

EMPLOYMENT STANDARDS ENFORCEMENT: A SCAN OF EMPLOYMENT STANDARDS COMPLAINTS AND WORKPLACE INSPECTIONS AND THEIR RESOLUTION UNDER THE *EMPLOYMENT STANDARDS ACT, 2000*

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Executive Summary

The Ontario *Employment Standards Act, 2000* (*ESA*) sets minimum workplace conditions in areas such as pay, working time, holidays and leaves, and termination and severance of employment. Yet there is mounting evidence of inadequacies in the enforcement of the *ESA*, which limit its ability to provide an effective floor of workplace rights for Ontario's employees. Drawing on administrative data collected by the Ministry of Labour's Employment Standards Program, this study presents a detailed portrait of the enforcement model currently used in Ontario. Adopting a conceptual framework that emphasizes the importance of compliance and deterrence, along with proactive and reactive enforcement measures, the study examines the prevalence and characteristics of employee complaints and workplace inspections, the number and kinds of violations alleged or detected through these means, and the resolution of complaints and violations, including the outcome of settlements, the use of compliance and deterrence measures, the recovery of unpaid wages, and the incidence and outcome of OLRB reviews of ESO orders.

The study reveals a number of important trends. First, the volume of *ESA* complaints received by the Ministry of Labour has decreased in recent years. Between 2008/09 and 2012/13, the number of ES complaints submitted annually dropped substantially, but has levelled off at about 15,000 per year since 2012/13. The absolute number of non-unionized Ontario employees increased during that time period; consequently, whereas in 2008/09, there was one complaint submitted for every 173 non-unionized employees, in 2014/15, there was one complaint submitted for every 285 non-unionized employees. Moreover, relatively few complainants – fewer than one in ten (9%) – are still working for the employer they file the complaint about, a proportion that has remained relatively constant across time, and which suggests that accessing the claims process may be a risky venture.

Another key trend in ES enforcement in Ontario from 2008/09 to 2014/15 is the expanded use of settlements, which accounted for 4% of complaint outcomes in 2008/09, and 15% of complaint outcomes in 2014/15. As a whole, settlements tend to yield a smaller percentage of the total claim amount compared to those assessed by an

ESO. When a settlement is facilitated by an ESO, almost 40% of complaints are settled for less than half of their total claim, whereas when a settlement is not facilitated by an ESO, fewer than 30% of complaints are settled for less than half of their total claim. Assuming that the nature of cases that are facilitated by an ESO are similar to those that are not facilitated, the facilitation by ESOs is associated with resolutions that are overall less favourable to complainants. Whether this relationship is an effect of ESO involvement, or whether it reflects differences in the nature of the complaints or the complainants that are involved in facilitated settlements, compared to those that are not facilitated, is an open question. Further investigation is required to determine the reason(s) for disparities between the outcomes of non-facilitated and facilitated settlements.

The use of proactive inspections in the Ministry of Labour's toolkit of enforcement strategies has been limited, or at best sporadic, over the past several decades. In more recent years, between 2011/12 and 2014/15 specifically, the number of inspections conducted by the Ministry of Labour has increased. The number of inspections that detect ES violations is quite high – ranging from 75% to 77% in the years between 2011/12 and 2013/14. In particular, inspections that are triggered by an expanded complaint investigation detect high rates of ES violations; indeed, between 2011/12 and 2014/2015, fully 82% of such inspections found infractions, indicating that verified individual complaints are a good source for identifying problematic workplaces.

Ontario's ES enforcement system relies primarily on compliance tools which aim to bring the employer into compliance with the law without imposing a sanction. Whereas Compliance Orders are the primary tool used in response to violations found in workplace inspections, Orders to Pay Wages are the primary tool used in response to violations detected through the complaints process. The *ESA* also allows for the use of deterrence tools that impose a penalty on employers who have violated the law (i.e., Notices of Contravention, Certificates of Offence (tickets and summonses) issued under Part I of the *Provincial Offences Act (POA)* and prosecution under Part III of the *POA*). Such tools are used far more infrequently than compliance measures, however. When deterrence tools are used, they tend to result in relatively small penalties (\$250 or

\$360), raising questions as to whether such penalties have the effect of deterring unlawful behaviors.

Employees, directors, and employers may apply to have an order issued under the *ESA* (or the failure to issue an order) reviewed by the Ontario Labour Relations Board (OLRB), a quasi-judicial administrative tribunal that makes decisions entirely independent of the Ministry of Labour. Overall, about one in five (19%) complaints in which monetary orders are issued prompts a review application, the majority of which are initiated by employers. Directors subject to an order seek review in about one in ten cases (9%). Among cases where review is sought, by far, the largest number of applications is resolved through settlements. This finding is of potential concern, since for both employer- and director- initiated reviews of monetary orders, settlements are associated with inferior outcomes for employees compared to those adjudicated by the OLRB. However, settlements of employee-initiated applications for OLRB review of complaint denials by ESOs are more favourable for employees compared to those adjudicated by the OLRB.¹ While these results may be viewed as offsetting, the fact that employer- and director- initiated reviews are far more frequent and that the threat of a review application to the OLRB may be used strategically earlier in the enforcement process would indicate that the need for concern about settlements remains.

The enforcement system fails when workers who have experienced monetary violations are unable to recover the money owed to them. Data show that, in most cases when employers do not voluntarily comply with ESOs' assessments, recovery rates are quite low. Only 39% of all complaints with a monetary order (Orders to Pay Wages, Orders to Compensate/Reinstate) issued during the period between 2009/10 and 2014/15 were fully recovered, 6% were partially recovered, and 56% were not recovered. In monetary terms, of the \$47.5 million that was ordered to be paid to employees, only about \$19 million was collected (40%), constituting a collective loss to employees of about \$28 million. Globally, 70% of complaints with monetary orders were sent to collections for recovery, with some inconsistent variation across time. Of those cases sent to collection, only about 20% were subsequently satisfied fully, while the

¹ Again, the question of whether this is a causal relationship as opposed to merely an association depends on whether settled and adjudicated cases are otherwise of the same merit.

remainder was not, a disturbingly low success rate that clearly contributes to the low rate of recovery for monetary orders. Despite moving responsibility for collections away from private collection agencies and into a unit within the Ministry of Finance in 2014, there does not seem to have been a noticeable improvement in collection rates. The recovery of entitlements is even more challenging in the context of employer bankruptcy and insolvency.

On the basis of these findings, this study outlines a series of options that have the potential to strengthen enforcement of the *ESA*. These options include augmenting the accessibility of the complaints system for employees alleging ES violations; further investigation of the Ministry of Labour's increased use of settlements; expanded use of proactive inspections, including expanded investigations and unannounced blitzes; greater use of the deterrence measures available in the Ministry of Labour's enforcement system; and strengthening the capacity of the Ministry of Labour to recover entitlements for complainants through measures such as a provincial wage protection fund.

A. Background

1. Introduction

Enacted in 1968, Ontario's *Employment Standards Act (ESA)* establishes minimum conditions of employment for the majority of workers² in the province, including those related to wages, hours of work, overtime pay, vacations, public holidays, and termination and severance. The level of minimum entitlements for each employee is established by the *ESA* itself or by regulations promulgated under the statute. These entitlements reflect a collectively-established, normative judgment about minimally decent working arrangements that must be provided to all Ontario employees, regardless of their bargaining power in the labour market (Ontario 1965, 1978; Thomas 2009).

² Although we attempt to use the term “employees” consistently across this study, we occasionally use the term “workers” while recognizing that, as a matter of law, the *ESA* does not apply to all workers but only to those in an employment relationship, subject to a further set of exemptions that are explored in Vosko, Noack and Thomas (2016).

If the promise of employment standards (ES) is to be fulfilled, however, employees must be able to effectively access the rights to which they are legally entitled. It is not enough to have laws on the books; they must be enforced to become the operative law of the labour market. Moreover, the enforcement of ES is not a private problem. The *ESA* creates statutory rights enforceable by the state and thus positions state officials as those who bear principal responsibility for the Act's enforcement and provides them with a range of enforcement tools. State actors must make an additional set of decisions about how to enforce the Act within the parameters of the available statutory powers and in the context of the prevailing administrative and financial constraints. The importance of these enforcement decisions cannot be underestimated, because they crucially determine the extent to which the *ESA* actually provides covered employees with the rights that it promises. Enforcement failures lead to the conventionalization of law-breaking and the erosion of the rule of law (Carson 1979).

The question of how best to enforce regulatory schemes in general and ES regimes in particular has been the subject of extensive scholarly and public policy debate. In a separate study prepared for the Changing Workplaces Review (CWR), Kevin Banks (2016) presents a literature review on issues of access to the complaints process and models of enforcement and their effectiveness. Broadly speaking, the goal of the present study is to map the enforcement model currently used by Ontario's Ministry of Labour by examining the prevalence and characteristics of employee complaints and workplace inspections, the number and kinds of violations alleged or detected through these means, and the resolution of complaints and violations, including the outcomes of settlements, the use of compliance and deterrence measures, the recovery of unpaid wages, and the incidence and outcome of OLRB reviews of ESO orders. The present study also considers the enforcement of the *ESA* in the particularly challenging context of employer bankruptcy and insolvency.

While this study is primarily empirical, drawing on administrative data collected by Ontario Ministry of Labour's Employment Practices Branch to present a detailed portrait of existing enforcement practices and outcomes, it also aims to provide analytic assessments that offer the Special Advisors options to consider in formulating their

recommendations for reform. To contextualize these assessments, we begin by providing a brief conceptual framework.

1.1 Conceptual Framework

Academic discussions of enforcement have focused on two crucial dimensions: reactive versus proactive enforcement and compliance versus deterrence.

1.1.1 Reactive and Proactive Enforcement

Worker-initiated complaints are the foundation of most regimes for enforcing employment and labour rights. After all, workers are the ones who experience violations directly and have the most direct and immediate interest in obtaining a remedy. However, complaint-driven enforcement suffers from numerous problems. First, there may be barriers to workers accessing the claims process. Workers may fear reprisal if they make a claim against their current employer, notwithstanding that reprisal is unlawful. They may not be aware of their rights and thus may not know that their rights have been violated, a situation exacerbated when entitlements are not universal but rather are subject to various exemptions and qualifications, a matter discussed in the study prepared for the CWR by Vosko, Noack and Thomas (2016). These barriers may not be evenly distributed across the labour market and this uneven distribution can lead to a second problem with complaint-based enforcement: the source and type of complaints may not be aligned with the underlying problems in the labour market. For example, workers in one sector may complain about violations more frequently than workers in another notwithstanding that violations may be more prevalent in the latter, but have become normalized as working conditions (Weil and Pyles 2005). Similarly, workers may make disproportionately fewer complaints about violations of a particular standard compared to others, perhaps reflecting the greater difficulty they might experience in determining whether they are entitled to that particular right. Third, a complaint-driven enforcement model presents limited opportunity for enforcement to achieve systemic effects by adopting strategies that may involve using leverage to influence the top of supply chains, rather than continually responding to complaints being voiced at the bottom (Weil 2008, 2010). In a complaint-driven system, complainants also bear the full cost of initiating their complaint (including any potential

reprisal risks) while the benefits of their resolution may spill over to other workers who receive redress as a result of the complaint.

These problems with complaint-driven enforcement point to the need for a greater role for proactive enforcement. Proactive enforcement strategies attempt to allocate enforcement resources in accordance with established priorities. This allocation process often involves the identification of sectors or particular employers where enforcement officials have reasonable grounds for believing that violations are more prevalent and/or that workers are more reluctant to raise complaints. Resources may also be deployed to engage parties who are not the legal employer in implementing measures designed to increase compliance by the entities that are. In Ontario, proactive enforcement priorities may be formulated at different levels of the enforcement regime, including the province, the region, and the individual enforcement officer, based on available information.

In practice, most enforcement systems combine reactive and proactive strategies to different degrees – and Ontario is no exception. However, the mix has varied across time. For example, in Ontario proactive enforcement was virtually non-existent for many years but was re-introduced in response to criticism of the provincial Auditor-General in 2004 (Auditor General 2004; Tucker et al. 2014). In this study, we investigate enforcement in the period after proactive inspections were re-introduced and, as a consequence, changes over time are not as readily apparent. However, reactive enforcement has been and, as we shall see, continues to be, the dominant strategy used in Ontario.

