either too ill to come to work or who have sick children for whom they are legally responsible for providing care may potentially be terminated as a result. This practical outcome is inconsistent with the protection the Act is designed to provide.

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Appendix A: Methodological Notes

Archival Records

Archival records covering the time frame from the 1940s to the 1980s were obtained from the Archives of Ontario. Records from the following Ontario Ministry of Labour Record Groups (RG) were used:

- *Minister of Labour's general correspondence and subject files* (RG 7-1). These files include memorandums to and from the Minister, draft copies of legislation, reports and submissions from labour and business organizations, and departmental research.
- *Correspondence of the Deputy Minister of Labour* (RG 7-12). These files include Ministry reports, research documents, news releases, and correspondence with labour and business organizations.
- *Ministry of Labour legislation and regulation files* (RG 7-14). These files include drafts and final versions of legislation and regulations, departmental research, and submissions from labour and business organizations.
- *Correspondence of the Director of the Employment Practices Branch and its predecessors* (RG 7-78). These files include letters and memorandums to and from the Director, news releases, policy recommendations, reports and submissions from labour and business organizations, and departmental research.
- *Research studies relating to policy and legislation* (RG 7-130). These files include background research on minimum standards legislation in Ontario.
- *Minister of Labour's policy and program development files* (RG 7-186). These files include a collection of the Ministry's news releases from the 1970s and 1980s highlighting major policy announcements during this time period.

Statistical Methodology

Data Sources

This analysis is based primarily on Statistics Canada's 2014 Labour Force Survey (2014). The main goal of the LFS is to classify Canada's working age population into three groups: employed, unemployed, and not in the labour force, and to provide descriptive information on each of these groups (Statistics Canada 2014). As such, it provides detailed information about workers' industry, occupation, employee status, full-time/part-time status, and tenure, as well as information about employee's hours of work, paid and unpaid overtime hours, wage earnings, unionization status, and firm size. In addition, the LFS captures some demographic information, including sex, age, country of birth and year of landing (for recent immigrants), Aboriginal status, student status, household composition and economic family income. The Labour Force survey was selected for this analysis because it is the most comprehensive, up-to-date source of statistical information about workers in Canada. The 2014 annual, confidential LFS data file was analyzed in the Statistics Canada's Toronto Research Data Centre. As appropriate, data were weighted using an annualized version of the person weight and an annualized version of the Aboriginal person weight (for analyses relevant to Aboriginal peoples), and a normalized equivalent of both weights for tests of statistical significance.

In addition to the LFS, an analysis of Statistics Canada's 2011 Survey of Labour and Income Dynamics (SLID) provides additional information about visible minority workers, and workers with disabilities. The SLID is a panel survey which interviews selected households about their labor market experiences and income; 2011 is the last year for which data are available. The 2011 cross-sectional SLID confidential data file was analyzed at Statistics Canada's Toronto Research Data Centre. The 'labor force weight' provided by Statistics Canada, and its normalized equivalent, were used in this analysis.

Because the SLID and the LFS data are from different years and are collected in different contexts, the estimates from the two surveys are not directly comparable. The data on visible minority workers and disabled workers from the SLID should only be

used to interpret the relative coverage of the workers in these groups, and cannot be compared to the relative coverage of other types of workers (young workers, etc.) based on LFS data. Contextual time-series information to support the primary analysis of LFS and SLID data was drawn from Statistics Canada's CANSIM tables based on the Labour Force Survey, 1976-2014.

Sample

The population of interest in this analysis is people living in Ontario, who were employed in 2014, and whose main job is not in a federally-regulated industry. The classification of employment in the LFS is based on that of the International Labour Organisation (ILO). Employed persons are members of the non-institutionalized population, aged 15 or older, who, during the reference week, did any work for pay or profit, or who had a job and were absent from work. Those who are employed include formal employees, the self-employed, and unpaid family workers (who are conceptualized as part of the self-employed). When a respondent holds more than one job or business, they are assigned the status of their main job – that is, the job or business involving the greatest number of usual hours worked (Statistics Canada 2014).

Respondents employed in federally-regulated industries in their main job or business, and thus outside the jurisdiction of Ontario's ESA, were identified based on the NAICS and NOC-S for their main job. In large part, the determination of which industries were exempt from provincial ES regulation was Human Resources and Skills Development Canada's (2010) "A Profile of Federal Labour Jurisdiction Workplaces," which reports on Statistics Canada 2008 Federal Jurisdiction Workplace Survey and includes a list of the relevant NAICS codes.

The analysis focuses primarily on workers who are employees in their main job, as opposed to those who are self-employed or unpaid family workers. A worker's main job is defined by Statistics Canada as the one with the most paid hours in the year. If hours are identical between two jobs, the main job is the one with the greatest earnings or the longest tenure (Statistics Canada, 2014). The Labour Force Survey only interviews workers who identify a selected dwelling as their "usual place of residence", and thus it may not effectively capture information about temporary foreign workers.

Operationalization of ESA Coverage

Each respondent was assessed for their coverage under each of the main provisions of the ESA (pay, working time, holidays and leaves, and termination and severance) based on their occupation/industry, job characteristics, and employer characteristics in their main job, as well as their personal characteristics. The specific exemptions identified for each respondent are based on the information provided by the Ontario Ministry of Labour's online 'Special Rule Tool', supported by the ESA and its regulations, and interpretive documentation.

Occupation/industry exemptions were assessed based on workers' NOC-S (National Occupational Classification for Statistics) 2006 code, often in conjunction with the NAICS (North American Industry Classification System) 2007 code of their employer. In many cases, it was difficult to match the occupations specified in the ESA regulations with the occupations classified in the NOC-S. Some occupations with exemptions from the ESA, such as travelling salespeople and swimming pool installers, are simply unidentifiable in the NOC-S and NAICS classification systems. Other occupational exemptions were too specific to be captured by the prevailing statistical classification systems. For example, the ESA includes exemptions for public accountants, however the NOC-S and NAICS do not distinguish between public accountants and other accountants. Similarly, some ESA exemptions are based on an employee residing at their place of work, such as residential building superintendents. Since the LFS does not capture information about residency, these workers are not identifiable. In all such cases, our approach errs on the side of coverage versus exemption, so that the estimated number of employees with exemptions or special rules for each ESA provision is not inflated.

Analysis

The analysis presented relies primarily on univariate and bivariate statistical techniques. This analysis is supplemented by a multinomial regression model in order to determine the independent effects of demographic and job characteristics. In accordance with Statistics Canada confidentiality protocols, the data presented in this paper all meet minimum cell count thresholds.

The analysis of the 2014 LFS and 2011 SLID confidential data files is augmented by contextual information from Statistics Canada's CANSIM database. Information from these data tables is used to illustrate the changes in the labour force over time, in order to understand the trajectory of the labour force in relation to key elements of the ESA. The results of this analysis should not be interpreted as making causal claims. While the findings suggest, in general, that members of traditionally disadvantaged demographic groups are subject to high levels of ES exemptions, we acknowledge that the direction of causal linkages is ambiguous. That is, we neither argue that exemptions are applied to an industry because of its high concentration of disadvantaged groups, nor that as a result of their marginalization, these workers are relegated to industries with high rates of exemptions. The goal of this analysis is not to infer causation, but rather to identify where exemptions exist and to whom they apply.

Appendix B: Statistical Tables⁸²

Table 1a&b: Labour Force Distribution of Ontario Workers, by Employee Status and Unionization

Table 2: Prevalence of ESA Coverage, Special Rules and Exemptions, Overall and by Unionization

Table 3: Economic Costs of ESA Special Rules and Exemptions, Overall and by Unionization

Table 4a&b: Conceptual Clusters of ESA Special Rules and Exemptions, by Employees' Socio-Demographic Characteristics

Table 5a&b: Conceptual Clusters of ESA Special Rules and Exemptions, by Employees' Job Characteristics

Table 6a-e: ESA Coverage, Special Rules, and Exemptions, by Employees' Socio-Demographic Characteristics

Table 7a-e: ESA Coverage, Special Rules, and Exemptions, by Employees' Job Characteristics

Table 8: Economic Costs of ESA Special Rules and Exemptions, by Employees' Socio-Demographic Characteristics

Table 9: Economic Costs of ESA Special Rules and Exemptions, by Employees' Job Characteristics

Table 10: Multinomial Regression Model Predicting ESA Coverage

⁸² In the statistical tables that follow, the symbol – indicates data are not available or inappropriate to report.

Table 1a: Labour Force Distribution of Ontario Workers, by Employee Status and Unionization

| DEMOGRAPHIC CHARACTERISTICS | | Weighted population | Overall | Non-employees | Employees | Non-unionized employees | Unionized employees |
|--|--------------------------------------|---------------------|---------|---------------|-----------|-------------------------|---------------------|
| SEX | Male | 3,216,261 | 51.3% | 63.7% | 48.8% | 50.0% | 45.2% |
| | Female | 3,055,092 | 48.7% | 36.3% | 51.2% | 50.0% | 54.8% |
| AGE GROUP | 15 to 29 years | 1,554,510 | 24.8% | 8.8% | 28.0% | 31.2% | 18.5% |
| | 30 to 49 years | 2,669,249 | 42.6% | 40.4% | 43.0% | 41.5% | 47.4% |
| | 50 or more years | 2,047,593 | 32.6% | 50.9% | 29.0% | 27.3% | 34.2% |
| VISIBLE MINORITY STATUS^a | No | 4,955,928 | 76.5% | 84.3% | 75.0% | 74.0% | 78.4% |
| | Yes | 1,519,030 | 23.5% | 15.7% | 25.0% | 26.0% | 21.6% |
| DISABILITY STATUS^a | No | 5,126,151 | 79.8% | 78.3% | 80.1% | 80.6% | 78.4% |
| | Yes | 1,299,981 | 20.2% | 21.7% | 19.9% | 19.4% | 21.6% |
| ABORIGINAL STATUS | No | 6,156,325 | 98.2% | 98.9% | 98.1% | 98.1% | 97.9% |
| | Yes | 113,072 | 1.8% | 1.1% | 1.9% | 1.9% | 2.1% |
| IMMIGRATION STATUS | Born in Canada | 4,324,282 | 70.1% | 64.9% | 71.1% | 69.7% | 75.3% |
| | More than 10 years since immigration | 1,399,247 | 22.7% | 29.5% | 21.3% | 21.7% | 20.1% |
| | 10 or fewer years since immigration | 448,766 | 7.3% | 5.7% | 7.6% | 8.6% | 4.6% |
| PARENT (CHILD UNDER 16) | No | 4,497,900 | 71.7% | 69.6% | 72.1% | 73.5% | 68.1% |
| | Yes | 1,773,453 | 28.3% | 30.4% | 27.9% | 26.5% | 31.9% |
| SINGLE PARENT (CHILD UNDER 16) | No | 6,109,988 | 97.4% | 98.1% | 97.3% | 97.5% | 96.7% |
| | Yes | 161,365 | 2.6% | 1.9% | 2.7% | 2.5% | 3.3% |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 1,128,537 | 19.6% | 35.8% | 17.9% | 20.4% | 10.3% |
| | Middle 40% of families | 2,289,451 | 39.7% | 44.8% | 39.1% | 38.9% | 39.8% |
| | Highest 40% of families | 2,352,528 | 40.8% | 19.4% | 43.0% | 40.7% | 49.8% |
| MULTIPLE JOB HOLDER^b | No | 5,932,436 | 94.6% | 94.0% | 94.7% | 94.8% | 94.4% |
| | Yes | 338,917 | 5.4% | 6.0% | 5.3% | 5.2% | 5.6% |