In thinking about how to combine reactive and proactive enforcement strategies, it is crucial to acknowledge the important role that both play in constructing an effective enforcement regime. It would be unacceptable not to provide workers who experience violations with an effective remedy as a cost of expanding proactive inspections. Conversely, regimes that rely solely on reactive complaints have the potential to be more expensive and less effective than those that also incorporate proactive measures. It is necessary therefore to consider options that combine both elements of an effective

enforcement regime that do not unduly sacrifice one or the other³ and that take into consideration the resources available for enforcement. In some jurisdictions, there is more than one agency with enforcement powers for labour standards, which allows for some division of labour. For example, in the United States, the federal Department of Labor focuses on proactive and strategic enforcement, but can rely on state-level Departments of Labor to address individual complaints. In Canada, the federal and provincial governments each have exclusive jurisdiction over the workers they cover, so there is no possibility of dividing up enforcement responsibilities in a manner similar to the United States; consequently, the province remains entirely responsible for all aspects of ES enforcement for those employees under its jurisdiction with the exception of unionized workers who must rely on the grievance procedure and are left without access to administrative enforcement by the Ministry of Labour.⁴

1.1.2 Compliance and Deterrence Measures

Compliance refers to a set of strategies, including the provision of information, persuasion, and negotiation that seek to generate observance of the law. In a compliance framework, when violations are detected, voluntary compliance is encouraged through the use of strategies such as facilitating settlements or issuing orders that require the violator to do that which he or she should have done in the first place. Strategies oriented to compliance emphasize encouraging voluntary adherence to the law or, achieving adherence after the fact, rather than detecting and punishing wrongdoing (Gunningham 2010). Compliance strategies are generally based on the view that most employers do not intentionally violate the law but rather do so out of incompetence or ignorance and therefore are not deserving of punishment. These approaches are also a noteworthy feature of new governance paradigms (Vosko, Grundy and Thomas 2014), based on the premise that engaging employers in

³ Expanded investigations are a noteworthy example of an enforcement strategy that rests at the intersection of reactive and proactive enforcement. Expanded inspections occur when, in response to a complaint, an ESO detects a violation that he or she has reason to believe may be affecting other employees of that employer. This leads to the ESO turning the individual investigation into a broader inspection to determine whether or not other employees are affected.

⁴ Ontario workers can seek to enforce monetary entitlements under the *ESA* in small claims court, but to our knowledge few do; furthermore, making civil actions the standard way to pursue a monetary *ESA* claim would shift the burden of enforcement onto employees' shoulders and likely result in a large proportion of those owed money foregoing their entitlements (on unions and ES enforcement, see Vosko and Thomas 2014).

cooperative relationships with regulatory officials will lead to joint problem solving that may even produce outcomes that go beyond compliance. In any event, a compliance emphasis avoids the promotion of adversarial relations that may impede the achievement of better adherence to the law (Johnstone and Sarre 2004; Gray 2006; Lobel 2012; Gunningham 2015). Compliance measures used in Ontario typically include public outreach and education and, when violations are detected, Orders to Pay Wages or Orders to Compensate and/or Reinstate, which are oriented exclusively towards restoring the employee to the position they would have held had the employer adhered to the law. In this study, we are not able to determine the systemic impact of compliance measures on overall violation rates or on whether they reduce repeat violations. Instead, we are concerned with the extent to which compliance measures achieve their most basic objective: getting employees what they are owed.⁵

In contrast, deterrence refers to the detection and punishment of wrongdoing. Theorists identify two types of deterrence: specific and general. Specific deterrence refers to the idea that regulated entities that have been subject to legal punishment will take measures to refrain from the illegal activity in the future (Gunningham 2010). The punishment of wrongdoing can also have a “general deterrence” effect, whereby it may discourage others from choosing to engage in illegal activities. The concept of general deterrence thus captures the broader effects that flow from the punishment of individual actors. Both types of deterrence are premised on the existence of rational, self-interested actors, who conduct themselves according to a cost-benefit analysis of the consequences of their actions; they calculate the risk of being detected and punished against the benefits gained from violating the law. Deterrence strategies may also discourage incompetent or inadvertent violators by drawing their attention to the consequences of being in violation of the law and thus encouraging them to better inform themselves of and manage their obligations in order to avoid penalties. In either case, for deterrence measures to be effective, there must be a substantial risk that law-breaking will be detected and that non-trivial punishments will follow.

Deterrence measures in Ontario include Notices of Contravention and tickets or summonses issued under Part I of the *Provincial Offences Act* (POA). In either case,

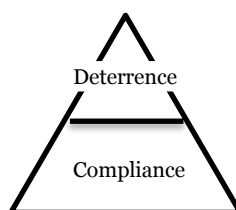
⁵ Reinstatement orders are relatively rare and thus we did not specifically investigate their use.

the penalty is a relatively small fine. A more serious deterrence measure is a prosecution under Part III of the *POA*, which could result in a higher fine or jail time. The most serious deterrence measure is a prosecution under the *Criminal Code* which might be possible in some cases, such as if an employer intentionally deprived employees of their wages. As a general matter, deterrence measures have not been a central pillar of most labour and employment enforcement regimes and this appears to also be the case in Ontario's *ESA* enforcement system, where deterrence measures of any kind are rarely used. Given how infrequently deterrence is used in Ontario, it is not possible to assess its efficacy in generating either specific or general deterrence.⁶

Just as reactive and proactive measures exist in combination, so too do compliance and deterrence measures. In the latter case, it is not just a matter of thinking about the appropriate quantity of each approach, but rather how the two might be combined to the best effect. Ayres and Braithwaite (1992) developed the "responsive regulation" approach with the aim of transcending the debate about the relative merits of compliance versus deterrence. The key idea was that rather than having to choose between the two approaches, compliance and deterrence elements can be combined effectively in a way that is responsive to the regulatory context. The model Ayres and Braithwaite developed, and for which responsive regulation is best known, is that of an enforcement pyramid which starts with persuasion at the base and provides that if and only if this fails to secure compliance, regulators should escalate to the next enforcement measure, and continue to escalate as needed, eventually reaching the most serious sanctions, with the greatest deterrence effects, at the top of the pyramid. The assumption that gives the pyramid its shape is that most regulatory activity would take place at the bottom and that fewer and fewer regulatory interventions would be necessary as sanctions became more serious. The hammer of deterrence is perceived as necessary, but should largely remain hidden.

⁶ See Weil (2010) for a careful discussion of the complexities both of designing and measuring deterrence effects. Although Weil's insights are valuable, the data needed to replicate the methods used in his study are not available to us.

Figure A.1: The Enforcement Pyramid



In this study, we *do not* introduce the enforcement pyramid because we endorse this approach, but rather because of its popularity and influence among government regulators. Another means of combining compliance and deterrence measures is articulated in Weil's (2008, 2010) approach to strategic enforcement. Unlike Ayres and Braithwaite's pyramid, this approach is not premised on the idea that most employers violate the law out of ignorance or incompetence and therefore enforcement should always begin with education and other compliance measures and only escalate when those measures have failed, but is, rather, based on a sophisticated understanding of business environments that may be conducive to the production of labour standards violations. Indeed, Weil argues that enforcement should be approached with a kind of "regulatory jujitsu" which uses compliance and deterrence measures in a variety of strategic combinations that are responsive to the context.

Regardless of the model, however, it is noteworthy that there is widespread agreement that deterrence measures have an important role to play in an effective enforcement regime. In this study, we consider how frequently deterrence measures are used in Ontario, the purposes for which they are used and penalties that are imposed.

1.1.3 Combining the Two Dimensions of Enforcement

Although we have talked about the two dimensions of enforcement separately, they can be logically combined in four different ways, as shown in the matrix in Figure A.2. There has been little discussion in the literature of the merits of these four combinations, but we think they are worthy of consideration. In the analyses that follow, we map how the activities of Ontario's ES enforcement system are situated relative to this matrix.

Figure A.2: Combining the two dimensions of enforcement

		<i>Enforcement Measures</i>	
		Compliance	Deterrence
<i>Enforcement Activity</i>	Proactive		
	Reactive		

Then, by way of conclusion, we outline options for reform that follow from the empirical evidence, and are aimed at achieving the optimal combination of enforcement strategies to ensure effective workplace regulation in Ontario.

B. Research Findings

Our empirical analysis is divided into seven distinct sections, each of which reflects key aspects of Ontario's ES enforcement regime. Section one on **complaints and claims** examines reactive enforcement and its outcomes. An analysis of complaints (and their associated claims) is an appropriate starting point as they are dominant in Ontario's reactively-oriented regime and thus an area towards which considerable resources are directed. Section two focuses on **settlements**. These are compliance measures that resolve complaints through an agreement between the employee who is alleging violation and the employer subject to the allegation about how the matter should be resolved. Settlements merit separate treatment because their use has steadily increased across time, and because Ontario has recently allowed settlements to be facilitated by an Employment Standards Officer. The third section on **inspections** investigates proactive enforcement and its outcomes. Virtually non-existent for many years, in recent years proactive inspections (including targeted/blitz inspections and expanded investigations) have become a more important feature of the Ministry of Labour's enforcement system. Section four addresses the use of **compliance and deterrence** measures, in terms of their frequency and context.

The remaining sections take up specific aspects of Ontario's ES enforcement regime that merit particular consideration. Section five considers **reviews** involving the

Ontario Labour Relations Board. The *ESA* provides for a review of an Employment Standards Officer's orders (or failure to make an order) and Notices of Contravention. Thus, reviews can occur either in the context of compliance or deterrence, though an overwhelming majority of reviews occur in the compliance context. The issue of reviews requires separate consideration because it takes complaint resolution outside of the Ministry of Labour and into the domain of the Ontario Labour Relations Board (OLRB), an independent administrative tribunal. The outcomes of OLRB reviews impact ES enforcement in several ways: first, OLRB decisions about the interpretation and application of the *ESA* and its regulations can affect how and what ESOs do in the future;⁷ second, OLRB involvement can shape enforcement outcomes by virtue of their re-assessment of the money that employees are ultimately found to be owed or that employers must pay where a Notice of Contravention has been upheld; and, the OLRB settlement process may provide space for strategic behaviour that influences the effectiveness of Ministry of Labour compliance measures.

The sixth section is concerned with the **recovery** of monetary entitlements found to be owing to an employee. The importance of recovery is obvious: a judgment is worthless unless it can be enforced. In this section, we describe the process for recovery and examine the empirical data on the percentage of employees' entitlements that are actually collected. Finally, section seven considers *ESA* enforcement in the context of non-operational businesses, and particularly those that are formally **bankrupt** or **insolvent**. Here the issue of recovery is particularly sharp since, by definition, the employer lacks sufficient funds to pay its debts, including the amounts to which its employees are entitled under the *ESA*. The topic of wage recovery in bankruptcy is complex, and goes beyond the *ESA* and provincial jurisdiction. Nevertheless, the particular difficulties of enforcing the *ESA* clearly affect Ontario workers, and influence the province's ES regime.

Methodological Notes

The principal source of data for the ensuing empirical analysis is the Ministry of Labour's Employment Standards Information System (ESIS), the chief administrative data set retained under the provincial *ESA* containing information on all complaints

⁷ An assessment of the OLRB's substantive effect on the law is outside the scope of this study.

submitted and their outcomes, violations detected, inspections conducted, settlements, the use of enforcement mechanisms, wage recovery, and reviews. A central feature of the ESIS database is that it provides a nearly-complete census of Ontario's ES enforcement activities and their outcomes that is not otherwise publically available (for more information, see Appendix A).

Although it captures a variety of information related to the *ESA* and its enforcement, the ESIS is primarily a tracking and record-keeping system. Like other sources of administrative data, ESIS has several limitations which merit note. First and foremost, as an indicator of reactive enforcement practices, it only captures the experiences of those who are successful in entering the administrative system. The vast majority of employees who experience a violation do not complain, so they are not captured in administrative data (Noack, Vosko and Grundy 2015; on the case of the United States, see Weil and Pyles 2005). Moreover, there is no straightforward relationship between violations on the ground and the types of complaints that enter the system; indeed, industries with high rates of violations, which have become normalized, may generate relatively few complaints, and vice versa (Weil and Pyles 2005). For this reason, ESIS data cannot be considered an accurate snapshot of ES violations in Ontario.

Second, as it was not designed for research purposes, the ESIS has not undergone the same quality control and data verification processes as survey data from large statistical agencies. Thus, the dataset includes inconsistencies, some of which appear to result from complainants' discrepancies in reporting (such as complainants who indicate that they are "still working" for an "out of business" employer), and some of which appear to occur when one aspect of the database is updated, but additional information remains in the system (such as when a complaint is listed as being "denied" but also has an Order to Pay Wages issued for it). In many instances, it is not possible to verify which information is correct, and thus our general approach has been to let these inconsistencies persist, unless there is clear evidence upon which to base a decision.

Finally, following the standard practice of the Ontario government, a substantial portion of this analysis relies on change across fiscal years to correspond with the

budget cycle, defined as April 1 – March 31, ranging from 2008/09 to 2014/15 (although information about some aspects of enforcement is not available for this entire period). Unlike the Ministry of Labour, however, we rely on the fiscal year in which an event first occurred or entered into the ES enforcement system as the key indicator: that is, any activity related to a complaint is classified using the fiscal year when the complaint was received by the Ministry of Labour (even though the activity itself – such as an OLRB review – may have occurred in a later year). Similarly, any activity related to an inspection is classified with the fiscal year when the inspection took place. As a result, the data shown here will differ from reports published by the Ministry of Labour.

1. Complaints and Claims⁸

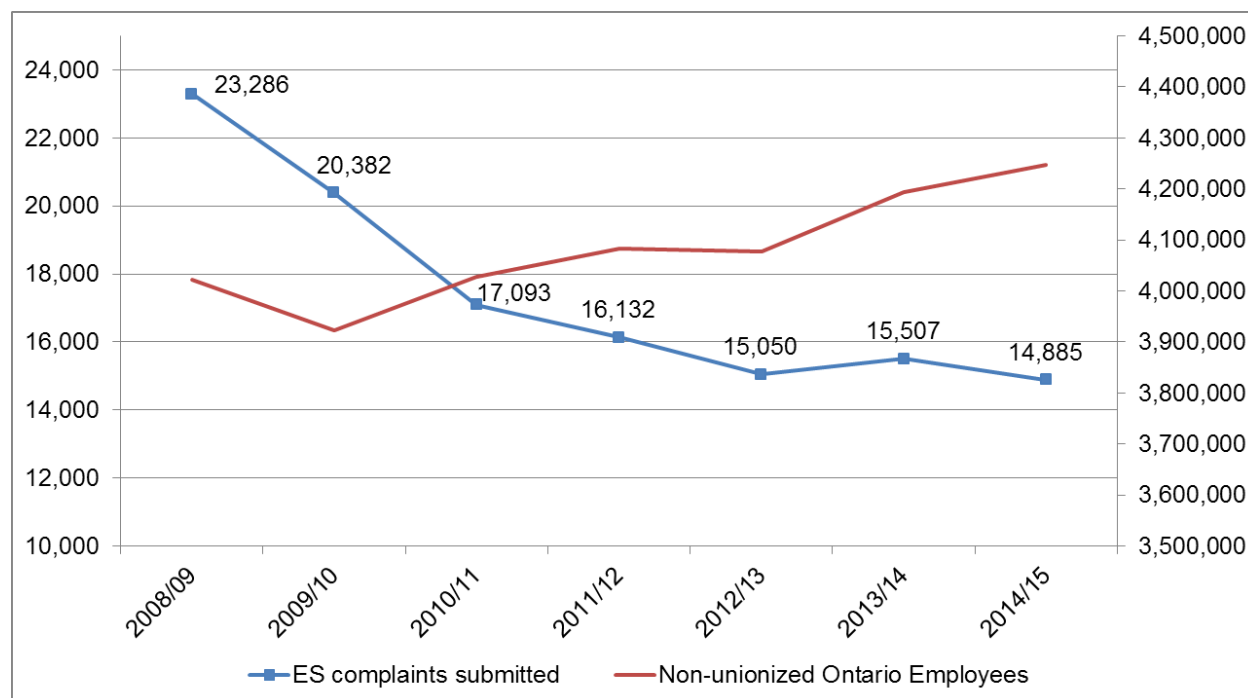
1.1 Trends in Complaints

The volume of ESA complaints received by the Ministry of Labour has decreased in recent years. Between 2008/09 and 2012/13, the number of ES complaints submitted annually dropped substantially (see Graph 1.1), but levelled off at about 15,000 per year starting in 2012/13.⁹ Notably, the absolute number of non-unionized Ontario employees increased during that time period; thus, whereas in 2008/09, there was one complaint submitted for every 173 non-unionized employees in Ontario, in 2014/15, there was one complaint submitted for every 285 non-unionized employees.

⁸ In this analysis, to enhance precision, and following the convention of other scholars working in this area internationally, the term “complaint” is used to refer to the entire submission made by an employee to the Ministry of Labour. Each complaint includes one or more “claims” which refer to alleged violations of particular employment standards. The Ontario MOL does not use the terms “complaints” and “claims” in the same way in its own reporting.

⁹ These include complaints that were not formally accepted, out of jurisdiction or cancelled, in order to reflect the total volume of Ministry of Labour intake. The number of complaints that were accepted and handled by the Ministry of Labour is slightly lower.

Graph 1.1: ES Complaints Submitted to the Ministry of Labour, Relative to the Number of Non-Unionized Employees in Ontario, 2008/09 to 2014/15¹⁰



There could be many reasons for this decline in complaints and the parallel change in the ratio of complaints to non-unionized workers. In theory, the decline in complaints could be evidence of greater employer compliance with the *ESA*, the result of changes in reporting behaviour, or an indicator that proactive inspections are detecting more violations thus reducing the need for employees experiencing violations to file complaints. The inspection data in section three suggest that the latter explanation is unlikely to account for this decline, leaving us with the possibility of better compliance or changes in reporting behaviour or a combination of the two. It is possible that administrative measures have improved compliance. Increased efforts to inform employers of their duties and workers of their rights might reduce violations as would increases in proactive inspections, including blitzes, which target sectors where high rates of violations are suspected. In the absence of reliable empirical evidence about the frequency of *ESA* violations and how they have changed over time, there is little more that we can say about the hypothesis that violations have become less frequent.

¹⁰ The number of non-unionized employees in Ontario for each fiscal year is estimated using Statistics Canada's Labour Force Survey, Public Use Microdata Files.

That leaves us with the third alternative: that there have been changes in reporting behaviour. We do not have enough evidence about how reporting behaviour may have changed over time to draw strong conclusions, but because changes to the complaints process brought about by the 2010 *Open for Business Act (OBA)* may have affected reporting behaviour, we discuss this issue in somewhat greater detail.

Non-unionized employees who experience ES violations can respond in at least four ways: 1) remain silent and do nothing; 2) attempt to resolve the matter directly with their employer; 3) make a complaint to the Ministry of Labour; or 4) sue their employer. The real and/or perceived risks of reprisal for making an ES complaint either directly to one's employer or to state officials, or for suing one's employer are well-documented in the scholarly literature (Ruckelshaus 2008; Alexander 2013; Griffith 2015), suggesting that employees often choose to remain silent and not complain. As a result of changes authorized by the *OBA*, employees are generally required to attempt self-help by resolving the matter directly with their employer before they are permitted to make a complaint to the Ministry of Labour.¹¹ The development of this policy was aimed directly at increasing the number of employees who attempt to resolve the matter directly with their employer and, as a consequence, reducing the number who make complaints to the Ministry of Labour.¹² As a result of the *OBA*, it is reasonable to assume that more employees pursue self-help than had been the case prior to its enactment. From 2011/12 onwards, the first full year for which this requirement was in place, more than 4 out of 5 complainants (84%) reported that they had either contacted or attempted to contact their employer. We do not know whether the *OBA* also increased the number of employees who remain silent rather than attempt self-help or complain directly to the Ministry of Labour and seek an exemption from the self-help requirement. Moreover, we

¹¹ The *OBA* gave the Director the power to specify steps that must be undertaken as a condition of making a complaint to the MOL, including attempting resolution with the employer. The Director exercised this power. However, the *ESA* also gave the Director discretion to relieve employees of this requirement.

¹² When this policy was enacted as part of the 2010 *Open for Business Act*, the then-Minister of Labour noted, "[i]n many instances, those claims are because the parties don't have the information beforehand where they can resolve the claim before it has to be dealt with by one of our employment standards officers" (Fonseca cited in Legislative Assembly of Ontario 2010a: 1899).

Furthermore, the then-Minister of Economic Development and Trade characterized the rationale for the *OBA* as follows: "the proposed changes included in the *Open for Business Act* would encourage employees and employers to settle disputes at an early stage, avoiding unnecessary costs for both parties, let alone the time involved for both, and allowing employment standards officers to focus on the current backlog of claims" (Pupatello cited in Legislative Assembly of Ontario 2010b: 1552).

have no information on the outcome of self-help efforts either before or after the *OBA* and how often workers who do not obtain a satisfactory resolution pursue a complaint with the Ministry of Labour. Hence, while it appears that, as intended, the self-help requirement reduced the number of complaints reaching the Ministry of Labour, there is no way of determining whether this legislation also has the unintended and undesirable consequence of increasing the number of workers who remain silent about unresolved violations. Some data suggest, however, that the self-help requirement may indeed have had this effect.

First, relatively few complainants – fewer than one in ten (9%) – are still working for the employer they file the complaint about.¹³ Over a quarter of complainants (28%) report that they had been fired. An additional 15% say that they were laid off and 24% say that they quit (see Appendix B, Table 1.1). The extremely low proportion of employees who file complaints against their employers while still on the job – which has remained relatively constant across time – is noteworthy as it supports suggestions by scholars (Bernhardt et al 2013; Vosko 2013) as well as the Auditor General of Ontario (2004) that accessing the complaints process may be a risky venture for those who remain on the job and wish to retain it. As noted, the Director may relieve employees of the obligation to contact their employer and there are now several formal grounds for exemption from this requirement, such as if a complainant is a young worker, a live-in caregiver, or fears retaliation. By far, the most commonly cited reason for not contacting or attempting to contact an employer was fear, cited by almost half (48%) of those who did not attempt to resolve the matter directly with their employer. This fear is particularly pronounced amongst complainants who were still working for their employer at the time that they filed a complaint. Among this group, more than 65% of those who did not contact or try to contact their employer indicated that they did not do so because they were afraid. These data confirm that fear of retaliation remains widespread among workers.

The balance of evidence suggests that the decline in complaints corresponds to the introduction of the *OBA*, the requirements of which may be dissuading workers from

¹³ In 2004, the Auditor General of Ontario found similarly that only 1 in 10 complaints received by the Ministry of Labour are from workers who are still employed in the job they filed the complaint about (Office of the Auditor General, 2004, 242).

pursuing their rights. **One option for dealing with this is to remove the discretion of the Director of Employment Standards to impose a requirement on employees to contact their employer before submitting a complaint.**¹⁴ Due to the clear evidence of fear, particularly among employed complainants, consideration could also be given to expanding options for third-party and anonymous complaints where employees remain on the job. These options might mirror other similar third-party or anonymous reporting systems existing elsewhere, such as in Saskatchewan, which allows an employee or a third party to submit a written complaint against an employer, which is then investigated, and/or in six American states – Colorado, New Jersey, California, Connecticut, Illinois, and New York – which provide for anonymous complaints with to the aim of protecting the identity of the claimant (for a review of such measures, see Vosko 2013, 860-861).

1.2 A Profile of Complaints and Claims

When employees complain to the Ministry of Labour, their complaints can include claims related to one or more standards outlined in the *ESA*. Typically, complaints include claims for only one or two standards. Two out of every five complaints (41%) include a claim for one standard only, and another 31% include a claim for two standards only. Just over one in ten complaints (12%) is for four or more standards. These results suggest that complainants are quite specific about the claims for which they are seeking restitution. Complaints relating to businesses that are still in operation are slightly more likely to have a claim for one standard alone, compared to complaints relating to businesses that are no longer in operation, which are more likely to include claims for two or three standards.

By far, the three most common standards for which claims are made relate to unpaid wages, termination pay, and vacation pay/time.¹⁵ The high prevalence of claims relating to these three standards is similar across industries, with the notable exception

¹⁴ Specifically, the *ESA* provides that the Director of Employment Standards shall not assign a complaint to an ESO unless the complainant has taken steps specified by the Director to facilitate the investigation of the complaint (s.96.1(1)). From 2010 onwards, the Director has exercised this discretion to require that complainants contact their employer to discuss the *ESA* issue under contention before filing a claim. However, the *ESA* (s 91.1(2)) gives the Director discretion to assign a complaint.