Differences between employees and non-employees, and between unionized employees and non-unionized employees, are statistically significant at the $p < 0.05$ level unless the value is italicized

a Data are taken from SLID (2011) and thus not directly comparable to other table data

b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 1b: Labour Force Distribution of Ontario Workers, by Employee Status and Unionization

| LABOUR FORCE CHARACTERISTICS (MAIN JOB) | | Weighted population | Overall | Non-employees | Employees | Non-unionized employees | Unionized employees |
|--|--------------------------------|---------------------|---------|---------------|-----------|-------------------------|---------------------|
| TYPE OF WORK | Full time (30 hours or more) | 4,985,225 | 79.5% | 75.2% | 80.4% | 78.9% | 84.7% |
| | Part time (less than 30 hours) | 1,286,128 | 20.5% | 24.8% | 19.6% | 21.1% | 15.3% |
| JOB PERMANENCY | Permanent | 4,537,773 | -- | -- | 86.8% | 86.1% | 89.0% |
| | Temporary | 688,618 | -- | -- | 13.2% | 13.9% | 11.0% |
| JOB TENURE | 12 months or less | 1,176,882 | 18.8% | 9.2% | 20.7% | 24.0% | 10.9% |
| | 13 to 59 months | 1,918,720 | 30.6% | 25.1% | 31.7% | 34.6% | 23.0% |
| | 60 months or more | 3,175,751 | 50.6% | 65.7% | 47.6% | 41.4% | 66.1% |
| FIRM SIZE | Less than 20 employees | 971,046 | -- | -- | 18.6% | 23.7% | 3.4% |
| | 20 to 99 employees | 861,170 | -- | -- | 16.5% | 18.8% | 9.5% |
| | 100 to 500 employees | 763,267 | -- | -- | 14.6% | 14.3% | 15.4% |
| | More than 500 employees | 2,630,907 | -- | -- | 50.3% | 43.2% | 71.7% |
| UNIONIZED (OR COVERED BY CA) | No | 3,917,086 | -- | -- | 74.9% | 0.0% | 100.0% |
| | Yes | 1,309,305 | -- | -- | 25.1% | 100.0% | 0.0% |
| HOURLY WAGE | Minimum wage or less | 611,644 | -- | -- | 11.7% | 14.3% | 3.8% |
| | Above minimum wage to \$15.00 | 1,048,198 | -- | -- | 20.1% | 23.9% | 8.5% |
| | \$15.01 to \$21.00 | 1,066,136 | -- | -- | 20.4% | 21.5% | 17.2% |
| | \$21.01 or higher | 2,500,412 | -- | -- | 47.8% | 40.3% | 70.5% |
| PAID HOURLY | No | 1,876,292 | -- | -- | 35.9% | 38.3% | 28.7% |
| | Yes | 3,350,098 | -- | -- | 64.1% | 61.7% | 71.3% |
| HAD A PART-WEEK ABSENCE^b | No | 3,846,235 | -- | -- | 79.9% | 80.7% | 77.3% |
| | Yes | 967,515 | -- | -- | 20.1% | 19.3% | 22.7% |
| WORKED PAID OVERTIME^b | No | 4,416,688 | -- | -- | 91.4% | 92.7% | 87.3% |
| | Yes | 414,117 | -- | -- | 8.6% | 7.3% | 12.7% |
| NUMBER OF PAID OVERTIME HOURS^b | Average | 414,117 | -- | -- | 7.8 | 7.5 | 8.3 |
| | Standard deviation | -- | -- | -- | 6.4 | 6.1 | 6.9 |
| WORKED UNPAID OVERTIME^b | No | 4,223,797 | -- | -- | 87.4% | 87.7% | 86.6% |
| | Yes | 607,008 | -- | -- | 12.6% | 12.3% | 13.4% |
| NUMBER OF UNPAID OVERTIME HOURS^b | Average | 607,008 | -- | -- | 8.1 | 7.9 | 8.5 |
| | Standard deviation | -- | -- | -- | 7.0 | 6.8 | 7.5 |

Differences between employees and non-employees, and between unionized employees and non-unionized employees, are statistically significant at the p<0.05 level unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data

^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 2: Prevalence of ESA Coverage, Special Rules and Exemptions, Overall and by Unionization

| | | Weighted Population | All Ontario Employees | Non-Unionized Ontario | Unionized Ontario |
|---|---|------------------------|--------------------------|--------------------------|----------------------|
| WEIGHTED POPULATION | | | 5,226,390 | 3,917,086 | 1,309,305 |
| MINIMUM WAGE | Covered by ESA provision | 4,650,256 | 89.0% | 90.1% | 85.7% |
| | Modified coverage (special rule) | 178,486 | 3.4% | 4.2% | 1.1% |
| | Exempt from ESA provision | 397,649 | 7.6% | 5.7% | 13.2% |
| OVERTIME PAY | Covered by ESA provision | 4,376,580 | 83.7% | 83.6% | 84.1% |
| | Modified coverage (special rule) | 55,872 | 1.1% | 1.1% | 1.0% |
| | Exempt from ESA provision | 793,939 | 15.2% | 15.3% | 14.9% |
| HOURS OF WORK | Covered by ESA provision | 4,181,926 | 80.0% | 80.8% | 77.5% |
| | Modified coverage (special rule) | -- | -- | -- | -- |
| | Exempt from ESA provision | 1,044,465 | 20.0% | 19.2% | 22.5% |
| DAILY REST PERIODS | Covered by ESA provision | 4,089,918 | 78.3% | 79.6% | 74.2% |
| | Modified coverage (special rule) | 112,103 | 2.1% | 1.7% | 3.3% |
| | Exempt from ESA provision | 1,024,369 | 19.6% | 18.7% | 22.4% |
| TIME OFF BETWEEN SHIFTS | Covered by ESA provision | 4,202,022 | 80.4% | 81.3% | 77.6% |
| | Modified coverage (special rule) | -- | -- | -- | -- |
| | Exempt from ESA provision | 1,024,369 | 19.6% | 18.7% | 22.4% |
| WEEKLY/BI-WEEKLY REST PERIODS | Covered by ESA provision | 4,202,022 | 80.4% | 81.3% | 77.6% |
| | Modified coverage (special rule) | -- | -- | -- | -- |
| | Exempt from ESA provision | 1,024,369 | 19.6% | 18.7% | 22.4% |
| EATING PERIODS | Covered by ESA provision | 4,754,356 | 91.0% | 92.7% | 85.7% |
| | Modified coverage (special rule) | 6,226 | 0.1% | 0.0% | 0.5% |
| | Exempt from ESA provision | 465,808 | 8.9% | 7.3% | 13.9% |
| PUBLIC HOLIDAYS | Covered by ESA provision | 3,736,515 | 71.5% | 75.6% | 59.3% |
| | Modified coverage (special rule) | 1,063,065 | 20.3% | 18.0% | 27.3% |
| | Exempt from ESA provision | 426,811 | 8.2% | 6.4% | 13.3% |
| VACATION TIME/PAY | Covered by ESA provision | 3,828,832 | 73.3% | 72.0% | 77.0% |
| | Modified coverage (special rule) | 1,040,093 | 19.9% | 23.2% | 10.0% |
| | Exempt from ESA provision | 357,465 | 6.8% | 4.8% | 13.0% |
| PERSONAL EMERGENCY | Covered by ESA provision | 3,854,580 | 73.8% | 72.3% | 78.1% |
| | Modified coverage (special rule) | 400,765 | 7.7% | 4.0% | 18.5% |
| | Exempt from ESA provision | 971,046 | 18.6% | 23.7% | 3.4% |
| TERMINATION PAY/NOTICE | Covered by ESA provision | 4,739,168 | 90.7% | 90.5% | 91.3% |
| | Modified coverage (special rule) | 13,585 | 0.3% | 9.5% | 8.7% |
| | Exempt from ESA provision | 473,637 | 9.1% | | |
| SEVERANCE PAY | Covered by ESA provision | 2,062,189 | 39.5% | 31.9% | 62.0% |
| | Modified coverage (special rule) | 3,164,201 | 60.5% | 68.1% | 38.0% |
| | Exempt from ESA provision | | | | |
| OVERALL COVERAGE (NOT INCLUDING SEVERANCE PAY) | Fully covered by ESA | 2,041,479 | 39.1% | 36.8% | 45.9% |
| | Some modified coverage, but no exemptions | 1,209,153 | 23.1% | 21.5% | 27.9% |
| | Exempt from at least one provision of the ESA | 1,975,757 | 37.8% | 41.7% | 26.2% |
| OVERALL COVERAGE (INCLUDING SEVERANCE PAY) | Fully covered by ESA | 1,262,269 | 24.2% | 20.6% | 34.6% |
| | Some modified coverage, but no exemptions | 379,315 | 7.3% | 4.5% | 15.6% |
| | Exempt from at least one provision of the ESA | 3,584,806 | 68.6% | 74.9% | 49.7% |

All differences between unionized and non-unionized employees are statistically significant at the p<0.05 level

Table 3: Economic Costs of ESA Special Rules and Exemptions, Overall and by Unionization

| | | Weighted Population | Median Relative Cost (%) | Average Relative Cost (%) | Std. Dev. of Relative Cost (%) | Median Absolute Cost (\$) | Average Absolute Cost (\$) | Std. Dev. of Absolute Cost (%) | Sum of Absolute Costs (\$) |
|--|--|------------------------|--------------------------------|---------------------------------|---|---------------------------------|----------------------------------|--------------------------------------|----------------------------------|
| ESTIMATED ECONOMIC COSTS FOR ALL ONTARIO EMPLOYEES | | | | | | | | | |
| MINIMUM WAGE | Weekly cost of special rules | 62,819 | 7.1% | 8.7% | 7.5% | \$8.42 | \$12.80 | \$15.13 | \$804,226 |
| | Weekly cost of exemptions | 14,077 | 7.6% | 18.3% | 31.1% | \$10.40 | \$40.33 | \$64.60 | \$567,788 |
| | Weekly cost of both special rules and exemptions | 76,529 | 7.6% | 10.5% | 15.4% | \$8.74 | \$17.88 | \$32.69 | \$1,368,628 |
| OVERTIME PAY | Weekly cost of special rules | 30,320 | 5.5% | 5.1% | 1.5% | \$59.50 | \$58.77 | \$26.36 | \$1,782,048 |
| | Weekly cost of exemptions | 65,582 | 6.2% | 6.9% | 5.4% | \$80.76 | \$117.52 | \$132.99 | \$7,707,186 |
| | Weekly cost of both special rules and exemptions | 95,902 | 6.0% | 6.3% | 4.6% | \$65.30 | \$98.95 | \$114.28 | \$9,489,234 |
| PUBLIC HOLIDAYS | Weekly cost of exemptions | 426,811 | 3.5% | 3.5% | 0.0% | \$42.60 | \$42.19 | \$23.49 | \$18,006,295 |
| VACATION PAY | Weekly cost of exemptions | 289,048 | 4.0% | 4.0% | 0.0% | \$56.00 | \$55.88 | \$25.07 | \$16,151,239 |
| TERMINATION PAY | Lump sum cost of exemptions | 243,076 | -- | -- | -- | \$3,161.60 | \$4,958.79 | \$4,377.26 | -- |
| SEVERANCE PAY | Lump sum cost of exemptions | 101,732 | -- | -- | -- | \$11,935.67 | \$15,286.97 | \$10,525.19 | -- |
| TOTAL WEEKLY | Min. Wage, Overtime, Pub. Holiday & Vacation Pay | 556,523 | 7.5% | 7.3% | 7.0% | \$67.15 | \$80.89 | \$79.88 | \$45,015,395 |
| ESTIMATED ECONOMIC COSTS FOR NON-UNIONIZED ONTARIO EMPLOYEES | | | | | | | | | |
| MINIMUM WAGE | Weekly cost of special rules | 57,544 | 7.1% | 8.8% | 7.8% | \$8.32 | \$12.99 | \$15.68 | \$747,433 |
| | Weekly cost of exemptions*† | nr | 7.6% | nr | nr | \$9.70 | nr | nr | nr |
| | Weekly cost of both special rules and exemptions*† | 69,865 | 7.3% | 9.9% | 13.5% | \$8.42 | \$16.74 | \$30.52 | \$1,169,592 |
| OVERTIME PAY | Weekly cost of special rules* | 24,787 | 5.2% | 5.0% | 1.4% | \$59.28 | \$55.82 | \$24.48 | \$1,383,707 |
| | Weekly cost of exemptions | 56,569 | 6.2% | 7.0% | 5.5% | \$81.59 | \$119.75 | \$136.56 | \$6,774,080 |
| | Weekly cost of both special rules and exemptions | 81,356 | 6.0% | 6.4% | 4.7% | \$62.40 | \$100.27 | \$118.39 | \$8,157,787 |
| PUBLIC HOLIDAYS | Weekly cost of exemptions*† | 252,163 | 3.5% | 3.5% | 0.0% | \$34.62 | \$39.25 | \$26.67 | \$9,897,014 |
| VACATION PAY | Weekly cost of exemptions | 164,536 | 4.0% | 4.0% | 0.0% | \$53.84 | \$55.54 | \$28.56 | \$9,138,180 |
| TERMINATION PAY | Lump sum cost of exemptions* | 153,686 | -- | -- | -- | \$2,704.00 | \$4,379.74 | \$4,086.47 | -- |
| SEVERANCE PAY | Lump sum cost of exemptions* | 62,514 | -- | -- | -- | \$10,147.08 | \$13,292.42 | \$9,897.19 | -- |
| TOTAL WEEKLY | Min. Wage, Overtime, Pub. Holiday & Vacation Pay*† | 368,655 | 7.5% | 7.5% | 7.2% | \$57.39 | \$76.94 | \$89.63 | \$28,362,572 |
| ESTIMATED ECONOMIC COSTS FOR UNIONIZED ONTARIO EMPLOYEES | | | | | | | | | |
| MINIMUM WAGE | Weekly cost of special rules | 5,276 | 7.1% | 7.9% | 3.7% | \$10.40 | \$10.77 | \$6.14 | \$56,793 |
| | Weekly cost of exemptions*† | nr | nr | nr | nr | nr | nr | nr | nr |
| | Weekly cost of both special rules and exemptions*† | 6,664 | 7.6% | 16.0% | 27.9% | \$10.92 | \$29.87 | \$48.50 | \$199,036 |
| OVERTIME PAY | Weekly cost of special rules* | 5,533 | 6.0% | 5.2% | 1.6% | \$74.88 | \$71.99 | \$30.15 | \$398,341 |
| | Weekly cost of exemptions | 9,013 | 6.0% | 6.4% | 4.9% | \$79.32 | \$103.53 | \$106.82 | \$933,106 |
| | Weekly cost of both special rules and exemptions | 14,546 | 6.0% | 6.0% | 4.0% | \$75.00 | \$91.53 | \$87.46 | \$1,331,447 |
| PUBLIC HOLIDAYS | Weekly cost of exemptions*† | 174,648 | 3.5% | 3.5% | 0.0% | \$48.46 | \$46.43 | \$17.03 | \$8,109,281 |
| VACATION PAY | Weekly cost of exemptions | 124,512 | 4.0% | 4.0% | 0.0% | \$59.23 | \$56.32 | \$19.52 | \$7,013,059 |
| TERMINATION PAY | Lump sum cost of exemptions* | 89,390 | -- | -- | -- | \$4,160.00 | \$5,954.33 | \$4,671.66 | -- |
| SEVERANCE PAY | Lump sum cost of exemptions* | 39,218 | -- | -- | -- | \$15,952.13 | \$18,466.26 | \$10,713.38 | -- |
| TOTAL WEEKLY | Min. Wage, Overtime, Pub. Holiday & Vacation Pay*† | 187,868 | 7.5% | 6.9% | 6.5% | \$86.10 | \$88.64 | \$55.21 | \$16,652,823 |

* indicates a statistically significant difference in absolute cost between unionized and non-unionized employees, at the p<0.05 level

† indicates a statistically significant difference in relative cost between unionized and non-unionized employees, at the p<0.05 level

nr indicates that data cannot be released because of confidentiality concerns

Table 4a: Conceptual Clusters of ESA Special Rules and Exemptions, by Employees' Socio-Demographic Characteristics

| | | | INDUSTRY/SECTOR | | | | WORKING TIME | | | | |
|---|------------------------------------|-------|--------------------------------|--------------------|------------------|-------------------|-------------------|------------------------------|------------------------------|---|-------------------------|
| | | | Percent of all Employees | Pro- fessionals | Agri- culture | Cons- truction | Liquor Servers | Irregular Working Time | Long-Hour Working Time | Irregular & Long-Hour Working Time | Continuous Operation |
| WEIGHTED POPULATION % OF ALL EMPLOYEES | | | | 268,309 5.1% | 31,680 0.6% | 260,440 5.0% | 45,878 0.9% | 126,191 2.4% | 51,733 1.0% | 117,140 2.2% | 803,852 15.4% |
| SEX | Male | 48.8% | 49.5% | 63.5% | 97.1% | 27.3% | 72.1% | 93.1% | 68.1% | 28.1% | |
| | Female | 51.2% | 50.5% | 36.5% | 2.9% | 72.7% | 27.9% | 6.9% | 31.9% | 71.9% | |
| AGE GROUP | 15 to 29 years | 28.0% | 15.1% | 40.8% | 33.3% | 60.7% | 25.0% | 9.2% | 26.2% | 39.2% | |
| | 30 to 49 years | 43.0% | 59.6% | 32.6% | 43.6% | 30.5% | 46.0% | 44.0% | 53.1% | 36.9% | |
| | 50 or more years | 29.0% | 25.2% | 26.6% | 23.1% | 8.8% | 29.0% | 46.8% | 20.7% | 23.9% | |
| VISIBLE MINORITY STATUS ^a | No | 75.0% | 73.8% | nr | 88.9% | nr | 81.4% | nr | 67.9% | nr | |
| | Yes | 25.0% | 26.2% | nr | 11.1% | nr | 18.6% | nr | 32.1% | nr | |
| DISABILITY STATUS ^a | No | 80.1% | 86.2% | 82.8% | 82.5% | 90.2% | 76.4% | 63.3% | 89.1% | nr | |
| | Yes | 19.9% | 13.8% | 17.2% | 17.5% | 9.8% | 23.6% | 36.7% | 10.9% | nr | |
| ABORIGINAL STATUS | No | 98.1% | 98.9% | nr | 97.1% | nr | 98.0% | nr | nr | 97.6% | |
| | Yes | 1.9% | 1.1% | nr | 2.9% | nr | 2.0% | nr | nr | 2.4% | |
| IMMIGRATION STATUS | Born in Canada | 71.1% | 68.7% | 79.4% | 79.2% | 82.1% | 71.9% | 80.5% | 60.2% | 69.8% | |
| | More than 10 yrs since immigration | 21.3% | 23.8% | 20.6% | 15.3% | 17.9% | 21.8% | 19.5% | 25.7% | 20.6% | |
| | 10 or fewer yrs since immigration | 7.6% | 7.6% | | 5.5% | | 6.3% | | 14.1% | 9.6% | |
| PARENT (CHILD UNDER 16) | No | 72.1% | 57.1% | 80.9% | 71.1% | 85.3% | 70.9% | 74.8% | 68.0% | 75.6% | |
| | Yes | 27.9% | 42.9% | 19.1% | 28.9% | 14.7% | 29.1% | 25.2% | 32.0% | 24.4% | |
| SINGLE PARENT (CHILD UNDER 16) | No | 97.3% | 97.9% | nr | 98.8% | 95.5% | 98.0% | nr | 96.2% | 96.9% | |
| | Yes | 2.7% | 2.1% | nr | 1.2% | 4.5% | 2.0% | nr | 3.8% | 3.1% | |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 17.9% | 4.0% | 25.6% | 9.5% | 40.0% | 12.8% | 13.1% | 14.1% | 23.1% | |
| | Middle 40% of families | 39.1% | 26.4% | 42.7% | 44.1% | 34.4% | 47.6% | 50.5% | 31.7% | 39.9% | |
| | Highest 40% of families | 43.0% | 69.6% | 31.7% | 46.3% | 25.7% | 39.6% | 36.4% | 54.1% | 37.0% | |
| MULTIPLE JOB HOLDER ^b | No | 94.7% | 96.1% | 95.0% | 97.8% | 86.8% | 97.3% | 96.5% | 96.0% | 92.6% | |
| | Yes | 5.3% | 3.9% | 5.0% | 2.2% | 13.2% | 2.7% | 3.5% | 4.0% | 7.4% | |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized
nr indicates that data cannot be released because of confidentiality concerns

^a Data are taken from SLID (2011) and thus not directly comparable to other table data

^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 4b: Conceptual Clusters of ESA Special Rules and Exemptions, by Employees' Socio-Demographic Characteristics

| | | | <u>WORKPLACE STATUS</u> | | | <u>EMPLOYEE/EMPLOYER</u> | |
|---|------------------------------------|--------------------------------|-------------------------|----------------------|--------------------------|--------------------------|-----------------|
| | | Percent of all Employees | Managers | Less than 5 Years | Temporary Help Agency | Small firm | Student |
| WEIGHTED POPULATION % OF ALL EMPLOYEES | | | 323,744 6.2% | 2,737,480 52.4% | 14,949 0.3% | 971,046 18.6% | 128,304 2.5% |
| SEX | Male | 48.8% | 60.6% | 49.8% | 62.7% | 49.8% | 45.9% |
| | Female | 51.2% | 39.4% | 50.2% | 37.3% | 50.2% | 54.1% |
| AGE GROUP | 15 to 29 years | 28.0% | 9.9% | 46.5% | 25.3% | 33.9% | nr |
| | 30 to 49 years | 43.0% | 55.6% | 37.4% | 46.0% | 39.1% | nr |
| | 50 or more years | 29.0% | 34.6% | 16.1% | 28.7% | 27.0% | nr |
| VISIBLE MINORITY STATUS^a | No | 75.0% | 80.0% | 71.5% | 26.1% | 76.0% | 76.7% |
| | Yes | 25.0% | 20.0% | 28.5% | 73.9% | 24.0% | 23.3% |
| DISABILITY STATUS^a | No | 80.1% | 84.5% | 82.5% | 87.3% | 79.9% | 91.6% |
| | Yes | 19.9% | 15.5% | 17.5% | 12.7% | 20.1% | 8.4% |
| ABORIGINAL STATUS | No | 98.1% | 98.9% | 97.7% | nr | 97.9% | 97.7% |
| | Yes | 1.9% | 1.1% | 2.3% | nr | 2.1% | 2.3% |
| IMMIGRATION STATUS | Born in Canada | 71.1% | 74.2% | 72.1% | 44.8% | 71.1% | 90.8% |
| | More than 10 yrs since immigration | 21.3% | 21.6% | 16.7% | 27.6% | 20.2% | 5.8% |
| | 10 or fewer yrs since immigration | 7.6% | 4.2% | 11.2% | 27.6% | 8.7% | 3.5% |
| PARENT (CHILD UNDER 16) | No | 72.1% | 62.4% | 76.4% | 70.1% | 75.7% | nr |
| | Yes | 27.9% | 37.6% | 23.6% | 29.9% | 24.3% | nr |
| SINGLE PARENT (CHILD UNDER 16) | No | 97.3% | 96.7% | 97.4% | nr | 97.5% | nr |
| | Yes | 2.7% | 3.3% | 2.6% | nr | 2.5% | nr |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 17.9% | 4.7% | 22.6% | 39.2% | 26.0% | 19.9% |
| | Middle 40% of families | 39.1% | 25.5% | 39.3% | 36.4% | 40.5% | 31.2% |
| | Highest 40% of families | 43.0% | 69.9% | 38.2% | 24.4% | 33.5% | 48.9% |
| MULTIPLE JOB HOLDER^b | No | 94.7% | 96.6% | 93.5% | 70.1% | 93.9% | nr |
| | Yes | 5.3% | 3.4% | 6.5% | 29.9% | 6.1% | nr |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized
nr indicates that data cannot be released because of confidentiality concerns

^a Data are taken from SLID (2011) and thus not directly comparable to other table data