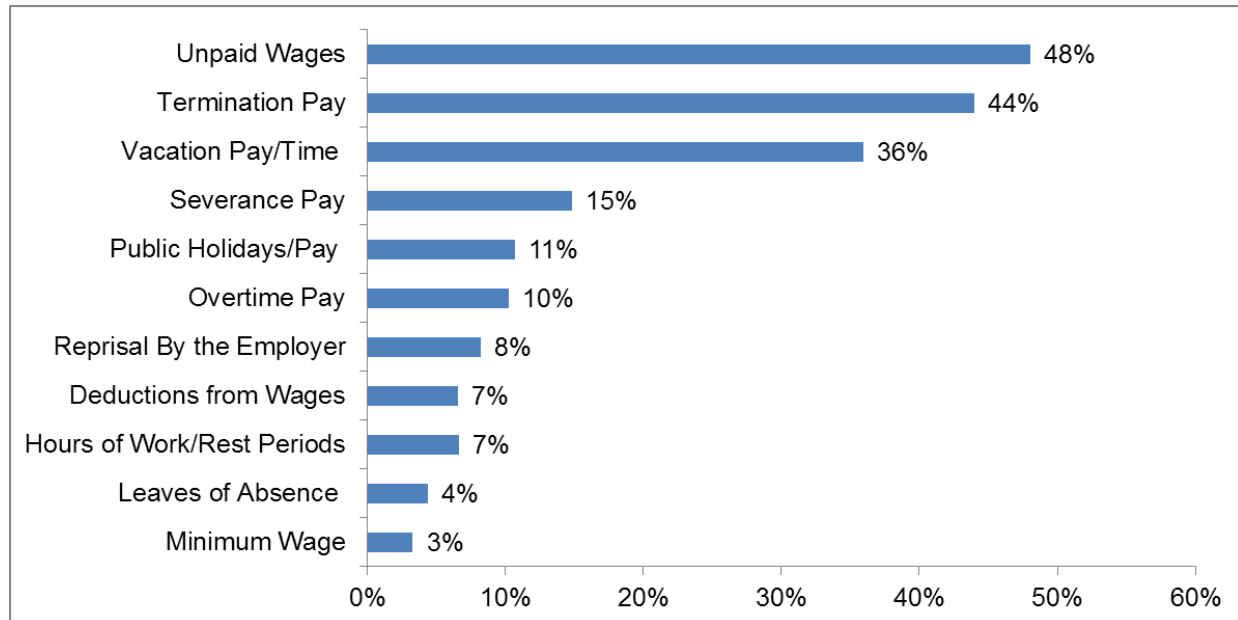
¹⁵ Approximately 20% of complaints include a claim for vacation pay exclusively, or for an amount beyond that which would accrue for other claims in the complaint (such as those for unpaid wages, overtime pay, public holiday pay, minimum wage, and termination pay).

that only 43% of complaints with a claim for unpaid wages relate to retail trades, whereas in other industries more than half of complaints include a claim for unpaid wages. In contrast, complaints related to retail trades are more likely to include a claim for termination pay. More than half of complaints related to the retail trades include claims for termination pay compared to 44% of complaints related to other industries (see Appendix B, Table 1.4). Appendix Table 1.1 profiles the proportion of complaints submitted with a claim for each standard between 2008/09 and 2014/15.¹⁶ It demonstrates that overall, between 2008/09 and 2014/15, claims for unpaid wages, overtime pay, hours of work/rest periods and reprisals became slightly more common among the complaints submitted, whereas claims for vacation pay and for termination pay have become slightly less common. The increase in the proportion of complaints with reprisal claims, in particular, provides additional evidence to suggest that the *OBA's* self-help requirement places some workers in precarious situations.

¹⁶ Claims included in less than 1% of all complaints are excluded from Appendix Table 1.1; among active ES standards, these include those related to equal pay for equal work and temporary help agencies (THAs).

Among those complaints that relate specifically to THAs (n=1922), THA claims are more prevalent. In this group, fully 6.8% claimed failure to provide required information, 4.6% claimed reprisal by the client business of the THA, 2.5% submitted that the client business was restricted from hiring the assignment employee, and 1.8% claimed that they had been charged prohibited fees.

Graph 1.2: Proportion of Complaints Submitted With a Claim for Each Standard, 2008/09 to 2014/15 (n=120,893)¹⁷

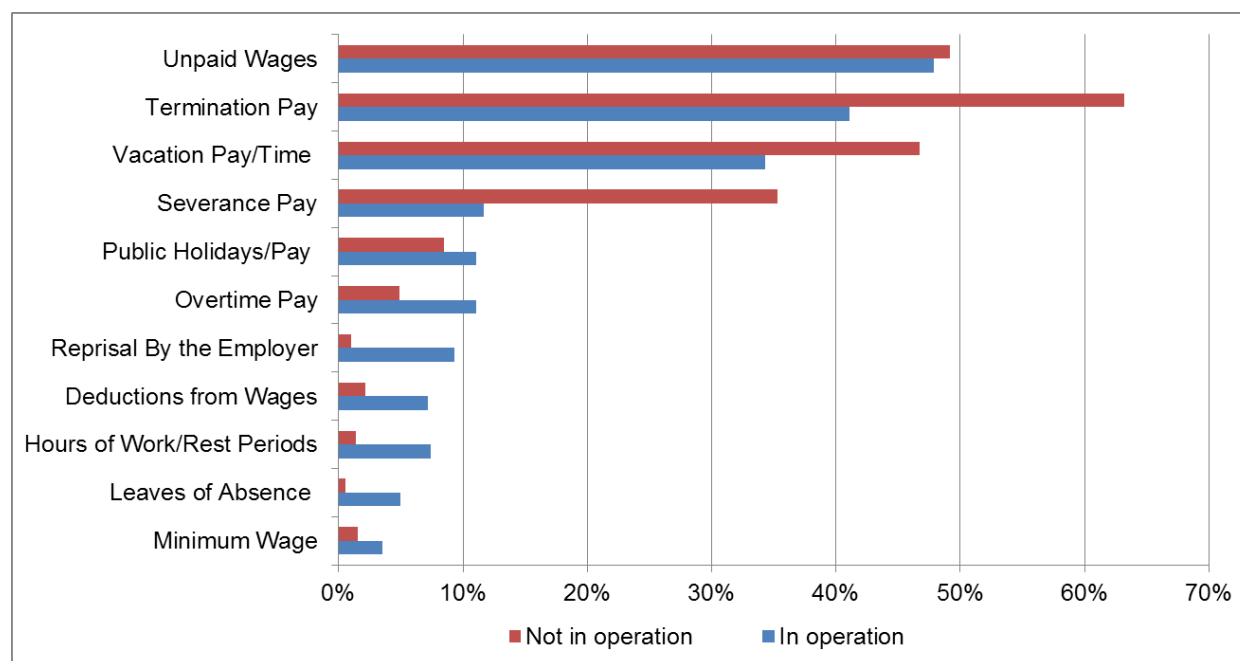


Not surprisingly, compared to complaints filed against operational businesses, complaints filed against non-operational businesses¹⁸ are more likely to include claims for termination pay and severance pay, as well as for vacation pay. In contrast, complaints filed against operational businesses are more likely to generate claims for public holidays/pay, overtime pay, reprisals, deductions from wages, limits on hours of work, leaves of absence and minimum wage (see Appendix B, Table 1.2).

¹⁷ Here, percentages add to more than 100%, since complaints can include a claim for more than one standard.

¹⁸ In this analysis, complaints were considered to relate to a non-operational business if they met any one of the following criteria: the complainant reported that the business was no longer operating, in receivership or bankrupt; the complainant reported that they did not contact their employer because their workplace had closed down or their employer had gone bankrupt, or the complaint was assigned to one of the Ministry of Labour's specialized Bankruptcy/Insolvency Claims Units.

Graph 1.3: Proportion of Complaints Submitted With a Claim for Each Standard, by Business Operation Status, 2008/09 to 2014/15 (n=120,893)



1.3 Complaint Outcomes

After an individual files a complaint, it is first routed to a claims/document processor who makes an initial assessment of whether the complaint falls under the jurisdiction of the *ESA* and whether it includes the minimum necessary information to proceed.¹⁹ Next, the complaint is forwarded to an ESO who collects information from all parties, and who may engage in other fact-finding activities, including meeting with the parties. Through their investigation, ESOs assess whether each claim included in a complaint is substantiated. ESOs then assess what amount is owing to the complainant for each validated claim. Complaints and claims are thus validated or denied by an ESO based on the balance of probabilities and on the available evidence. As a result of their investigation, ESOs can also assess entitlements for ES violations that were not included in the original complaint.

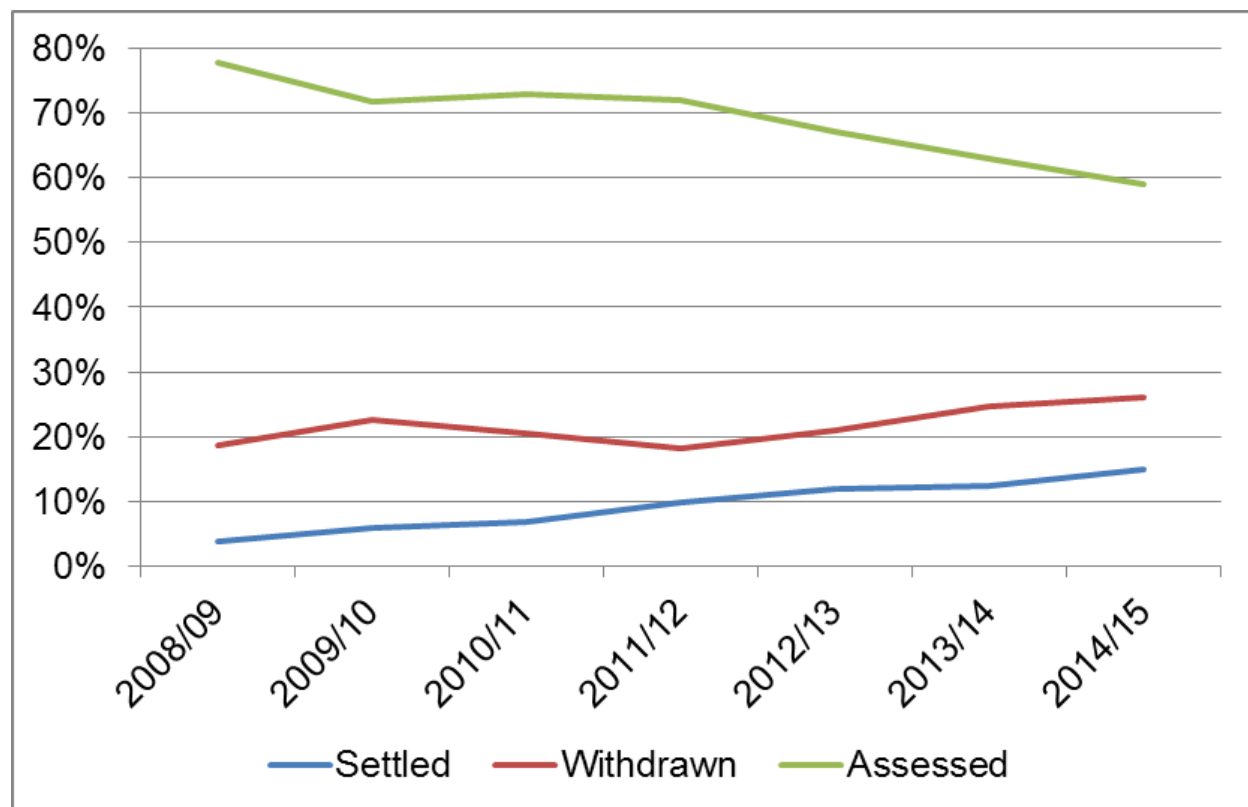
From an administrative perspective, an ES complaint can have five possible outcomes. A complaint can be withdrawn by the complainant, because the issue has been resolved or because they do not want to pursue the complaint for other reasons.

¹⁹ The final determination of whether a complaint falls under the jurisdiction of an *ESA*, or involves an *ESA* issue, rests with an ES Regional and/or District Manager.

Employees who are still working for the employer that they filed the complaint against are more likely to withdraw their complaints than other complainants (35% of those still working withdraw their complaints, compared to 22% overall). There is no information available about why employees in general withdraw their complaints. Consequently, it is difficult to offer an explanation for the greater likelihood of current employees to withdraw their complaints; this pattern may be because current employees are more likely to come to a satisfactory informal resolution with their employer, or because they are more likely to experience employer pressures to withdraw their complaint. A complaint can also be settled by the two parties at any point in the process (see section two for more details on settlements). Complaints that are withdrawn or settled are not formally assessed by ESOs, though in practice, some assessment may have taken place, depending on the point in the process at which a complaint is withdrawn or settled. Among complaints that are formally assessed by an ESO, there are two possible outcomes: the complaint may be denied or validated by the ESO. Complaints are considered to be validated when one or more of the violations alleged are fully or partially substantiated upon investigation by an ESO. If the complaint is validated, the employer may agree to voluntarily comply, or the ESO may need to order compliance (for information on the additional use of deterrence measures, see section four).

Overall, about 7 out of every 10 complaints (70%) are formally assessed by an ESO. This proportion has been steadily decreasing across time: whereas in 2008/09, 78% of complaints were assessed by an ESO, in 2014/15 only 59% of complaints were assessed (see Appendix B, 1.1). For the 30% of complaints that are not assessed by an ESO, the majority (21% overall) are because of withdrawals. About one in ten complaints overall (9%) are resolved through settlements, though settlements have become more common recently: whereas settlements accounted for 4% of complaint outcomes in 2008/09, they accounted for 15% in 2014/15 (see Appendix B, Table 1.1); issues related to settlements are discussed separately in section two.

Graph 1.4: Proportion of Complaints Assessed, Settled, and Withdrawn, 2008/09 to 2014/15 (n=120,893)



Among assessed complaints, overall, a violation is found 69% of the time (see Appendix B, Table 1.1). Complaints related to the accommodation and food services industry are most likely to have violations, with 78% of assessed complaints resulting in violations (see Appendix B, Table 1.3). Violations are also more likely to be found for complaints filed against small firms. The difference between large and small firms is most noticeable when comparing complaints relating to firms with 1-5 employees, which have a violation rate of 80%, and complaints relating to firms with more than 200 employees, which have a violation rate of only 49% (see Appendix B, Table 1.4). The vast majority of these violations relate to monetary claims. Among assessed complaints, 69% included monetary violations, and only 1.6% included non-monetary violations. The percentage of assessed complaints that result in a violation declined slightly in the 2014/15 year, though it is too soon to say whether this is part of a trend (see Appendix B, Table 1.1).