^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 5a: Conceptual Clusters of ESA Special Rules and Exemptions, by Employees' Job Characteristics

| | | | INDUSTRY/SECTOR | | | | WORKING TIME | | | | |
|---|--------------------------------|-------|--------------------------------|--------------------|------------------|-------------------|-------------------|------------------------------|------------------------------|---|-------------------------|
| | | | Percent of all Workers | Pro- fessionals | Agri- culture | Cons- truction | Liquor Servers | Irregular Working Time | Long-Hour Working Time | Irregular & Long-Hour Working Time | Continuous Operation |
| EMPLOYEE STATUS | No | 16.7% | 32.3% | 59.4% | 23.7% | -- | 10.3% | 47.3% | 30.7% | 4.3% | |
| | Yes | 83.3% | 67.7% | 40.6% | 76.3% | 100.0% | 89.7% | 52.7% | 69.3% | 95.7% | |
| AMONG EMPLOYEES ONLY | | | Percent of all Employees | | | | | | | | |
| WEIGHTED POPULATION % OF ALL EMPLOYEES | | | | 268,309 5.1% | 31,680 0.6% | 260,440 5.0% | 45,878 0.9% | 126,191 2.4% | 51,733 1.0% | 117,140 2.2% | 803,852 15.4% |
| TYPE OF WORK | Full time (30 hours or more) | 80.4% | 91.3% | 81.2% | 96.4% | 42.5% | 91.2% | 95.9% | 88.5% | 66.3% | |
| | Part time (less than 30 hours) | 19.6% | 8.7% | 18.8% | 3.6% | 57.5% | 8.8% | 4.1% | 11.5% | 33.7% | |
| JOB PERMANENCY | Permanent | 86.8% | 92.1% | 73.5% | 83.0% | 81.7% | 85.0% | 91.7% | 84.2% | 86.1% | |
| | Temporary | 13.2% | 7.9% | 26.5% | 17.0% | 18.3% | 15.0% | 8.3% | 15.8% | 13.9% | |
| JOB TENURE | 12 months or less | 20.7% | 9.6% | 31.1% | 28.1% | 34.1% | 17.7% | 20.1% | 24.0% | 25.0% | |
| | 13 to 59 months | 31.7% | 27.3% | 33.7% | 32.8% | 45.7% | 28.0% | 33.4% | 37.5% | 33.7% | |
| | 60 months or more | 47.6% | 63.2% | 35.2% | 39.1% | 20.2% | 54.3% | 46.4% | 38.4% | 41.3% | |
| FIRM SIZE | Less than 20 employees | 18.6% | 8.1% | 50.3% | 39.1% | 30.5% | 6.4% | 21.8% | 29.0% | 11.9% | |
| | 20 to 99 employees | 16.5% | 8.8% | 26.6% | 26.0% | 25.5% | 10.9% | 26.0% | 17.9% | 14.7% | |
| | 100 to 500 employees | 14.6% | 10.0% | 11.4% | 13.5% | 10.1% | 18.2% | 19.5% | 17.2% | 14.0% | |
| | More than 500 employees | 50.3% | 73.1% | 11.7% | 21.3% | 34.0% | 64.4% | 32.8% | 35.9% | 59.4% | |
| UNIONIZED (or covered by a CA) | No | 74.9% | 53.6% | nr | 63.3% | nr | 67.8% | 80.0% | 92.4% | 66.5% | |
| | Yes | 25.1% | 46.4% | nr | 36.7% | nr | 32.2% | 20.0% | 7.6% | 33.5% | |
| HOURLY WAGE | Minimum wage or less | 11.7% | 1.1% | 19.5% | 2.2% | 29.2% | 6.1% | 5.2% | 4.0% | 22.7% | |
| | Above minimum wage to | 20.1% | 3.0% | 42.9% | 13.0% | 44.8% | 14.2% | 12.0% | 18.8% | 22.5% | |
| | \$15.01 to \$21.00 | 20.4% | 6.0% | 24.0% | 23.7% | 18.3% | 29.0% | 41.2% | 14.4% | 18.0% | |
| | \$21.01 or higher | 47.8% | 89.9% | 13.6% | 61.1% | 7.6% | 50.6% | 41.6% | 62.8% | 36.9% | |
| PAID HOURLY | No | 35.9% | 77.9% | 22.6% | 13.9% | nr | 15.0% | 39.3% | 58.5% | 13.2% | |
| | Yes | 64.1% | 22.1% | 77.4% | 86.1% | nr | 85.0% | 60.7% | 41.5% | 86.8% | |
| HAD A PART-WEEK ABSENCE ^b | No | 79.9% | 75.1% | 88.1% | 77.3% | 91.7% | 78.2% | 84.6% | 77.0% | 86.5% | |
| | Yes | 20.1% | 24.9% | 11.9% | 22.7% | 8.3% | 21.8% | 15.4% | 23.0% | 13.5% | |
| WORKED PAID OVERTIME ^b | No | 91.4% | 94.1% | 92.5% | 84.9% | nr | 67.0% | 84.8% | 94.3% | 94.5% | |
| | Yes | 8.6% | 5.9% | 7.5% | 15.1% | nr | 33.0% | 15.2% | 5.7% | 5.5% | |
| NUMBER OF PAID OVERTIME HOURS ^b | Average | 7.8 | 8.9 | 8.3 | 9.2 | nr | 8.3 | 9.3 | 6.6 | 7.3 | |
| | Standard deviation | 6.4 | 7.5 | 6.8 | 7.7 | nr | 4.9 | 9.5 | 5.2 | 6.5 | |
| WORKED UNPAID OVERTIME ^b | No | 87.4% | 63.2% | 95.4% | 95.8% | nr | 93.9% | 95.4% | 83.5% | 91.8% | |
| | Yes | 12.6% | 36.8% | 4.6% | 4.2% | nr | 6.1% | 4.6% | 16.5% | 8.2% | |
| NUMBER OF UNPAID OVERTIME HOURS ^b | Average | 8.1 | 9.8 | 12.6 | 9.2 | nr | 9.5 | 6.9 | 8.2 | 6.0 | |
| | Standard deviation | 7.0 | 7.3 | 12.6 | 8.0 | nr | 9.5 | 7.3 | 6.9 | 5.7 | |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized; nr indicates that data cannot be released because of confidentiality concerns

^a Data are taken from SLID (2011) and thus not directly comparable to other table data^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 5b: Conceptual Clusters of ESA Special Rules and Exemptions, by Employees' Job Characteristics

| | | Percent of all Workers | WORKPLACE STATUS | | | EMPLOYEE/EMPLOYER | |
|--|--------------------------------|--------------------------------|------------------|----------------------|--------------------------|-------------------|-----------------|
| | | | Managers | Less than 5 Years | Temporary Help Agency | Small firm | Student |
| EMPLOYEE STATUS | No | 16.7% | 38.5% | 11.6% | -- | -- | -- |
| | Yes | 83.3% | 61.5% | 88.4% | 100.0% | -- | 100.0% |
| AMONG EMPLOYEES ONLY | | Percent of all Employees | | | | | |
| WEIGHTED POPULATION % OF ALL EMPLOYEES | | | 323,744 6.2% | 2,737,480 52.4% | 14,949 0.3% | 971,046 18.6% | 128,304 2.5% |
| TYPE OF WORK | Full time (30 hours or more) | 80.4% | 98.2% | 72.3% | 82.8% | 75.0% | 6.3% |
| | Part time (less than 30 hours) | 19.6% | 1.8% | 27.7% | 17.2% | 25.0% | 93.7% |
| JOB PERMANENCY | Permanent | 86.8% | 97.3% | 78.7% | -- | 83.4% | 57.3% |
| | Temporary | 13.2% | 2.7% | 21.3% | 100.0% | 16.6% | 42.7% |
| JOB TENURE | 12 months or less | 20.7% | 11.1% | 39.5% | 63.1% | 26.7% | 55.6% |
| | 13 to 59 months | 31.7% | 27.6% | 60.5% | 36.9% | 36.5% | 40.6% |
| | 60 months or more | 47.6% | 61.2% | -- | | 36.9% | 3.8% |
| FIRM SIZE | Less than 20 employees | 18.6% | 12.3% | 22.4% | 17.5% | 100.0% | 25.7% |
| | 20 to 99 employees | 16.5% | 18.6% | 17.5% | 28.6% | -- | 19.4% |
| | 100 to 500 employees | 14.6% | 17.9% | 14.3% | 23.6% | -- | 9.2% |
| | More than 500 employees | 50.3% | 51.2% | 45.8% | 30.3% | -- | 45.7% |
| UNIONIZED (or covered by a CA) | No | 74.9% | 94.0% | 83.8% | nr | 95.4% | 91.7% |
| | Yes | 25.1% | 6.0% | 16.2% | nr | 4.6% | 8.3% |
| HOURLY WAGE | Minimum wage or less | 11.7% | 1.0% | 19.4% | 28.0% | 15.3% | 75.2% |
| | Above minimum wage to \$15.00 | 20.1% | 4.5% | 27.3% | 60.0% | 28.9% | 19.4% |
| | \$15.01 to \$21.00 | 20.4% | 9.3% | 20.3% | 11.9% | 24.7% | 5.3% |
| | \$21.01 or higher | 47.8% | 85.1% | 33.0% | | 31.2% | |
| PAID HOURLY | No | 35.9% | 86.2% | 28.7% | -- | 30.5% | 4.7% |
| | Yes | 64.1% | 13.8% | 71.3% | 100.0% | 69.5% | 95.3% |
| HAD A PART-WEEK ABSENCE ^b | No | 79.9% | 75.8% | 82.7% | 79.6% | 81.9% | 95.0% |
| | Yes | 20.1% | 24.2% | 17.3% | 20.4% | 18.1% | 5.0% |
| WORKED PAID OVERTIME ^b | No | 91.4% | 97.2% | 92.3% | nr | 94.8% | nr |
| | Yes | 8.6% | 2.8% | 7.7% | nr | 5.2% | nr |
| NUMBER OF PAID OVERTIME HOURS ^b | Average | 7.8 | 9.2 | 7.8 | nr | 7.4 | nr |
| | Standard deviation | 6.4 | 10.2 | 6.8 | nr | 6.8 | nr |
| WORKED UNPAID OVERTIME ^b | No | 87.4% | 61.1% | 90.5% | nr | 92.7% | nr |
| | Yes | 12.6% | 38.9% | 9.5% | nr | 7.3% | nr |
| NUMBER OF UNPAID OVERTIME HOURS ^b | Average | 8.1 | 9.8 | 7.8 | nr | 7.2 | nr |
| | Standard deviation | 7.0 | 7.1 | 7.0 | nr | 6.7 | nr |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized; nr indicates that data cannot be released because of confidentiality concerns

^a Data are taken from SLID (2011) and thus not directly comparable to other table data^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 6a: ESA Coverage, Special Rules, and Exemptions, by Employees' Socio-Demographic Characteristics

| | | | <u>ESA COVERAGE</u> <u>(EXCLUDES SEVERANCE)</u> | | | <u>MINIMUM WAGE</u> | | |
|--|--------------------------------------|------------------------|--|---|--|--------------------------------|---|---------------------------------|
| | | Weighted Population | Fully covered by ESA | Modified coverage, but no exemptions | Exempt from at least one ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| SEX | Male | 2,550,164 | 38.7% | 18.7% | 42.6% | 90.1% | 2.3% | 7.7% |
| | Female | 2,676,226 | 39.4% | 27.4% | 33.2% | 87.9% | 4.5% | 7.6% |
| AGE GROUP | 15 to 29 years | 1,462,902 | 27.0% | 33.3% | 39.7% | 85.0% | 8.4% | 6.6% |
| | 30 to 49 years | 2,247,389 | 41.4% | 19.9% | 38.8% | 89.4% | 1.6% | 8.9% |
| | 50 or more years | 1,516,100 | 47.3% | 18.1% | 34.5% | 92.1% | 1.3% | 6.6% |
| VISIBLE MINORITY STATUS^a | No | 4,058,480 | 37.6% | 23.5% | 38.9% | 88.9% | 3.1% | 8.0% |
| | Yes | 1,351,807 | 36.5% | 26.2% | 37.3% | 84.6% | 7.3% | 8.1% |
| DISABILITY STATUS^a | No | 420,750 | 36.3% | 23.9% | 39.8% | 86.9% | 4.3% | 8.8% |
| | Yes | 115,962 | 41.1% | 25.0% | 33.9% | 91.5% | 3.5% | 5.0% |
| ABORIGINAL STATUS | No | 5,123,960 | 39.1% | 23.0% | 37.8% | 88.9% | 3.4% | 7.7% |
| | Yes | 101,621 | 35.3% | 28.9% | 35.8% | 91.8% | 4.0% | 4.2% |
| IMMIGRATION STATUS | Born in Canada | 3,656,804 | 38.7% | 23.1% | 38.3% | 88.5% | 3.6% | 7.8% |
| | More than 10 years since immigration | 1,095,736 | 43.6% | 21.2% | 35.2% | 90.7% | 1.9% | 7.3% |
| | 10 or fewer years since immigration | 390,559 | 32.7% | 29.1% | 38.2% | 90.0% | 3.5% | 6.4% |
| PARENT (CHILD UNDER 16) | No | 3,770,821 | 38.4% | 24.3% | 37.3% | 88.9% | 4.3% | 6.8% |
| | Yes | 1,455,569 | 40.8% | 20.0% | 39.2% | 89.3% | 1.1% | 9.6% |
| SINGLE PARENT (CHILD UNDER 16) | No | 5,084,477 | 39.0% | 23.1% | 37.9% | 88.9% | 3.4% | 7.7% |
| | Yes | 141,913 | 41.2% | 23.5% | 35.4% | 91.1% | 3.0% | 6.0% |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 933,636 | 34.6% | 28.0% | 37.4% | 91.3% | 5.8% | 3.0% |
| | Middle 40% of families | 2,045,683 | 41.3% | 24.3% | 34.4% | 91.3% | 3.0% | 5.7% |
| | Highest 40% of families | 2,247,071 | 38.9% | 20.1% | 41.0% | 85.9% | 2.8% | 11.3% |
| MULTIPLE JOB HOLDER^b | No | 4,950,360 | 39.4% | 22.8% | 37.9% | 89.0% | 3.4% | 7.7% |
| | Yes | 276,030 | 33.2% | 29.9% | 36.9% | 89.4% | 4.2% | 6.4% |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data

^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 6b: ESA Coverage, Special Rules, and Exemptions, by Employees' Socio-Demographic Characteristics

| | | <u>OVERTIME PAY</u> | | | <u>HOURS OF WORK</u> | | | <u>DAILY REST PERIODS</u> | | |
|--|--------------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|
| | | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| SEX | Male | 80.7% | | 19.3% | 73.0% | -- | 27.0% | 70.5% | 3.3% | 26.3% |
| | Female | 86.7% | | 13.3% | 86.7% | -- | 13.3% | 85.7% | 1.1% | 13.3% |
| AGE GROUP | 15 to 29 years | 89.1% | 0.4% | 10.5% | 85.2% | -- | 14.8% | 84.5% | 1.6% | 13.9% |
| | 30 to 49 years | 80.5% | 1.1% | 18.4% | 75.9% | -- | 24.1% | 73.8% | 2.4% | 23.8% |
| | 50 or more years | 83.4% | 1.7% | 14.9% | 81.0% | -- | 19.0% | 78.9% | 2.3% | 18.8% |
| VISIBLE MINORITY STATUS^a | No | 81.1% | | 18.9% | 79.1% | -- | 20.9% | 77.7% | 1.8% | 20.5% |
| | Yes | 83.3% | | 16.7% | 83.7% | -- | 16.3% | 82.7% | 1.1% | 16.1% |
| DISABILITY STATUS^a | No | 80.6% | 0.9% | 18.5% | 79.1% | -- | 20.9% | 77.9% | 1.5% | 20.5% |
| | Yes | 86.0% | 1.7% | 12.3% | 85.2% | -- | 14.8% | 83.6% | 1.9% | 14.6% |
| ABORIGINAL STATUS | No | 83.6% | 1.1% | 15.3% | 79.9% | -- | 20.1% | 78.2% | 2.1% | 19.7% |
| | Yes | 90.4% | 1.2% | 8.5% | 83.8% | -- | 16.2% | 82.1% | 1.9% | 16.0% |
| IMMIGRATION STATUS | Born in Canada | 83.3% | | 16.7% | 79.4% | -- | 20.6% | 77.7% | 2.1% | 20.1% |
| | More than 10 years since immigration | 84.1% | | 15.9% | 81.0% | -- | 19.0% | 78.8% | 2.3% | 18.9% |
| | 10 or fewer years since immigration | 86.7% | | 13.3% | 83.6% | -- | 16.4% | 81.8% | 1.9% | 16.3% |
| PARENT (CHILD UNDER 16) | No | 85.3% | 1.1% | 13.6% | 81.9% | -- | 18.1% | 80.3% | 2.0% | 17.6% |
| | Yes | 79.8% | 0.9% | 19.3% | 75.0% | -- | 25.0% | 72.9% | 2.4% | 24.7% |
| SINGLE PARENT (CHILD UNDER 16) | No | 83.7% | | 16.3% | 80.0% | -- | 20.0% | 78.2% | 2.2% | 19.6% |
| | Yes | 84.6% | | 15.4% | 81.8% | -- | 18.2% | 80.7% | 1.4% | 17.9% |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 92.7% | 0.6% | 6.6% | 91.4% | -- | 8.6% | 90.5% | 1.3% | 8.1% |
| | Middle 40% of families | 87.6% | 1.4% | 11.0% | 83.2% | -- | 16.8% | 81.0% | 2.6% | 16.4% |
| | Highest 40% of families | 76.5% | 0.9% | 22.6% | 72.4% | -- | 27.6% | 70.7% | 2.0% | 27.3% |
| MULTIPLE JOB HOLDER^b | No | 83.5% | | 16.5% | 79.6% | -- | 20.4% | 77.8% | 2.2% | 20.0% |
| | Yes | 87.5% | | 12.5% | 86.9% | -- | 13.1% | 86.0% | 1.0% | 12.9% |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data

^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 6c: ESA Coverage, Special Rules, and Exemptions, by Employees' Socio-Demographic Characteristics

| | | <u>TIME OFF BETWEEN SHIFTS</u> | | | <u>WEEKLY/BI-WEEKLY REST PERIODS</u> | | | <u>EATING PERIODS</u> | | |
|--|--------------------------------------|--------------------------------|---|---------------------------------|--|---|---------------------------------|--------------------------------|---|---------------------------------|
| | | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| SEX | Male | 73.7% | -- | 26.3% | 73.7% | -- | 26.3% | 90.5% | 0.1% | 9.4% |
| | Female | 86.7% | -- | 13.3% | 86.7% | -- | 13.3% | 91.4% | 0.1% | 8.5% |
| AGE GROUP | 15 to 29 years | 86.1% | -- | 13.9% | 86.1% | -- | 13.9% | 94.0% | | 6.0% |
| | 30 to 49 years | 76.2% | -- | 23.8% | 76.2% | -- | 23.8% | 88.4% | | 11.6% |
| | 50 or more years | 81.2% | -- | 18.8% | 81.2% | -- | 18.8% | 91.8% | | 8.2% |
| VISIBLE MINORITY STATUS^a | No | 79.5% | -- | 20.5% | 79.5% | -- | 20.5% | 91.3% | 0.1% | 8.6% |
| | Yes | 83.9% | -- | 16.1% | 83.9% | -- | 16.1% | 90.9% | -- | 9.1% |
| DISABILITY STATUS^a | No | 79.5% | -- | 20.5% | 79.5% | -- | 20.5% | 90.5% | 0.1% | 9.3% |
| | Yes | 85.4% | -- | 14.6% | 85.4% | -- | 14.6% | 94.2% | -- | 5.8% |
| ABORIGINAL STATUS | No | 80.3% | -- | 19.7% | 80.3% | -- | 19.7% | 90.9% | | 9.1% |
| | Yes | 84.0% | -- | 16.0% | 84.0% | -- | 16.0% | 94.6% | | 5.4% |
| IMMIGRATION STATUS | Born in Canada | 79.9% | -- | 20.1% | 79.9% | -- | 20.1% | 91.3% | | 8.7% |
| | More than 10 years since immigration | 81.1% | -- | 18.9% | 81.1% | -- | 18.9% | 90.5% | | 9.5% |
| | 10 or fewer years since immigration | 83.7% | -- | 16.3% | 83.7% | -- | 16.3% | 90.2% | | 9.8% |
| PARENT (CHILD UNDER 16) | No | 82.4% | -- | 17.6% | 82.4% | -- | 17.6% | 92.1% | 0.1% | 7.8% |
| | Yes | 75.3% | -- | 24.7% | 75.3% | -- | 24.7% | 87.9% | 0.2% | 11.8% |
| SINGLE PARENT (CHILD UNDER 16) | No | 80.4% | -- | 19.6% | 80.4% | -- | 19.6% | 91.0% | | 9.0% |
| | Yes | 82.1% | -- | 17.9% | 82.1% | -- | 17.9% | 91.1% | | 8.9% |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 91.9% | -- | 8.1% | 91.9% | -- | 8.1% | 96.1% | -- | 3.9% |
| | Middle 40% of families | 83.6% | -- | 16.4% | 83.6% | -- | 16.4% | 93.0% | 0.1% | 6.9% |
| | Highest 40% of families | 72.7% | -- | 27.3% | 72.7% | -- | 27.3% | 87.0% | 0.2% | 12.8% |
| MULTIPLE JOB HOLDER^b | No | 80.0% | -- | 20.0% | 80.0% | -- | 20.0% | 90.9% | | 9.1% |
| | Yes | 87.1% | -- | 12.9% | 87.1% | -- | 12.9% | 92.5% | | 7.5% |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data

^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 6d: ESA Coverage, Special Rules, and Exemptions, by Employees' Socio-Demographic Characteristics

| | | <u>PERSONAL EMERGENCY LEAVE</u> | | | <u>PUBLIC HOLIDAYS</u> | | | <u>VACATION TIME/PAY</u> | | |
|--|--------------------------------------|-------------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|
| | | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| SEX | Male | 75.7% | 5.3% | 19.0% | 72.4% | 19.0% | 8.5% | 72.6% | 20.5% | 6.9% |
| | Female | 71.9% | 9.9% | 18.2% | 70.6% | 21.6% | 7.8% | 73.9% | 19.3% | 6.8% |
| AGE GROUP | 15 to 29 years | 72.8% | 4.7% | 22.5% | 64.9% | 27.4% | 7.7% | 56.5% | 39.5% | 3.9% |
| | 30 to 49 years | 73.3% | 9.8% | 16.9% | 72.5% | 18.2% | 9.3% | 76.6% | 14.4% | 8.9% |
| | 50 or more years | 75.3% | 7.3% | 17.3% | 76.3% | 16.8% | 6.9% | 84.4% | 9.0% | 6.6% |
| VISIBLE MINORITY STATUS^a | No | 73.9% | 6.4% | 19.7% | 73.0% | 18.4% | 8.6% | 73.4% | 20.0% | 6.6% |
| | Yes | 74.5% | 6.7% | 18.7% | 71.9% | 19.8% | 8.3% | 74.2% | 19.3% | 6.4% |
| DISABILITY STATUS^a | No | 73.8% | 6.6% | 19.6% | 72.1% | 18.6% | 9.3% | 72.7% | 20.2% | 7.1% |
| | Yes | 74.6% | 5.7% | 19.7% | 75.1% | 19.5% | 5.4% | 77.5% | 18.1% | 4.4% |
| ABORIGINAL STATUS | No | 73.7% | 7.7% | 18.5% | 71.6% | 20.2% | 8.2% | 73.3% | 19.8% | 6.9% |
| | Yes | 75.2% | 4.6% | 20.1% | 68.8% | 26.7% | 4.5% | 70.0% | 26.5% | 3.5% |
| IMMIGRATION STATUS | Born in Canada | 74.0% | 7.6% | 18.4% | 71.0% | 20.5% | 8.5% | 72.6% | 20.5% | 6.9% |
| | More than 10 years since immigration | 74.0% | 8.5% | 17.5% | 73.7% | 18.7% | 7.6% | 79.4% | 13.6% | 7.0% |
| | 10 or fewer years since immigration | 72.5% | 6.4% | 21.1% | 69.4% | 23.9% | 6.7% | 64.3% | 29.7% | 6.0% |
| PARENT (CHILD UNDER 16) | No | 74.2% | 6.4% | 19.5% | 71.5% | 21.0% | 7.5% | 72.2% | 22.0% | 5.8% |
| | Yes | 72.7% | 11.1% | 16.2% | 71.5% | 18.6% | 10.0% | 76.0% | 14.3% | 9.6% |
| SINGLE PARENT (CHILD UNDER 16) | No | 73.7% | 7.7% | 18.6% | 71.4% | 20.4% | 8.2% | 73.2% | 20.0% | 6.9% |
| | Yes | 74.9% | 7.8% | 17.3% | 73.9% | 19.9% | 6.2% | 76.5% | 17.6% | 6.0% |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 71.1% | 1.9% | 27.1% | 73.0% | 23.2% | 3.8% | 68.1% | 29.9% | 2.0% |
| | Middle 40% of families | 74.7% | 6.0% | 19.2% | 72.4% | 21.3% | 6.2% | 75.7% | 19.1% | 5.2% |
| | Highest 40% of families | 74.0% | 11.6% | 14.5% | 70.0% | 18.2% | 11.8% | 73.2% | 16.4% | 10.4% |
| MULTIPLE JOB HOLDER^b | No | 74.0% | 7.6% | 18.4% | 71.6% | 20.2% | 8.2% | 73.6% | 19.5% | 6.9% |
| | Yes | 69.6% | 8.9% | 21.5% | 70.0% | 23.3% | 6.7% | 67.2% | 27.8% | 5.0% |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 6e: ESA Coverage, Special Rules, and Exemptions, by Employees' Socio-Demographic Characteristics