Table 1.1 Incidence of All Violations, Monetary Violations and Non-Monetary Violations, Among Assessed Complaints, 2008/09 to 2014/15 (n=84,471)

	Fiscal Year when Complaint was Submitted							Total
	2008/ 09	2009/ 10	2010/ 11	2011/ 12	2012/ 13	2013/ 14	2014/ 15	
Any violation	70.3%	68.4%	70.4%	70.7%	67.9%	69.5%	66.6%	69.3%
Monetary violation	69.8%	67.8%	69.7%	69.9%	67.0%	68.1%	65.3%	68.5%
Non-monetary violation	1.0%	1.1%	1.4%	1.7%	2.2%	2.5%	2.5%	1.6%

For complaints where a violation is found and an entitlement is assessed, the ESO can request voluntary compliance on the part of the employer, which is achieved in about half of these cases. An ESO can also order compliance. This order can take the form of an Order to Pay Wages directed at either the employer or a related-employer (s.103), a Directors' Order to Pay Wages (s.81), an Order for Compensation and/or Reinstatement (ss.104, 74.16, 74.17), and/or an Order to Pay Fees (s.74.14).²⁰ There has been a notable decline in the number of complaints with voluntary compliance during triage (i.e., at the ESO I level) across time. Concomitantly, among assessed complaints, the proportion that requires ESO investigation has risen. This trend may be the result of the establishment of the self-help requirement under the *OBA*, insofar as many employers who were voluntarily complying early in the complaint process may now comply at the self-help stage and never enter the system, with the result that the proportion of formal ES complaints involving recalcitrant employers is increasing.

A business' operational status is also associated with the likelihood of achieving voluntary compliance. Among businesses that are not operational, only 6% achieve voluntary compliance. In contrast, three out of five businesses (63%) that are still in operation achieve voluntary compliance (see Appendix B, Table 1.2). The high proportion of cases relating to non-operational businesses that require the use of ESO orders underscores the difficulty of recovering wages from such entities (as discussed in section six on recovery).

Fortunately, the percentage of non-operational businesses appears to be declining; in 2008/09, 22% of complaints were related to businesses that were not in

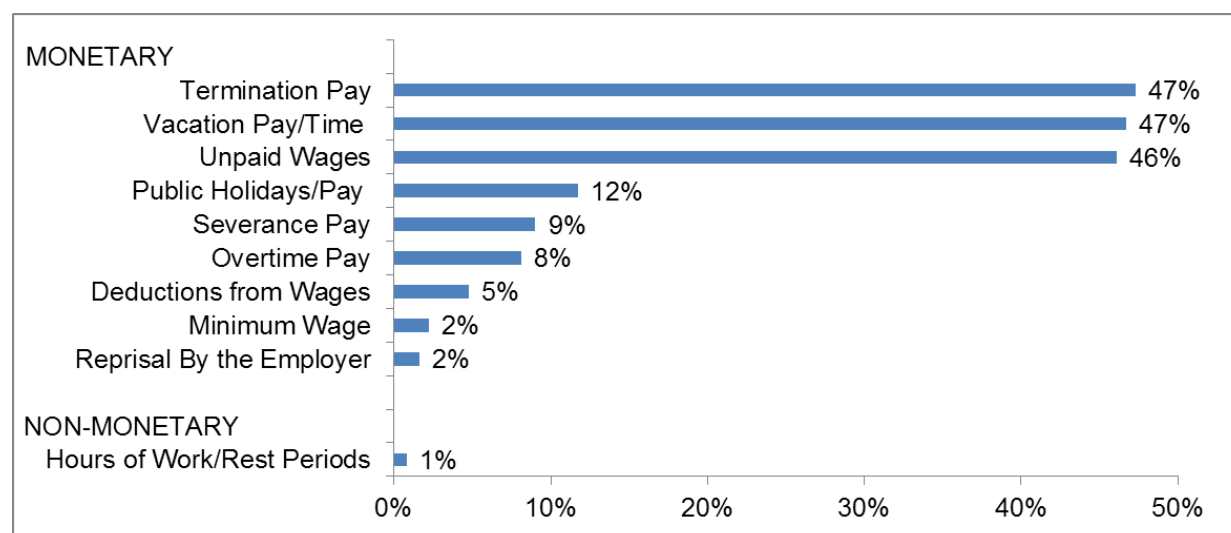
²⁰ Orders to Pay Fees are very rarely issued, and thus are not discussed in this study.

operation, compared to only 8% in 2014/15. One noticeable finding is the relatively high proportion of complaints (15%) relating to non-operational businesses in the accommodation and food services industry, compared to other industries where only about 10% of complaints relate to non-operational businesses (see Appendix B, Table 1.3). This result likely reflects the high level of business turnover in the accommodation and food services industry more generally.

1.4 Claim Validation and Monetary Entitlements

Among complaints where a violation has been found, by far the most prevalent entitlements are for termination pay, vacation pay,²¹ and unpaid wages (see Graph 1.5). Not surprisingly, termination and severance pay violations are more likely to relate to businesses that are not in operation than from their operational counterparts. Almost three quarters (73%) of validated complaints relating to businesses that were not in operation included an entitlement for termination pay (see Appendix B, Table 1.2).

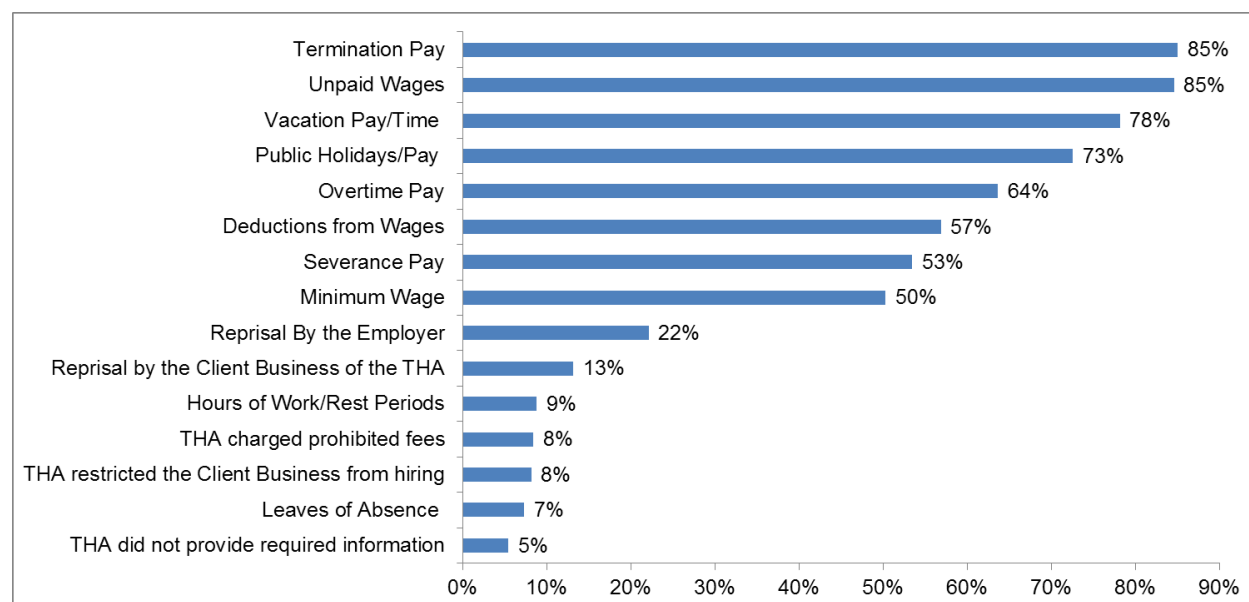
Graph 1.5: Proportion of Complaints Where a Violation has been Found with an Entitlement for Each Standard, 2008/09 to 2014/15 (n=58,527)



²¹ Roughly 28% of complaints with a violation include a monetary entitlement for vacation pay exclusively, or for an amount beyond that which would accrue for other assessed entitlements (such as those for unpaid wages, overtime pay, public holiday pay, minimum wage, and termination pay). For some complaints, however, entitlements for vacation pay are not separately recorded (i.e. an assessed entitlement for unpaid wages might include both the unpaid wage amount and the associated vacation pay owing). Consequently, these results provide only a general estimate of the prevalence of entitlements for vacation pay.

Another way to assess validation rates is by considering the proportion of claims (not complaints) for each standard that are substantiated upon investigation by an ESO. For instance, among those who claimed they were unlawfully deprived of termination pay, 85% were found to have an entitlement (see Graph 1.6). A similarly high validation rate exists for workers claiming unpaid wages, where 85% of those who made a claim in this area were awarded an entitlement for this standard. Other areas where claims are good indicators of violations include vacation pay/time (78% of those claimed were awarded it), public holidays/pay (64% of those who claimed it were awarded it) and overtime pay (64% of those who claimed it were awarded it). Thus, the vast majority of wage-related claims are validated. Other types of claims are less likely to be validated by an ESO. For instance, although there has been an increase in reprisal claims, only one-fifth of people who make a claim related to reprisal are awarded an entitlement in this area (the proportion of validated reprisal claims has also increased over time). Standards with low validation rates suggest that the regulations governing these requirements may be difficult for people to understand, or that they are particularly difficult to prove in a manner satisfactory to ESOs. The lower proportion of validated claims for hours of work, minimum wage, severance pay and overtime pay might be attributable in part to the complex exemptions and special rules in these claim areas (Vosko, Noack and Thomas 2016). Notably, ESOs sometimes award entitlements for standards that were not initially claimed by complainants, most commonly vacation pay and termination pay, reflecting their holistic approach to assessment. The ability of ESOs to detect violations that employees have not themselves raised, highlights the benefit of expanded investigations and other proactive measures (for further information, see section three on inspections).

Graph 1.6: Validation Rates for Each Employment Standard Claimed, 2008/09 to 2014/15²²



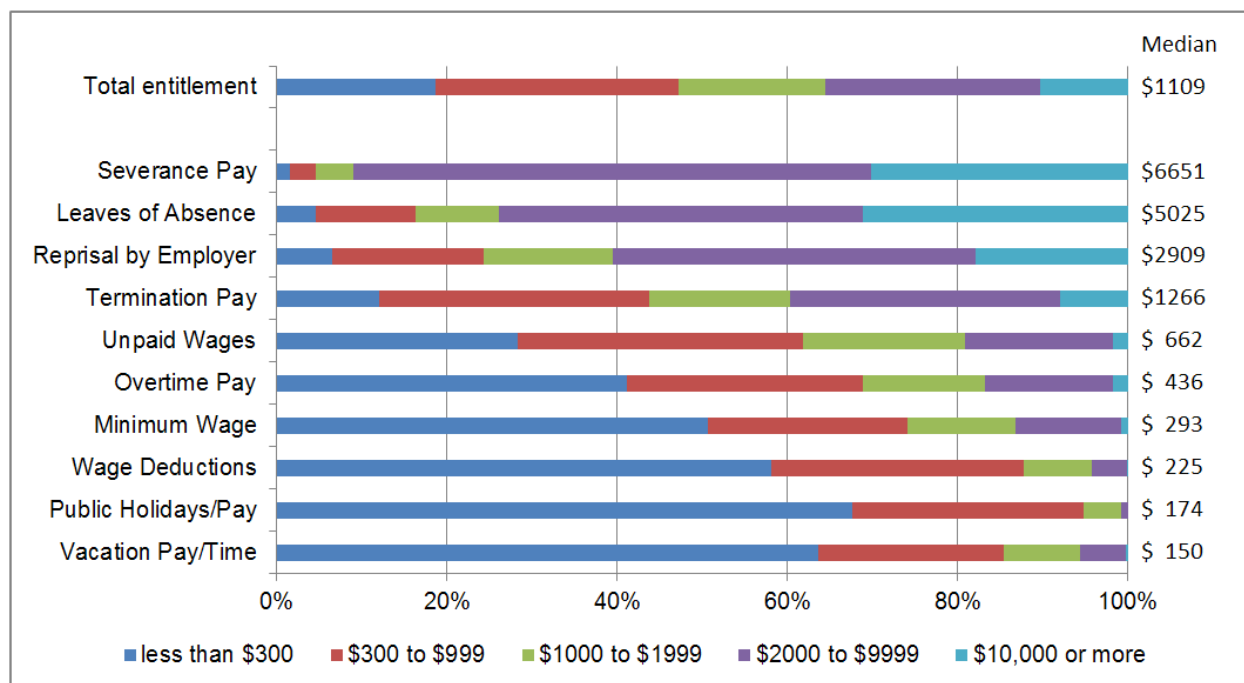
There are consistent trends in the entitlement amounts of validated claims across time. Not surprisingly, severance pay consistently yields the largest median entitlement, followed by leaves of absence, reprisals, and termination pay (see Appendix B, Table 1.1). In a labour market characterized by high levels of unemployment, the relatively large dollar value of severance and termination pay claims, both of which relate to job loss, underline the scope of hardship that these claims generate. Similarly, leave of absence and reprisal violations commonly involve loss of employment and generate substantial losses for the workers affected.

While the entitlement amount for the most commonly submitted and validated claim – unpaid wages – is typically smaller, these amounts may represent a large proportion of many employees' expected weekly and monthly earnings, especially for those in low wage jobs. Graph 1.7 illustrates the distribution of total entitlements and entitlements owing for each standard, for complaints submitted during the seven year period under consideration. Consistently, about half of complainants' total entitlements

²² This graph shows the percent of claims with monetary entitlements for each standard, except for the standards relating to leaves, limits on hours of work/rest periods, THAs restricting client businesses from hiring, and THAs not providing required information, where the percent of claims with both monetary and non-monetary entitlements are shown.

are for \$1000 or more, a substantial sum of money that has not been received by an employee, and may subsequently cause them or their family hardship.

Graph 1.7: Distribution and Median of Entitlements (Overall and by Standard) Owed to Complainants, 2008/09 to 2014/15



Taken together, these results show that the majority of complaints lead to the detection of violations, which reinforces the value of a reactive enforcement system in identifying and remedying ES violations. The total entitlements that workers are assessed as being owed can be substantial: about half are consistently for \$1000 or more, a loss which may result in employees' inability to meet their basic expenses, or cause them to incur debt. The substantial nature of these entitlements suggests that one option may be to give **ESOs the power to order liquidated damages in addition to the amount of the order to pay. If this power is granted, a further option could be to specify that damages are mandatory and perhaps fixed as a percentage of what is owed (e.g., in the U.S. at the federal level, liquidated damages are equal to the amount of back wages owed).** Measures of this sort could augment deterrence effects as well as provide for greater compensation to workers with validated entitlements (see also section four on deterrence).

2. Settlements

As described in the preceding profile of *ESA* complaints and claims, once a complaint has been sent to an ESO several outcomes are possible. One possibility is that a complainant and his or her employer may settle the complaint by agreeing to certain terms in order to resolve it. The use of settlements in minimum standards enforcement regimes merits special consideration for several reasons. Some scholars have raised concerns about their use because settlements potentially involve the negotiation of minimum standards instead of their enforcement, which may lead workers to accept less than their legal entitlement (Fairey 2005). Further, the use of settlements potentially allows for the contracting out of ES (Fairey 2005), and can turn questions of law enforcement into matters of dispute resolution (Vosko et al. 2012).

In Ontario's ES enforcement system, settlements are divided into two types: non-facilitated and facilitated settlements.²³ Non-facilitated settlements, outlined in s.112 of the *ESA*, may be reached at any point after the complaint is filed and require that a written agreement be provided to the ESO outlining the agreement. After a settlement is reached and recorded, and the parties do what they agreed to do in the terms of the settlement, the complaint is considered withdrawn. A complainant can apply to the OLRB to void a settlement if it was reached as a result of fraud or coercion. Facilitated settlements (s.101) were introduced under the *OBA* in 2010 and involve the ESO as an agreement facilitator between the employee and the employer. According to the Ministry of Labour's Administrative Manual for Employment Standards (AMES)²⁴ appendix on facilitated settlements, this approach may be appropriate where there are credibility issues; the facts are unclear; the application of the law is uncertain; or each party's evidence has equal strengths and weaknesses. However, facilitated settlements are not appropriate where it is clear there has been a contravention or where a contravention is not clear, but there is a language barrier, one or more parties has an intimidating manner, or there is an imbalance in negotiating ability between the parties. Where

²³ This section discusses settlements that occur before or during the period when an ESO assesses a complaint. Settlements may also occur in the context of OLRB reviews of ESO orders (or their failure to issue an order); we discuss those settlements in section five on reviews.

²⁴ In preparing this study, we relied primarily on the AMES 2013 as we only received access to the updated AMES at the final stages of review; as a result, we only refer to the updated AMES in a few places where we have been advised of changes by the MOL.

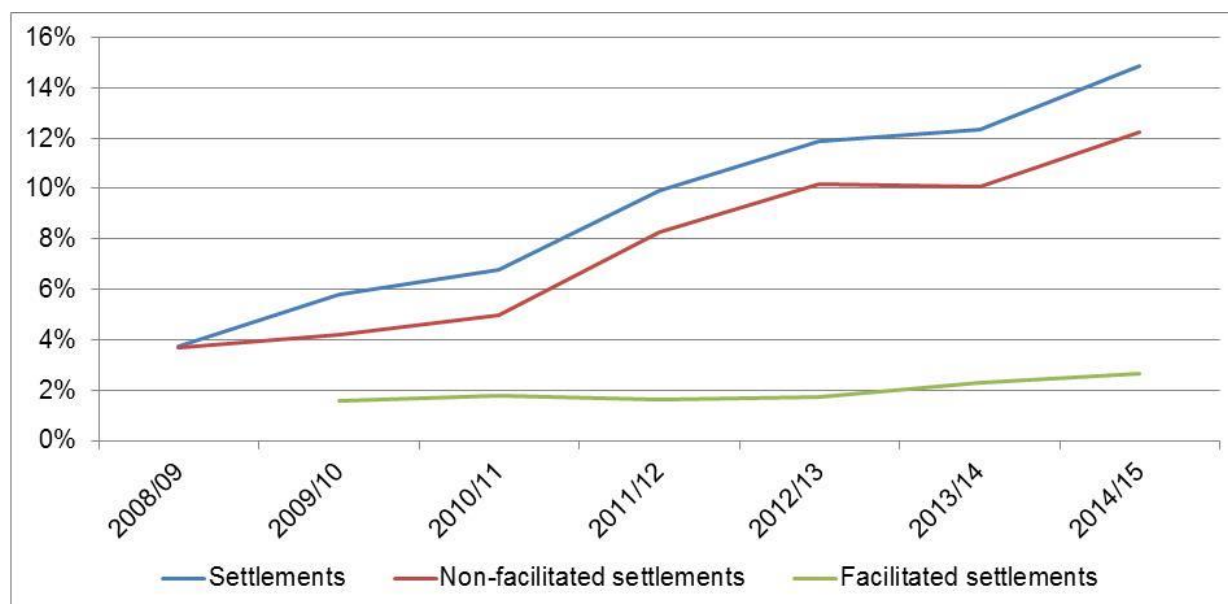
facilitated settlements are undertaken, the ESO is not to assist in drafting the terms of the settlement. Rather s/he is involved in “[h]elping parties understand the strengths and weaknesses of their cases; providing parties with information on how the ESA applies to their cases; [and] helping parties to frame their position and communicate with each other” (Ministry of Labour undated: 3). That is, ESOs assist the parties in coming up with what the terms of a settlement could be. For facilitated settlements, the terms of the agreement must be established before an ESO makes a decision on the entitlements related to the complaint. Again, either the complainant or employer may apply to the OLRB to void the settlement if it involved fraud or coercion.

As previously noted, a key trend in ES enforcement in Ontario from 2008/09 to 2014/15 has been the expanded use of settlements, which accounted for 4% of complaint outcomes in 2008/09, and 15% of complaint outcomes in 2014/15. This trend may correspond to the persistently low rates of recovery for monetary entitlements from employers who do not voluntarily comply (see section six). Employees' perceptions that there are low monetary recovery rates, or that unsettled complaints take a long time to be resolved, create an incentive for employees to settle for less than they believe they are owed rather than risk getting less or going without while they wait for their claims to be assessed and paid.

2.1 Use and Outcomes of Facilitated and Non-Facilitated Settlements

Non-facilitated settlements account for the majority of the increase in settlement usage between 2008/09 and 2014/15. Since their introduction in 2010, the proportion of complaints resolved via facilitated settlements has remained relatively steady (see Graph 2.1).

Graph 2.1: Use of Settlements to Resolve Complaints, Overall and by Type, 2008/09 to 2014/15 (n=120,893)²⁵



Overall, settlements tend to be used for complaints with slightly higher value claims, particularly those between \$2,000 and \$10,000. In terms of the standards claimed, settlements are used disproportionately to resolve complaints with a claim for overtime pay, public holiday pay, and reprisals. Not surprisingly, settlements are more prominent in relation to employers who are still in operation (see Appendix B, Table 2.1).²⁶ There are no notable variations in the prevalence of settlements by industry or company size.

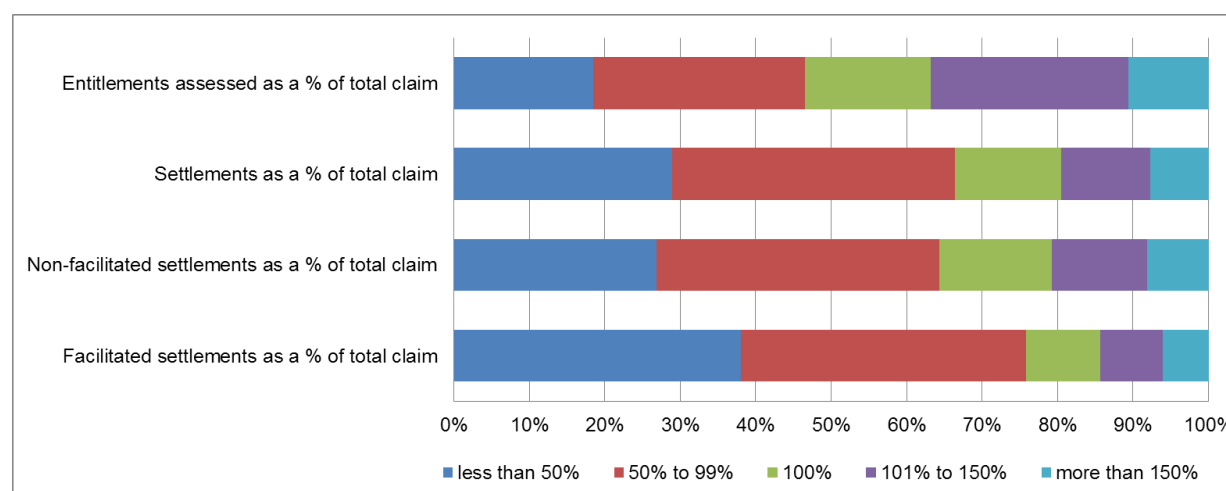
Where settlements occur, there is no assessment of the complainant's legal entitlement. As a result, settlement outcomes can only be assessed in relation to the total claim amount, and compared to the validated entitlement in assessed cases. Graph 2.2 compares facilitated and non-facilitated settlement outcomes with the outcomes of assessed cases where a monetary claim has been validated. It illustrates that, for employees overall, settlements yield a smaller percentage of the total initial claim amount compared to those assessed by an ESO (though this analysis does not take into account complaints denied by an ESO, presumably some complaints that were

²⁵ In this graph, facilitated settlements charted in 2009/10 reflect a pilot project in this area prior to the implementation of the OBA.

²⁶ Appendix Table 1.1 compares complaints that are settled to those that are withdrawn or assessed. It should be noted that some withdrawals may involve *de-facto* settlements, in the form of employer payments that the complainant has deemed good enough to prompt them to withdraw their complaint.

settled may have been denied if they were assessed). Furthermore, in almost 40% of cases, facilitated settlements are settled for less than half of an employee's total initial claim, while fewer than 30% of non-facilitated settlements are settled for less than half of an employee's total initial claim, suggesting that the involvement of the ESO produces a resolution that is overall less favourable to the complainant.

Graph 2.2: Percentage of Total Claim Amount Awarded/Settled for, Assessed Cases with Monetary Entitlements and Settled Cases, by Type, 2010/11 to 2014/15²⁷



The fact that settled complaints tend to be resolved for a smaller percentage of the initial claim amount than assessed complaints, and the fact that facilitated settlements produce less favourable outcomes for the complainant than non-facilitated settlements, raises questions that call for further investigation. In theory, these differences could be attributed to the relative strength of the complaints that are resolved in these different ways, but there is no obvious reason why assessed complaints would be stronger than settled ones or why complaints settled without ESO involvement would be stronger than those settled with ESO facilitation. Given the contexts in which ESOs are directed to use facilitated settlements, they may be more likely to be used in situations where the facts of a case are under contention. There may also be differences in the characteristics of the complainants, rather than the complaints, that explain these outcomes. For instance, complainants who have more support, or who are better informed, or who are stronger willed and therefore better able

²⁷ Complaints with total claim amounts that are missing or \$1 or less are excluded from this analysis.

to persist in the process may do better in settlements. Finally, there may be some aspect of the way that ESOs facilitate settlements that influences their outcomes compared to non-facilitated settlements. Regardless, given the rising role of settlements and these troubling findings about their potential impact on complaint outcomes, one option is **to consider a further investigation of the growing role of settlements with a view to limiting their use, especially those facilitated by ESOs. A second option is to protect workers in the settlement process so as to avoid arrangements that fall below minimum entitlements. A third option is to investigate whether problems in recovering the amounts ESOs order employers to pay (s. 6) place downward pressure on settlement outcomes. These options are not mutually exclusive.**

3. A Profile of *ESA* Inspection Types and Outcomes

A second major component of ES enforcement in Ontario is the use of workplace inspections. In contrast to the reactive process of accepting and assessing individual complaints, workplace inspections are a proactive strategy for discovering violations. The scholarly literature clearly establishes that proactive inspections are critical to any enforcement scheme, since it cannot be assumed that complaints will accurately reflect the number or source of violations (see for e.g., Weil and Pyles, 2005). Section 91 of the *ESA* provides ESOs with powers associated with inspections and investigations, including the power to conduct warrantless searches, require the production of records and question persons who the officer believes may have information relevant to the investigation.