| | | TERMINATION PAY/NOTICE | | | SEVERANCE PAY | | |
|--------------------------------------|--------------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|
| | | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| SEX | Male | 85.7% | 0.3% | 14.0% | 37.2% | | 62.8% |
| | Female | 95.4% | 0.2% | 4.4% | 41.6% | | 58.4% |
| AGE GROUP | 15 to 29 years | 84.9% | 0.2% | 14.9% | 9.8% | | 90.2% |
| | 30 to 49 years | 92.1% | 0.3% | 7.6% | 45.8% | | 54.2% |
| | 50 or more years | 94.2% | 0.3% | 5.5% | 58.7% | | 41.3% |
| VISIBLE MINORITY STATUS ^a | No | 92.1% | 0.3% | 7.5% | 36.5% | | 63.5% |
| | Yes | 91.8% | 1.4% | 6.9% | 28.8% | | 71.2% |
| DISABILITY STATUS ^a | No | 91.7% | 0.7% | 7.7% | 32.8% | | 67.2% |
| | Yes | 93.5% | 0.3% | 6.1% | 41.9% | | 58.1% |
| ABORIGINAL STATUS | No | 90.8% | | 9.2% | 39.6% | | 60.4% |
| | Yes | 86.7% | | 13.3% | 33.7% | | 66.3% |
| IMMIGRATION STATUS | Born in Canada | 89.9% | 0.2% | 9.9% | 39.2% | | 60.8% |
| | More than 10 years since immigration | 93.5% | 0.3% | 6.1% | 48.9% | | 51.1% |
| | 10 or fewer years since immigration | 89.7% | 0.9% | 9.4% | 19.2% | | 80.8% |
| PARENT (CHILD UNDER 16) | No | 90.2% | 0.3% | 9.6% | 36.6% | | 63.4% |
| | Yes | 92.0% | 0.3% | 7.7% | 47.0% | | 53.0% |
| SINGLE PARENT (CHILD UNDER 16) | No | 90.6% | | 9.4% | 39.4% | | 60.6% |
| | Yes | 94.0% | | 6.0% | 41.9% | | 58.1% |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 90.4% | 0.5% | 9.1% | 24.9% | | 75.1% |
| | Middle 40% of families | 90.4% | 0.3% | 9.3% | 38.7% | | 61.3% |
| | Highest 40% of families | 91.0% | 0.1% | 8.8% | 46.2% | | 53.8% |
| MULTIPLE JOB HOLDER ^b | No | 90.6% | | 9.4% | 40.1% | | 59.9% |
| | Yes | 91.5% | | 8.5% | 28.5% | | 71.5% |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data

^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 7a: ESA Coverage, Special Rules, and Exemptions, by Employees' Job Characteristics

| | | | <u>ESA COVERAGE</u> <u>(EXCLUDES SEVERANCE)</u> | | | <u>MINIMUM WAGE</u> | | |
|--|--------------------------------|--------------------------------|--|---|---|---|---|--|
| | | Weighted Population | Fully covered by ESA | Modified coverage, but no exemptions | Exempt from at least one ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| TYPE OF WORK | Full time (30 hours or more) | 4,199,675 | 41.5% | 20.1% | 38.3% | 90.8% | 1.3% | 8.0% |
| | Part time (less than 30 hours) | 1,026,715 | 28.9% | 35.4% | 35.7% | 81.7% | 12.1% | 6.2% |
| JOB PERMANENCY | Permanent | 4,537,773 | 41.5% | 22.0% | 36.5% | 89.6% | 2.9% | 7.4% |
| | Temporary | 688,618 | 23.1% | 30.4% | 46.4% | 84.6% | 6.5% | 8.9% |
| JOB TENURE | 12 months or less | 1,080,822 | -- | 50.7% | 49.3% | 87.2% | 7.3% | 5.4% |
| | 13 to 59 months | 1,656,659 | 47.0% | 17.0% | 35.9% | 88.8% | 4.6% | 6.6% |
| | 60 months or more | 2,488,910 | 50.7% | 15.2% | 34.0% | 89.9% | 0.9% | 9.2% |
| FIRM SIZE | Less than 20 employees | 971,046 | -- | -- | 100.0% | 89.2% | 5.9% | 4.9% |
| | 20 to 99 employees | 861,170 | 46.9% | 26.1% | 27.0% | 91.0% | 3.5% | 5.5% |
| | 100 to 500 employees | 763,267 | 48.3% | 27.7% | 24.0% | 92.1% | 2.3% | 5.6% |
| | More than 500 employees | 2,630,907 | 48.2% | 29.4% | 22.4% | 87.3% | 2.8% | 9.9% |
| UNIONIZED (OR COVERED BY A CA) | No | 3,917,086 | 36.8% | 21.5% | 41.7% | 90.1% | 4.2% | 5.7% |
| | Yes | 1,309,305 | 45.9% | 27.9% | 26.2% | 85.7% | 1.1% | 13.2% |
| HOURLY WAGE | Minimum wage or less | 611,644 | 23.2% | 40.6% | 36.3% | 79.1% | 17.1% | 3.8% |
| | Above minimum wage to \$15.00 | 1,048,198 | 34.9% | 27.4% | 37.7% | 92.1% | 4.3% | 3.6% |
| | \$15.01 to \$21.00 | 1,066,136 | 43.3% | 23.6% | 33.0% | 95.3% | 1.8% | 2.9% |
| | \$21.01 or higher | 2,500,412 | 42.9% | 16.9% | 40.3% | 87.4% | 0.4% | 12.2% |
| PAID HOURLY | No | 1,876,292 | 44.1% | 9.8% | 46.1% | 85.1% | 1.0% | 13.9% |
| | Yes | 3,350,098 | 36.2% | 30.6% | 33.2% | 91.1% | 4.8% | 4.1% |
| HAD A PART-WEEK ABSENCE^b | No | 3,846,235 | 37.3% | 24.6% | 38.2% | 89.0% | 4.0% | 7.0% |
| | Yes | 967,515 | 43.7% | 18.2% | 38.1% | 90.3% | 1.4% | 8.2% |
| WORKED PAID OVERTIME^b | No | 4,416,688 | 37.8% | 23.0% | 39.1% | 88.8% | 3.8% | 7.4% |
| | Yes | 414,117 | 46.0% | 26.1% | 27.9% | 94.2% | 0.9% | 4.9% |
| NUMBER OF PAID OVERTIME HOURS^b | Average | 414,117 | 7.6 | 7.6 | 8.2 | 7.7 | 6.6 | 8.9 |
| | Standard deviation | -- | 5.9 | 5.9 | 7.4 | 6.3 | 6.3 | 7.8 |
| WORKED UNPAID OVERTIME^b | No | 4,223,797 | 38.5% | 24.7% | 36.8% | 90.1% | 4.0% | 5.9% |
| | Yes | 607,008 | 38.9% | 13.3% | 47.8% | 83.4% | 0.4% | 16.2% |
| NUMBER OF UNPAID OVERTIME HOURS^b | Average | 607,008 | 7.7 | 6.3 | 8.9 | 7.8 | 5.3 | 9.4 |
| | Standard deviation | -- | 6.9 | 6.4 | 7.1 | 6.9 | 6.9 | 7.2 |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 7b: ESA Coverage, Special Rules, and Exemptions, by Employees' Job Characteristics

| | | <u>OVERTIME PAY</u> | | | <u>HOURS OF WORK</u> | | | <u>DAILY REST PERIODS</u> | | |
|--|--------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|
| | | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| TYPE OF WORK | Full time (30 hours or more) | 81.8% | 1.3% | 16.9% | 76.7% | -- | 23.3% | 74.6% | 2.5% | 22.9% |
| | Part time (less than 30 hours) | 91.7% | 0.2% | 8.1% | 93.6% | -- | 6.4% | 93.2% | 0.7% | 6.1% |
| JOB PERMANENCY | Permanent | 83.4% | 1.1% | 15.5% | 79.5% | -- | 20.5% | 77.6% | 2.2% | 20.3% |
| | Temporary | 86.0% | 1.0% | 12.9% | 83.3% | -- | 16.7% | 82.8% | 1.9% | 15.2% |
| JOB TENURE | 12 months or less | 87.8% | 1.1% | 11.0% | 83.3% | -- | 16.7% | 82.5% | 1.7% | 15.8% |
| | 13 to 59 months | 85.2% | 1.1% | 13.8% | 81.5% | -- | 18.5% | 80.0% | 1.7% | 18.2% |
| | 60 months or more | 81.0% | 1.0% | 17.9% | 77.6% | -- | 22.4% | 75.2% | 2.6% | 22.2% |
| FIRM SIZE | Less than 20 employees | 86.5% | 1.2% | 12.3% | 78.1% | -- | 21.9% | 79.1% | 0.5% | 20.4% |
| | 20 to 99 employees | 83.7% | 1.7% | 14.6% | 78.6% | -- | 21.4% | 78.0% | 1.0% | 21.0% |
| | 100 to 500 employees | 83.6% | 1.5% | 14.9% | 80.5% | -- | 19.5% | 77.8% | 2.9% | 19.4% |
| | More than 500 employees | 82.8% | 0.7% | 16.5% | 81.0% | -- | 19.0% | 78.2% | 2.9% | 18.9% |
| UNIONIZED (OR COVERED BY A CA) | No | 83.6% | 1.1% | 15.3% | 80.8% | -- | 19.2% | 79.6% | 1.7% | 18.7% |
| | Yes | 84.1% | 1.0% | 14.9% | 77.5% | -- | 22.5% | 74.2% | 3.3% | 22.4% |
| HOURLY WAGE | Minimum wage or less | 94.1% | 0.3% | 5.6% | 95.5% | -- | 4.5% | 95.1% | 0.6% | 4.3% |
| | Above minimum wage to \$15.00 | 92.0% | 0.5% | 7.4% | 90.8% | -- | 9.2% | 90.2% | 1.5% | 8.3% |
| | \$15.01 to \$21.00 | 90.8% | 2.2% | 7.0% | 86.9% | -- | 13.1% | 84.4% | 3.0% | 12.6% |
| | \$21.01 or higher | 74.7% | 1.0% | 24.3% | 68.8% | -- | 31.2% | 66.5% | 2.4% | 31.1% |
| PAID HOURLY | No | 68.6% | 1.0% | 30.3% | 67.2% | -- | 32.8% | 66.8% | 0.4% | 32.7% |
| | Yes | 92.2% | 1.1% | 6.7% | 87.2% | -- | 12.8% | 84.7% | 3.1% | 12.2% |
| HAD A PART-WEEK ABSENCE^b | No | 84.6% | 1.1% | 14.3% | 81.0% | -- | 19.0% | 79.3% | 2.1% | 18.6% |
| | Yes | 81.7% | 1.0% | 17.3% | 76.6% | -- | 23.4% | 74.6% | 2.5% | 22.9% |
| WORKED PAID OVERTIME^b | No | 82.7% | 1.1% | 16.3% | 79.9% | -- | 20.1% | 78.8% | 1.5% | 19.7% |
| | Yes | 98.6% | 1.4% | 0.0% | 82.6% | -- | 17.4% | 73.4% | 9.5% | 17.1% |
| NUMBER OF PAID OVERTIME HOURS^b | Average | 7.7 | 11.3 | -- | 7.6 | -- | 8.8 | 7.5 | 8.1 | 8.8 |
| | Standard deviation | 6.3 | 10.3 | -- | 6.0 | -- | 7.7 | 6.2 | 4.7 | 7.8 |
| WORKED UNPAID OVERTIME^b | No | 87.0% | 1.2% | 11.8% | 82.8% | -- | 17.2% | 80.9% | 2.4% | 16.7% |
| | Yes | 63.3% | 0.4% | 36.4% | 61.5% | -- | 38.5% | 60.8% | 0.7% | 38.5% |
| NUMBER OF UNPAID OVERTIME HOURS^b | Average | 7.2 | 7.0 | 9.6 | 7.2 | -- | 9.5 | 7.2 | 9.0 | 9.5 |
| | Standard deviation | 6.7 | 5.3 | 7.3 | 6.7 | -- | 7.2 | 6.6 | 10.8 | 7.2 |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 7c: ESA Coverage, Special Rules, and Exemptions, by Employees' Job Characteristics