In this analysis, inspections are divided conceptually into three types: expanded investigations, targeted inspections, and regular/other inspections. Expanded inspections are triggered by an individual complaint and occur when there is an indication that an ESO should assess the workplace more fully by conducting an inspection. Targeted or blitz inspections are determined at the provincial level, and typically take the form of blitzes directed at a particular industry, occupational group or form of employment. In contrast, regular inspections are largely determined either by individual ESO IIs or regional or district offices on the basis of local conditions and are

unconnected with blitzes. In addition, the Ministry of Labour tracks several other types of inspections, including re-inspections of previous violators, inspections as a result of participating in a self-assessment (compliance check) and random selections. Because these types of inspections are less common, they are grouped together with regular inspections.

Typically, an ESO sends the employer a notice of regular inspections in advance of a visit (Ministry of Labour 2013a, s.4.7.1).²⁸ In the case of targeted inspections, a public announcement is made in an effort to give businesses and/or industries an opportunity to comply in advance of a potential inspection. In the case of the former, this advance notice streamlines the work of ESOs, but can also give businesses and/or industries the opportunity to prepare and, in the case of a regular inspection, to select which employees will be present and available for an ESO to speak with on the day of an inspection.²⁹ Although we do not have data on the impact of this practice on the efficacy of inspections, because of the obvious potential for businesses to take advantage of advance notice to hide some violations, an option to consider is to **review, and possibly suspend, the practice of providing advance notice of inspection.** The provision of public notice, on the other hand, may broadly motivate employers in a sector to bring themselves into compliance, with a reduced risk that they will hide their violations since these employers do not know in advance whether or not their firms will be selected for inspection.

3.1 Trends in Inspections

The use of proactive inspections in the Ministry of Labour's toolkit of enforcement strategies has been limited, or at best sporadic, over the past several decades. Reports published by the Office of the Provincial Auditor General in both 1991 and 2004 found that proactive inspections were severely under-utilized, despite their effectiveness in detecting *ESA* violations. In more recent years, between 2011/12 and 2014/15 specifically, the number of inspections conducted by the Ministry of Labour has increased.³⁰

²⁸ The AMES states the following: "[w]hile not required by the *Act*, advance notice of an inspection should be given unless there is a specific rationale for not providing notice" (Ministry of Labour 2013a, s.4.7.2)

²⁹ <http://www.labour.gov.on.ca/english/es/pubs/guide/molrole.php>. See also Hall et al., 2015.

³⁰ ESIS only includes comprehensive data on inspections from 2011/12 onwards.

Despite employers receiving advance notice, the number of inspections that uncover ES violations is quite high. The proportion of inspections that detected violations ranged from 75% to 77% in the years between 2011/12 and 2013/14, but dropped to 65% in 2014/15 (see Appendix B, Table 3.1). When monetary and non-monetary violations are disaggregated, overall 29% of inspections detect both a monetary and a non-monetary violation, 27% detect only non-monetary violations, and 10% detect only monetary violations. Put another way, about 39% of inspections find a monetary violation whereas fully 56% find a non-monetary violation. There was little change in this distribution in the years between 2011/12 and 2013/14. However, in 2014/15, the decline in the proportion of inspections detecting violations is almost entirely accounted for by a decline in the detection of monetary violations (alone or in combination with non-monetary violations). There is no clear explanation for this change, nor any indication of whether it reflects the beginning of a larger trend.

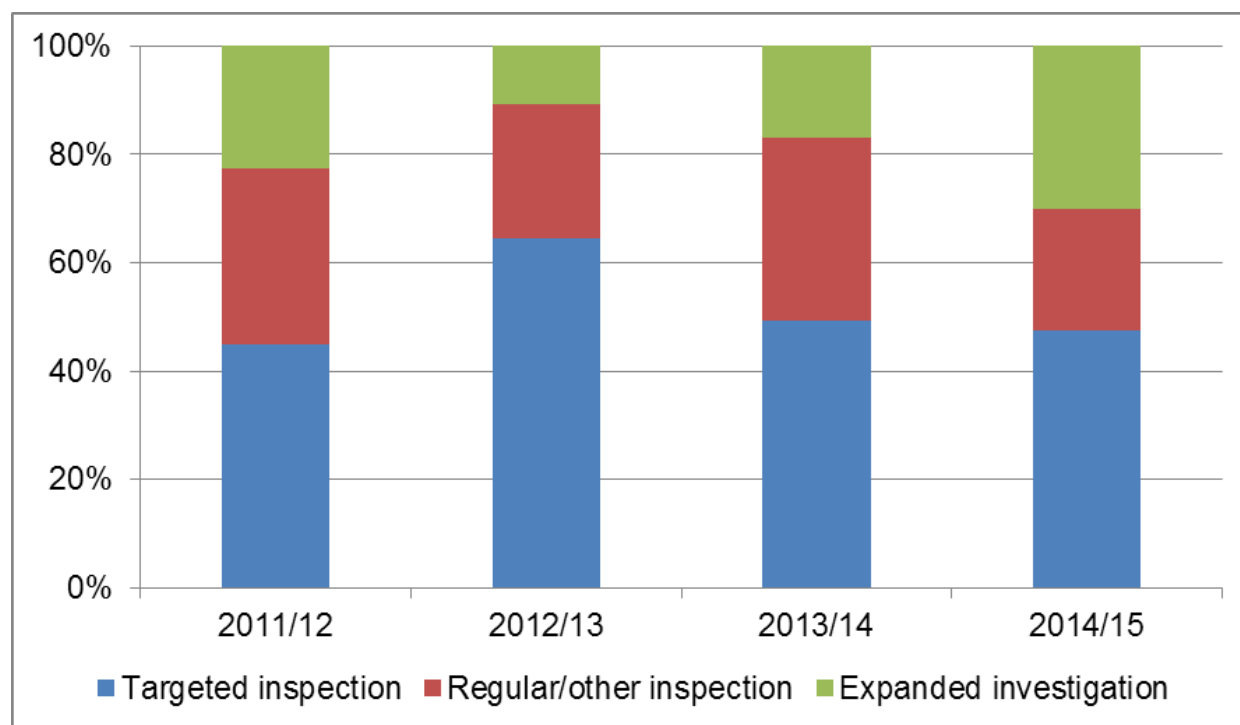
Table 3.1 Incidence of all violations, monetary violations and non-monetary violations, among inspections, 2011/12 to 2014/15 (n=7,004)

	Fiscal Year of Inspection				Total
	2011/12	2012/13	2013/14	2014/15	
Any violation	76.5%	77.4%	74.7%	64.6%	73.4%
Monetary violation	41.1%	41.2%	41.2%	30.6%	38.6%
Non-monetary violation	57.5%	59.9%	57.6%	47.8%	55.9%

3.2 Analysis of Inspection Results by Inspection Type

Targeted inspections account for about half (53%) of all inspections conducted in Ontario, although there is substantial variation by fiscal year (see Graph 3.1), presumably due to variations in provincial directives (Ministry of Labour 2013b). For example, in 2012, the Ministry of Labour's blitz of temporary help agencies yielded strong results, which may account for the higher use of targeted inspections (64%) in the 2012/13 fiscal year. Expanded investigations appear to be becoming more common, seemingly at the expense of regular/other investigations, though it is too soon to assess whether this constitutes a clear trend.

Graph 3.1: Types of Inspections Conducted, 2011/12 to 2014/15 (n=7,004)



Expanded investigations detect the highest rates of ES violations; fully 82% of such inspections find infractions (see Appendix B, Table 3.2). Such high rates of detection suggest that verified individual complaints are a good source for identifying problematic workplaces and industries, a finding that is consistent with the results of other studies (Weil and Pyles 2005). Targeted and regular inspections, in contrast, detect violations 72% and 70% of the time; predictably similar yields since documented violations are not the motivation for either type of inspection (see Appendix B, Table 3.2). Expanded investigations also yield the highest levels of monetary violations (overall about 46%), whereas targeted and regular inspections find monetary violations 36% and 38% of the time respectively. This result is unsurprising, since expanded investigations are presumably triggered as a result of finding a monetary violation³¹ for one employee that might affect others, while targeted and regular inspections are triggered by suspicions that there might be a problem in a particular sector or with a particular employer. It is worth noting that there appears to be no particular relationship between the type of

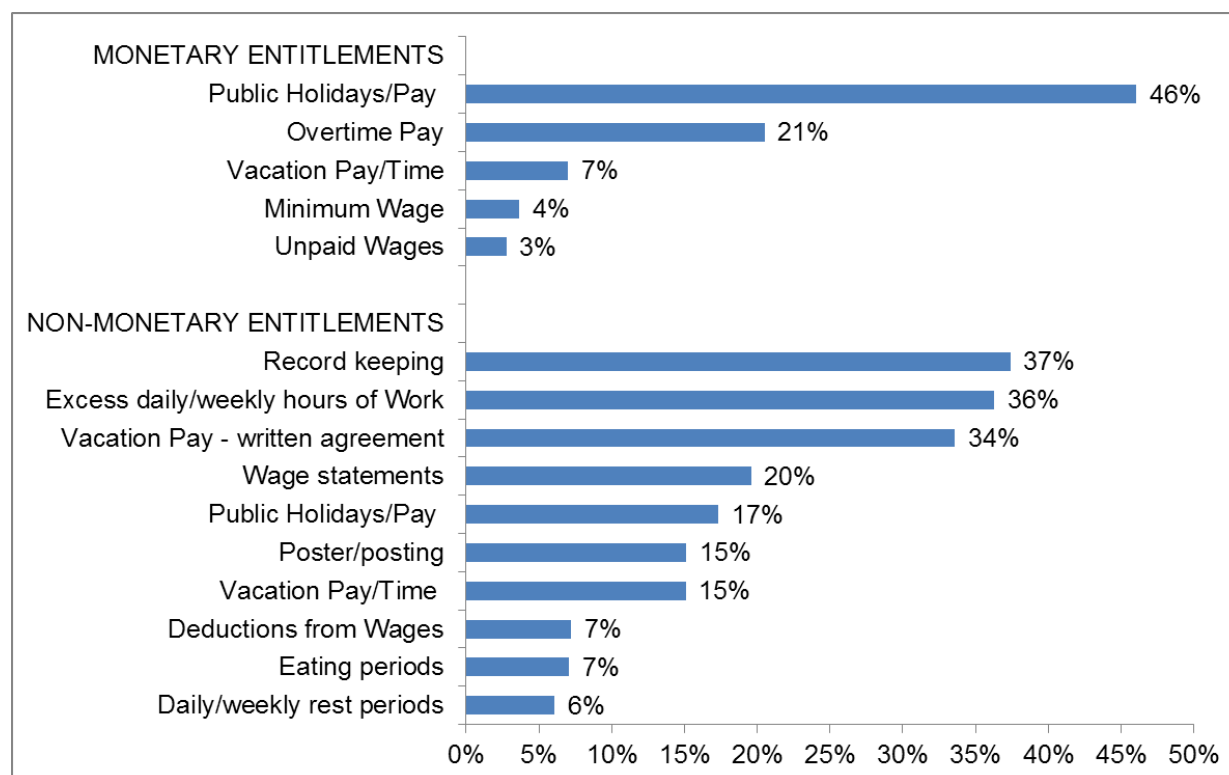
³¹ Expanded investigations can also be triggered by non-monetary contraventions.

inspection and the standards for which violations are found, with the exception that expanded investigations tend to detect violations of overtime pay requirements more frequently. For inspections overall, violation rates are lowest for firms with 50 or more employees (about 68%) and highest for firms with 11 to 19 employees (79%).

3.3 Types of Violations found by Inspections

Among the 73% of inspections which detect a violation, the most common (monetary) violation is for public holiday pay (46%), followed by non-monetary violations related to record keeping, excess hours of work, and written agreements for vacation pay (see Graph 3.2). The next most common monetary violation is for overtime pay, identified as a concern in 21% of inspections. Notable here is the radically different profile of ES violations that are detected by inspections compared to those identified in individual complaints (compare with Graph 1.5). The three most prominent violations among validated complaints (termination pay, vacation pay/time, and unpaid wages) are detected far less frequently in the context of ES inspections. Since generally inspections do not target termination pay contraventions and because ESOs generally do not conduct inspections of businesses that are not in operation, the absence of termination pay is expected, but the low rates of violation for vacation pay and unpaid wages suggest that complaints and inspections capture very different profiles of violations, and that both are necessary in a comprehensive enforcement system. Neither complaints nor inspections alone appear to provide an accurate depiction of the full range of ES violations in Ontario workplaces.