| | | <u>TIME OFF BETWEEN SHIFTS</u> | | | <u>WEEKLY/BI-WEEKLY REST PERIODS</u> | | | <u>EATING PERIODS</u> | | |
|--|--------------------------------|--------------------------------|---|---------------------------------|--|---|---------------------------------|--------------------------------|---|---------------------------------|
| | | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| TYPE OF WORK | Full time (30 hours or more) | 77.1% | -- | 22.9% | 77.1% | -- | 22.9% | 89.9% | | 10.1% |
| | Part time (less than 30 hours) | 93.9% | -- | 6.1% | 93.9% | -- | 6.1% | 95.4% | | 4.6% |
| JOB PERMANENCY | Permanent | 79.7% | -- | 20.3% | 79.7% | -- | 20.3% | 90.8% | | 9.2% |
| | Temporary | 84.8% | -- | 15.2% | 84.8% | -- | 15.2% | 92.4% | | 7.6% |
| JOB TENURE | 12 months or less | 84.2% | -- | 15.8% | 84.2% | -- | 15.8% | 93.9% | | 6.1% |
| | 13 to 59 months | 81.8% | -- | 18.2% | 81.8% | -- | 18.2% | 91.9% | | 8.1% |
| | 60 months or more | 77.8% | -- | 22.2% | 77.8% | -- | 22.2% | 89.1% | | 10.9% |
| FIRM SIZE | Less than 20 employees | 79.6% | -- | 20.4% | 79.6% | -- | 20.4% | 94.0% | | 6.0% |
| | 20 to 99 employees | 79.0% | -- | 21.0% | 79.0% | -- | 21.0% | 93.2% | | 6.8% |
| | 100 to 500 employees | 80.6% | -- | 19.4% | 80.6% | -- | 19.4% | 92.1% | | 7.9% |
| | More than 500 employees | 81.1% | -- | 18.9% | 81.1% | -- | 18.9% | 88.8% | | 11.2% |
| UNIONIZED (OR COVERED BY A CA) | No | 81.3% | -- | 18.7% | 81.3% | -- | 18.7% | 92.7% | -- | 7.3% |
| | Yes | 77.6% | -- | 22.4% | 77.6% | -- | 22.4% | 85.7% | 0.5% | 13.9% |
| HOURLY WAGE | Minimum wage or less | 95.7% | -- | 4.3% | 95.7% | -- | 4.3% | 97.1% | | 2.9% |
| | Above minimum wage to \$15.00 | 91.7% | -- | 8.3% | 91.7% | -- | 8.3% | 96.3% | | 3.7% |
| | \$15.01 to \$21.00 | 87.4% | -- | 12.6% | 87.4% | -- | 12.6% | 96.0% | | 4.0% |
| | \$21.01 or higher | 68.9% | -- | 31.1% | 68.9% | -- | 31.1% | 85.1% | | 14.9% |
| PAID HOURLY | No | 67.3% | -- | 32.7% | 67.3% | -- | 32.7% | 82.9% | | 17.1% |
| | Yes | 87.8% | -- | 12.2% | 87.8% | -- | 12.2% | 95.5% | | 4.5% |
| HAD A PART-WEEK ABSENCE^b | No | 81.4% | -- | 18.6% | 81.4% | -- | 18.6% | 91.7% | | 8.3% |
| | Yes | 77.1% | -- | 22.9% | 77.1% | -- | 22.9% | 89.7% | | 10.3% |
| WORKED PAID OVERTIME^b | No | 80.3% | -- | 19.7% | 80.3% | -- | 19.7% | 91.1% | 0.1% | 8.8% |
| | Yes | 82.9% | -- | 17.1% | 82.9% | -- | 17.1% | 93.2% | 0.5% | 6.3% |
| NUMBER OF PAID OVERTIME HOURS^b | Average | 7.6 | -- | 8.8 | 7.6 | -- | 8.8 | 7.8 | | 8.1 |
| | Standard deviation | 6.0 | -- | 7.8 | 6.0 | -- | 7.8 | 6.3 | | 7.3 |
| WORKED UNPAID OVERTIME^b | No | 83.3% | -- | 16.7% | 83.3% | -- | 16.7% | 92.8% | | 7.2% |
| | Yes | 61.5% | -- | 38.5% | 61.5% | -- | 38.5% | 80.9% | | 19.1% |
| NUMBER OF UNPAID OVERTIME HOURS^b | Average | 7.2 | -- | 9.5 | 7.2 | -- | 9.5 | 7.8 | | 9.2 |
| | Standard deviation | 6.7 | -- | 7.2 | 6.7 | -- | 7.2 | 6.9 | | 7.2 |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 7d: ESA Coverage, Special Rules, and Exemptions, by Employees' Job Characteristics

| | | <u>PERSONAL EMERGENCY</u> | | | <u>PUBLIC HOLIDAYS</u> | | | <u>VACATION TIME/PAY</u> | | |
|--|--------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|
| | | <u>LEAVE</u> | | | | | | | | |
| | | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| TYPE OF WORK | Full time (30 hours or more) | 74.3% | 8.3% | 17.3% | 72.8% | 18.6% | 8.6% | 76.1% | 16.1% | 7.8% |
| | Part time (less than 30 hours) | 71.4% | 4.9% | 23.6% | 66.0% | 27.4% | 6.6% | 61.6% | 35.4% | 3.0% |
| JOB PERMANENCY | Permanent | 74.0% | 8.2% | 17.8% | 72.5% | 19.7% | 7.8% | 77.3% | 15.6% | 7.1% |
| | Temporary | 72.2% | 4.4% | 23.4% | 65.0% | 24.2% | 10.8% | 46.4% | 48.4% | 5.1% |
| JOB TENURE | 12 months or less | 72.7% | 3.4% | 24.0% | 67.4% | 26.0% | 6.6% | -- | 96.2% | 3.8% |
| | 13 to 59 months | 72.4% | 6.2% | 21.4% | 71.4% | 21.4% | 7.1% | 94.5% | -- | 5.5% |
| | 60 months or more | 75.1% | 10.5% | 14.4% | 73.3% | 17.2% | 9.5% | 91.0% | -- | 9.0% |
| FIRM SIZE | Less than 20 employees | -- | -- | 100.0% | 72.5% | 20.7% | 6.8% | 70.7% | 25.6% | 3.6% |
| | 20 to 99 employees | 95.2% | 4.8% | -- | 71.6% | 22.1% | 6.3% | 74.3% | 21.6% | 4.1% |
| | 100 to 500 employees | 92.9% | 7.1% | -- | 74.5% | 19.6% | 5.9% | 75.7% | 19.4% | 4.9% |
| | More than 500 employees | 88.4% | 11.6% | -- | 70.2% | 19.8% | 9.9% | 73.2% | 17.4% | 9.5% |
| UNIONIZED (OR COVERED BY A CA) | No | 72.3% | 4.0% | 23.7% | 75.6% | 18.0% | 6.4% | 72.0% | 23.2% | 4.8% |
| | Yes | 78.1% | 18.5% | 3.4% | 59.3% | 27.3% | 13.3% | 77.0% | 10.0% | 13.0% |
| HOURLY WAGE | Minimum wage or less | 75.4% | 0.4% | 24.3% | 64.0% | 31.6% | 4.4% | 52.8% | 45.9% | 1.3% |
| | Above minimum wage to \$15.00 | 72.5% | 0.8% | 26.7% | 73.6% | 21.4% | 4.9% | 66.3% | 31.9% | 1.8% |
| | \$15.01 to \$21.00 | 75.4% | 2.1% | 22.5% | 77.1% | 19.4% | 3.5% | 79.4% | 18.1% | 2.4% |
| | \$21.01 or higher | 73.2% | 14.7% | 12.1% | 70.0% | 17.6% | 12.4% | 78.5% | 9.3% | 12.2% |
| PAID HOURLY | No | 72.9% | 11.3% | 15.8% | 78.8% | 7.2% | 14.0% | 75.1% | 11.2% | 13.8% |
| | Yes | 74.2% | 5.7% | 20.1% | 67.4% | 27.7% | 4.9% | 72.2% | 24.8% | 3.0% |
| HAD A PART-WEEK ABSENCE^b | No | 73.5% | 7.0% | 19.5% | 70.9% | 21.6% | 7.5% | 72.1% | 21.9% | 6.0% |
| | Yes | 75.1% | 7.8% | 17.1% | 75.1% | 16.0% | 8.9% | 76.0% | 15.9% | 8.0% |
| WORKED PAID OVERTIME^b | No | 73.1% | 7.2% | 19.7% | 71.3% | 20.6% | 8.0% | 72.4% | 21.0% | 6.6% |
| | Yes | 82.1% | 6.5% | 11.5% | 75.5% | 19.1% | 5.4% | 78.0% | 17.3% | 4.6% |
| NUMBER OF PAID OVERTIME HOURS^b | Average | 7.8 | 7.9 | 7.4 | 7.6 | 8.1 | 8.7 | 7.7 | 7.9 | 9.0 |
| | Standard deviation | 6.3 | 6.6 | 6.8 | 6.1 | 7.0 | 7.5 | 6.2 | 6.9 | 7.8 |
| WORKED UNPAID OVERTIME^b | No | 74.0% | 5.8% | 20.1% | 71.5% | 21.9% | 6.6% | 73.0% | 22.0% | 5.1% |
| | Yes | 72.6% | 16.3% | 11.1% | 72.8% | 11.0% | 16.3% | 72.1% | 11.8% | 16.1% |
| NUMBER OF UNPAID OVERTIME HOURS^b | Average | 8.0 | 8.8 | 7.2 | 8.0 | 6.4 | 9.4 | 7.9 | 7.5 | 9.4 |
| | Standard deviation | 7.0 | 7.2 | 6.7 | 7.0 | 6.0 | 7.3 | 6.9 | 6.8 | 7.2 |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 7e: ESA Coverage, Special Rules, and Exemptions, by Employees' Job Characteristics

| | | <u>TERMINATION PAY/NOTICE</u> | | | <u>SEVERANCE PAY</u> | | |
|--|--------------------------------|--------------------------------|---|---------------------------------|--------------------------------|---|---------------------------------|
| | | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision | Covered by ESA provision | Modified coverage (special rule) | Exempt from ESA provision |
| TYPE OF WORK | Full time (30 hours or more) | 90.7% | | 9.3% | 44.2% | | 55.8% |
| | Part time (less than 30 hours) | 90.8% | | 9.2% | 20.0% | | 80.0% |
| JOB PERMANENCY | Permanent | 92.7% | | 7.3% | 43.7% | | 56.3% |
| | Temporary | 77.5% | | 22.5% | 11.3% | | 88.7% |
| JOB TENURE | 12 months or less | 72.9% | 0.6% | 26.5% | -- | | 100.0% |
| | 13 to 59 months | 94.6% | 0.3% | 5.2% | -- | | 100.0% |
| | 60 months or more | 95.8% | 0.1% | 4.1% | 82.9% | | 17.1% |
| FIRM SIZE | Less than 20 employees | 83.3% | 0.3% | 16.4% | -- | | 100.0% |
| | 20 to 99 employees | 87.2% | 0.5% | 12.4% | 41.1% | | 58.9% |
| | 100 to 500 employees | 90.8% | 0.4% | 8.7% | 46.8% | | 53.2% |
| | More than 500 employees | 94.5% | 0.1% | 5.3% | 51.4% | | 48.6% |
| UNIONIZED (OR COVERED BY A CA) | No | 90.5% | | 9.5% | 31.9% | | 68.1% |
| | Yes | 91.3% | | 8.7% | 62.0% | | 38.0% |
| HOURLY WAGE | Minimum wage or less | 87.3% | | 12.7% | 9.2% | | 90.8% |
| | Above minimum wage to \$15.00 | 88.9% | | 11.1% | 21.4% | | 78.6% |
| | \$15.01 to \$21.00 | 90.9% | | 9.1% | 38.0% | | 62.0% |
| | \$21.01 or higher | 92.2% | | 7.8% | 55.0% | | 45.0% |
| PAID HOURLY | No | 96.0% | | 4.0% | 49.7% | | 50.3% |
| | Yes | 87.7% | | 12.3% | 33.7% | | 66.3% |
| HAD A PART-WEEK ABSENCE^b | No | 90.1% | 0.3% | 9.7% | 36.5% | | 63.5% |
| | Yes | 91.0% | 0.3% | 8.7% | 45.7% | | 54.3% |
| WORKED PAID OVERTIME^b | No | 90.5% | | 9.5% | 37.6% | | 62.4% |
| | Yes | 87.6% | | 12.4% | 45.2% | | 54.8% |
| NUMBER OF PAID OVERTIME HOURS^b | Average | 7.7 | | 8.7 | 7.7 | | 7.8 |
| | Standard deviation | 6.2 | | 7.3 | 5.9 | | 6.8 |
| WORKED UNPAID OVERTIME^b | No | 89.4% | | 10.6% | 36.0% | | 64.0% |
| | Yes | 96.4% | | 3.6% | 54.5% | | 45.5% |
| NUMBER OF UNPAID OVERTIME HOURS^b | Average | 8.1 | | 7.9 | 8.2 | | 7.9 |
| | Standard deviation | 7.0 | | 7.4 | 6.9 | | 7.1 |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

^a Data are taken from SLID (2011) and thus not directly comparable to other table data

^b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 8: Economic Costs of ESA Special Rules and Exemptions, by Employees' Socio-Demographic Characteristics

| | | Weighted Population | Median Relative Cost (%) | Average Relative Cost (%) | Std. Dev. of Relative Cost (%) | Median Absolute Cost (\$) | Average Absolute Cost (\$) | Std. Dev. of Absolute Cost (%) | Sum of Absolute Costs (\$) |
|--|--------------------------------------|------------------------|--------------------------------|---------------------------------|--------------------------------------|---------------------------------|----------------------------------|---|----------------------------------|
| | Total | 556,523 | 7.5% | 7.3% | 7.0% | \$67.15 | \$80.89 | \$79.88 | \$45,015,395 |
| SEX | Male | 298,549 | 7.5% | 7.2% | 7.6% | \$71.75 | \$86.72 | \$86.23 | \$25,889,762 |
| | Female | 257,975 | 7.5% | 7.4% | 6.3% | \$60.66 | \$74.14 | \$71.24 | \$19,125,633 |
| AGE GROUP | 15 to 29 years | 174,630 | 7.1% | 7.3% | 6.9% | \$15.60 | \$37.07 | \$54.56 | \$6,474,194 |
| | 30 to 49 years | 248,449 | 7.5% | 7.2% | 5.2% | \$97.57 | \$102.17 | \$78.47 | \$25,384,366 |
| | 50 or more years | 133,444 | 7.5% | 7.3% | 9.7% | \$74.88 | \$98.59 | \$87.08 | \$13,156,835 |
| VISIBLE MINORITY STATUS^a | No | 485,235 | 7.5% | 8.4% | 7.5% | \$53.17 | \$78.22 | \$84.86 | \$37,953,974 |
| | Yes | 135,554 | 7.5% | 9.6% | 10.4% | \$61.81 | \$76.98 | \$68.75 | \$10,434,697 |
| DISABILITY STATUS^a | No | 540,561 | 7.5% | 8.7% | 8.3% | \$54.05 | \$76.43 | \$77.21 | \$41,313,658 |
| | Yes | 75,934 | 7.5% | 8.4% | 8.4% | \$49.85 | \$88.02 | \$108.52 | \$6,683,772 |
| ABORIGINAL STATUS | No | 548,787 | 7.5% | 7.3% | 7.0% | \$67.15 | \$80.87 | \$78.19 | \$44,381,072 |
| | Yes | 7,173 | 7.5% | 7.7% | 5.9% | \$64.80 | \$82.11 | \$162.90 | \$588,982 |
| IMMIGRATION STATUS | Born in Canada | 420,462 | 7.5% | 7.2% | 7.2% | \$59.91 | \$76.14 | \$80.57 | \$32,014,826 |
| | More than 10 years since immigration | 96,737 | 7.5% | 7.3% | 5.7% | \$87.83 | \$98.42 | \$75.03 | \$9,520,430 |
| | 10 or fewer years since immigration | 31,617 | 7.5% | 8.1% | 7.3% | \$74.62 | \$85.90 | \$71.57 | \$2,715,811 |
| PARENT (CHILD UNDER 16) | No | 386,858 | 7.5% | 7.3% | 7.8% | \$53.26 | \$69.75 | \$77.23 | \$26,985,146 |
| | Yes | 169,665 | 7.5% | 7.3% | 4.7% | \$100.44 | \$106.27 | \$80.04 | \$18,030,249 |
| SINGLE PARENT (CHILD UNDER 16) | No | 546,422 | 7.5% | 7.3% | 7.0% | \$67.15 | \$80.59 | \$78.75 | \$44,036,505 |
| | Yes | 10,102 | 7.5% | 7.7% | 6.4% | \$67.23 | \$96.90 | \$125.79 | \$978,890 |
| FAMILY INCOME QUINTILE | Lowest 20% of families | 50,581 | 7.1% | 8.4% | 14.1% | \$16.64 | \$25.80 | \$34.02 | \$1,305,089 |
| | Middle 40% of families | 175,316 | 7.5% | 7.1% | 5.8% | \$55.25 | \$59.92 | \$46.54 | \$10,505,442 |
| | Highest 40% of families | 330,626 | 7.5% | 7.2% | 5.8% | \$93.60 | \$100.43 | \$91.30 | \$33,204,864 |
| MULTIPLE JOB HOLDER^b | No | 533,793 | 7.5% | 7.3% | 7.1% | \$67.90 | \$81.35 | \$78.61 | \$43,424,250 |
| | Yes | 22,731 | 7.5% | 7.3% | 5.4% | \$43.27 | \$70.00 | \$104.91 | \$1,591,145 |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

a Data are taken from SLID (2011) and thus not directly comparable to other table data

b In the "reference week", which is the entire calendar week (Sun-Sat) prior to the survey data collection

Table 9: Economic Costs of ESA Special Rules and Exemptions, by Employees' Job Characteristics

| | | Weighted Population | Median Relative Cost (%) | Average Relative Cost (%) | Std. Dev. of Relative Cost (%) | Median Absolute Cost (\$) | Average Absolute Cost (\$) | Std. Dev. of Absolute | Sum of Absolute Costs (\$) |
|---------------------------------------|--------------------------------|------------------------|--------------------------------|---------------------------------|--------------------------------------|---------------------------------|----------------------------------|-----------------------------|----------------------------------|
| TOTAL | | 556,523 | 7.5% | 7.3% | 7.0% | \$67.15 | \$80.89 | \$79.88 | \$45,015,395 |
| TYPE OF WORK | Full time (30 hours or more) | 431,037 | 7.5% | 7.3% | 7.1% | \$87.52 | \$99.49 | \$81.08 | \$42,882,181 |
| | Part time (less than 30 hours) | 125,487 | 7.1% | 7.3% | 6.7% | \$9.28 | \$17.00 | \$21.21 | \$2,133,214 |
| JOB PERMANENCY | Permanent | 460,582 | 7.5% | 7.3% | 7.1% | \$77.48 | \$89.77 | \$81.34 | \$41,347,270 |
| | Temporary | 95,941 | 6.0% | 7.1% | 6.7% | \$18.00 | \$38.23 | \$55.25 | \$3,668,125 |
| JOB TENURE | 12 months or less | 117,592 | 7.0% | 7.0% | 5.0% | \$19.50 | \$45.05 | \$66.59 | \$5,297,250 |
| | 13 to 59 months | 164,064 | 7.5% | 7.8% | 9.1% | \$56.99 | \$71.67 | \$80.99 | \$11,759,234 |
| | 60 months or more | 274,868 | 7.5% | 7.1% | 6.2% | \$96.00 | \$101.72 | \$77.93 | \$27,958,911 |
| FIRM SIZE | Less than 20 employees | 90,636 | 7.5% | 7.8% | 9.0% | \$31.20 | \$55.09 | \$66.59 | \$4,993,577 |
| | 20 to 99 employees | 80,499 | 7.0% | 7.1% | 5.0% | \$48.30 | \$70.21 | \$94.26 | \$5,651,589 |
| | 100 to 500 employees | 61,898 | 7.5% | 7.0% | 5.9% | \$65.52 | \$80.63 | \$81.88 | \$4,990,628 |
| | More than 500 employees | 323,490 | 7.5% | 7.2% | 7.0% | \$83.23 | \$90.82 | \$77.00 | \$29,379,601 |
| UNIONIZED (or covered by a CA) | No | 368,655 | 7.5% | 7.5% | 7.2% | \$57.39 | \$76.94 | \$89.63 | \$28,362,572 |
| | Yes | 187,868 | 7.5% | 6.9% | 6.5% | \$86.10 | \$88.64 | \$55.21 | \$16,652,823 |
| HOURLY WAGE | Minimum wage or less | 92,417 | 7.1% | 10.4% | 15.4% | \$9.98 | \$20.54 | \$40.53 | \$1,898,540 |
| | Above minimum wage to \$15.00 | 56,398 | 3.6% | 5.7% | 3.9% | \$17.31 | \$28.34 | \$42.21 | \$1,598,292 |
| | \$15.01 to \$21.00 | 56,461 | 6.2% | 6.5% | 3.8% | \$49.69 | \$52.92 | \$55.90 | \$2,988,095 |
| | \$21.01 or higher | 351,246 | 7.5% | 6.8% | 2.7% | \$100.43 | \$109.70 | \$80.82 | \$38,530,468 |
| PAID BY THE HOUR | No | 312,211 | 7.5% | 7.7% | 7.5% | \$100.44 | \$109.88 | \$85.75 | \$34,305,077 |
| | Yes | 244,313 | 7.0% | 6.8% | 6.2% | \$25.27 | \$43.84 | \$51.89 | \$10,710,318 |

Differences between groups are statistically significant at the p<0.05 level, unless the value is italicized

Table 10: Multinomial Regression Predicting ESA Coverage

| | Modified coverage compared to full ESA coverage | | Exempt from at least one ESA provision compared to full ESA coverage | |
|--|--|--|---|--|
| | Model 1 Odds Ratio (Confidence Interval) | Model 2 Odds Ratio (Confidence Interval) | Model 1 Odds Ratio (Confidence Interval) | Model 2 Odds Ratio (Confidence Interval) |
| SOCIO-DEMOGRAPHIC CHARACTERISTICS | | | | |
| SEX | | | | |
| Female (ref: Male) | 1.5 (1.4-1.5) | 1.3 (1.3-1.3) | 0.8 (0.7-0.8) | 0.8 (0.7-0.8) |
| AGE GROUP | | | | |
| 15-29 Years (ref: 30-49 years) | 2.6 (2.6-2.7) | 1.9 (1.8-2.0) | 1.6 (1.6-1.6) | 1.3 (1.3-1.3) |
| 50+ Years (ref: 30-49 years) | 0.8 (0.8-0.9) | 0.8 (0.8-0.8) | 0.8 (0.8-0.8) | 0.8 (0.8-0.8) |
| IMMIGRATION STATUS | | | | |
| 10 or fewer years since immigration (ref: Canadian born or immigrated more than 10 yrs) | 1.6 (1.5-1.6) | 1.4 (1.4-1.5) | 1.2 (1.1-1.2) | 1.1 (1.0-1.1) |
| JOB CHARACTERISTICS | | | | |
| TYPE OF WORK | | | | |
| Part time, less than 30 Hours (ref: Full time, 30 hours or more) | | 1.5 (1.5-1.7) | | 1.1 (1.1-1.2) |
| JOB PERMANENCY | | | | |
| Temporary (ref: Permanent) | | 1.6 (1.5-1.7) | | 2.0 (1.9-2.1) |
| HOURLY WAGE | | | | |
| \$15.00 or less (ref: more than \$15.00) | | 1.6 (1.6-1.7) | | 1.0 (0.9-1.0) |
| UNIONIZED (or covered by a CA) | | | | |
| Yes (ref: No) | | 1.4 (1.4-1.4) | | 0.5 (0.5-0.6) |

The reference group is shown in brackets after each variable.