Graph 3.2: Types of ES Violations Found by Inspections, 2011/12 to 2014/15 (n=5140)³²



The number of employees in inspected workplaces is another central metric in any evaluation of the effectiveness of particular types of inspections as well as inspections overall. Unfortunately, ESIS data do not permit an assessment of the exact number of employees affected by ES violations in a single workplace. The only information available is the number of employees affected by the violation of a particular ES standard; inspections that detect the violation of multiple standards might do so for the same employees multiple times, or slightly different combinations of employees each time. The number of employees affected by violations of an ES standard within a single workplace typically ranges from a single employee to several thousand. In about half of all inspections, fewer than 10 employees are affected by each violation of an ES

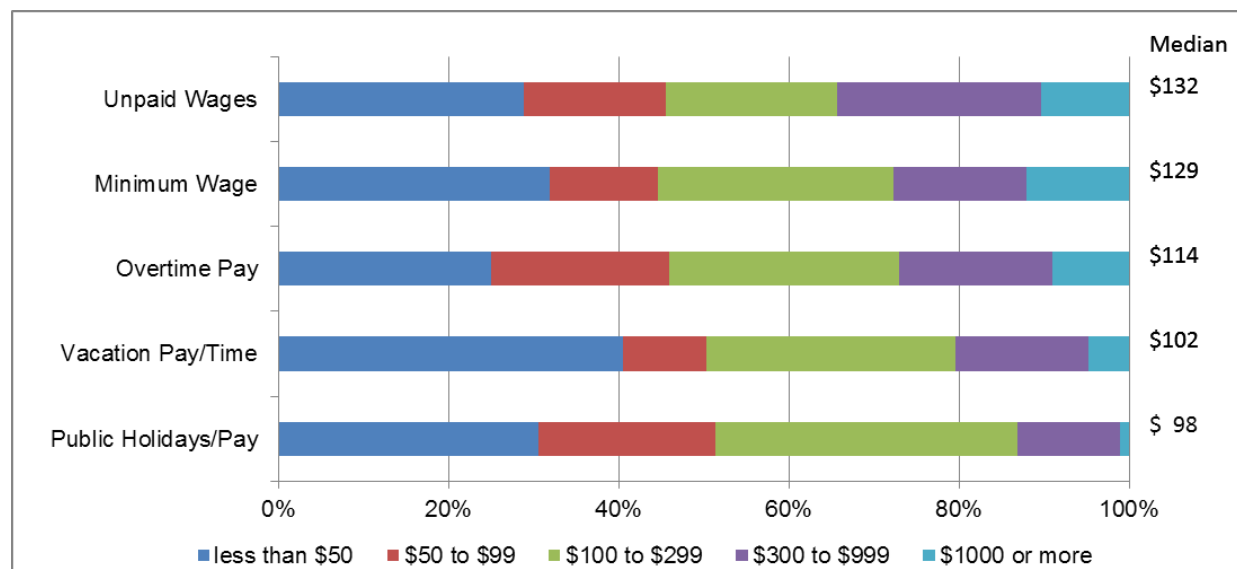
³² In this context, “non-monetary entitlements” related to compensation issues largely refer to employers’ failures to secure agreements required by statute in order to deviate from the standard. For example, with respect to the non-monetary entitlement related to excess daily hours of work, whereas employees may work in excess of eight or a number set by the employer, they must agree to do so and agreements must be in writing. Presumably, in this instance, ESOs are finding that employees are working longer hours but the employer is unable to produce the written agreement required, which represents a non-monetary violation of the *ESA* on the assumption that employees are being paid for all of the hours they worked.

standard that is detected. Notably, however, small businesses are more likely to be inspected than larger businesses: whereas about 23% of Ontario businesses have fewer than 20 employees, fully 69% of businesses that were inspected have fewer than 20 employees. This use of inspections parallels the high rates of substantiated violations among complaints relating to small firms, especially those with fewer than 20 employees.

3.4. Inspection Entitlements

Inspections typically yield lower rates of monetary violations than complaints, and when monetary violations are detected, typically result in lower average entitlements per employee. For instance, the median average entitlement per employee for unpaid wages resulting from an inspection is \$132, compared to a median entitlement of \$662 for unpaid wages resulting from an individual complaint (compare Graph 1.7 and 3.3). Similarly, the median average entitlement per employee for minimum wage violations detected in an inspection is \$129, compared to a median entitlement of \$293 for minimum wage violations detected in an individual complaint. These differences in magnitude may reflect the higher-stakes of individual complaint-making: such complaints are largely initiated by employees themselves, who must be sufficiently motivated to undertake the work (especially collecting documentation) and spend the time required to pursue a complaint. Moreover, complaints include claims for termination and severance pay, or for compensation in relation to a violation of reinstatement rights, which typically involve much larger sums of money. At the same time, with regard to the most common monetary violation detected in workplace inspections, relating to public holiday pay/time, the fact that almost half of affected employees are entitled to \$100 or more is far from negligible.

Graph 3.3: Distribution and Median of Average Monetary Entitlements Owed to Employees in Inspected Workplaces, 2011/12 to 2014/15



Collectively, the preceding findings highlight the value of expanded investigations and, to a lesser extent, targeted inspections, in unearthing ES violations, and monetary violations in particular. One option is **to strengthen the proactive model of enforcement with a view, in particular, to identifying monetary violations of the type being detected via complaints. A related option is to increase the role of expanded investigations as a bridge between the reactive and proactive dimensions of the *ESA* enforcement regime**, such that validated complaints routinely trigger workplace inspections whenever there is an indication that the problem goes beyond the particular situation of a specific employee. Indeed, greater use of inspections to detect monetary violations could result in a reduction in the number of individual complaints, and thus make more efficient the use of enforcement resources.

4. The Use of Compliance and Deterrence Tools in ES Enforcement

Whenever an ESO detects an ES violation, stemming from either an individual complaint or a workplace inspection, they alert the employer, who can voluntarily agree to rectify the situation, and, if applicable, pay any entitlement owing to the workers. Regardless of whether an employer voluntarily agrees to rectify the situation, an ESO can use a series of compliance and deterrence tools. Briefly, compliance tools include

Compliance Orders, Orders to Pay Wages (for employers, directors, and related employers), and Orders to Compensate and/or Reinstate. Deterrence tools include Notices of Contravention, Part I tickets or summonses and Part III prosecutions under the *Provincial Offences Act (POA)*.

4.1 Compliance Tools

ESOs have several compliance tools at their disposal. The most open-ended compliance tool is a Compliance Order (s.108), in which an employer is ordered to modify their business practices in order to conform to the law going forward. No money is owed as a result of a Compliance Order, and thus they are typically used for non-monetary violations, although they may also be issued in relation to monetary violations, presumably to signal that an employer needs to adjust its compensation processes on a more global level. Compliance Orders are rarely used in the context of complaints, but commonly used in relation to inspections (see Appendix B, Tables 4.1 and 4.2). In more than three-quarters of inspections where violations were detected (78%), a Compliance Order was issued. Compliance Orders are also sometimes issued for inspections where the employer complies voluntarily with the *ESA*. The Ministry of Labour advises that the purpose of issuing Compliance Orders in such cases is to help ensure that the employer complies going forward.

Where monetary violations have been found, an ESO can issue an Order to Pay Wages (s.103). In this context, "wages" refers to any monies owing, including severance pay, termination pay, public holiday pay, and vacation pay, and not solely the narrow category of unpaid wages. Orders to Pay Wages are typically first issued against the direct employer who has been found in violation of the Act. The *ESA* also allows for parties other than the immediate employer to be made responsible for the employers' liabilities. Where the employer is a corporation, directors may have Orders to Pay Wages issued against them, although their liability is limited (*ESA*, Part XX & s.106, 107). In particular, directors' liabilities are limited to six months of unpaid wages and twelve months of vacation pay and they are not liable for unpaid termination and severance pay. As well, under certain circumstances separate businesses may be found to be related employers who are jointly and severally liable for violations of the Act and for wages owing to an employee of any of them (*ESA*, s.4).

Orders to Pay Wages are rarely used in the context of workplace investigations (see Appendix B, Table 4.2). Only 1% of inspections where violations are detected triggered any type of Order to Pay Wages, presumably because of the high rates of voluntary compliance among inspected employers. In contrast, Orders to Pay Wages are the typical outcome for complaints with a monetary entitlement where the employer does not voluntarily comply. Overall, Orders to Pay are issued in about 72% of these complaints (see Appendix B, Table 4.1). Among the remaining complaints with monetary violations where an employer has not complied but no Order has been issued, two-thirds (66%) appear to be formally bankrupt or insolvent, and an additional 8% appear to be non-operational (and in some of the remaining cases, the complainant did not know the operational status of the business). The Ministry of Labour advises that ESOs are directed to issue Orders even if the employer is out of business. However, if the employer is formally insolvent, ESO orders are of no force and effect under the *Bankruptcy and Insolvency Act*; instead, proofs of claim are the mechanism to register the debt.

In about 16% of complaints with monetary violations, where the employer has not complied voluntarily, an Order is issued against a corporation's directors (often to more than one director simultaneously). The low proportion of Orders to Pay Wages issued against directors is difficult to interpret, since no information is available to assess how many non-compliant businesses were also corporations; that is, there is no way of knowing the number of times that ESOs have the option to issue an Order to Pay Wages to a Director. Only about 1% of complaints with non-compliant employers trigger an Order to Pay Wages for a related employer. This finding reflects the relatively stringent criteria for identifying a related employer under the Act; currently, related-employer liability is available in a limited number of circumstances and certainly does not cover arms-length relationships that typically exist in supply chains. This study cannot delve into the topic of supply chain regulation, but it is one that has attracted much attention (see for e.g., Hardy and Howe, 2015). One option to consider is **further investigation of related-employer liability, including the possibility of extending it substantially beyond its current boundaries to supply chain situations.**

In addition to the commonly-used Order to Pay Wages, ESOs have three further compliance tools at their disposal. Orders to Compensate and/or Reinstate (under s.104) provide employees with restitution for retaliation or reprisal and for violations of the leaves of absence provision,³³ in the recognition of the hardship that these actions incur. In addition, two types of Orders can be issued in the context of Temporary Help Agency workers. Orders to Compensate and/or Reinstate (under s.74.17) provide restitution for retaliation or reprisal by the client business of a THA, and Orders to Compensate (under s.74.16) provide compensation for THAs' failure to give referrals and violations of other *ESA* obligations imposed upon them. Given the relatively specific circumstances in which these orders can be issued, it is not surprising they are typically not used in the context of workplace inspections and are rarely used in the context of complaints: only about 3% of non-compliant employers with monetary violations were issued one of these other types of orders (see Appendix B, Table 4.1).³⁴

Taken together, these results show that compliance tools are widely used in Ontario's ES enforcement system. Whereas Compliance Orders are the primary tool used in response to violations found in workplace inspections, Orders to Pay Wages are the primary tool used in response to violations detected through the complaints process. In situations where an ESO issues an Order to Pay Wages or an Order to Compensate and/or Reinstate, an administrative cost of the greater of \$100 or 10% of the amount found owing is added to the order (see s.103(3)). While this cost may create an incentive for employers to voluntarily comply or to settle, it is not intended to serve as a deterrence measure and thus is not considered as such for the purpose of this analysis. The central goal of compliance measures is to bring the employer into compliance with the law and to make sure that employees receive their *ESA* entitlements; they do not impose any sanction on the employer for violating the law.

³³ They are also available for the Retail Business Establishments and Lie Detectors provisions.

³⁴ Standards that can generate compensation/ reinstatement orders are not part of inspections. (Inspections are typically geared towards detecting contraventions that affect most/all employees of a business. Reprisals and leaves are particular to individual employees and thus are typically addressed through the complaint process.)

4.2 Deterrence Tools

In situations where violations are detected, ESOs have additional enforcement powers that do involve the imposition of a penalty and hence involve deterrence.³⁵ Under the *ESA*, there are three deterrence measures. These are Notices of Contravention (NOCs), Certificates of Offence (tickets or summonses) issued under Part I of the *POA* and prosecution under Part III of the *POA*. In an appropriate case, an employer could be prosecuted under the *Criminal Code* where the failure to pay was deliberate or amounted to a fraud. To our knowledge, criminal sanctions have not been used in the context of *ESA* violations, although this should not prevent the Special Advisors from considering the criminal law as an option in appropriate cases. In the discussion that follows, we review each of these deterrence powers and comment on their use.

Notices of Contravention (NOCs) and tickets are the first level at which penalties may be formally imposed for non-compliance with the *ESA*. These recently-established sanctions aim to provide ESOs with a greater range of deterrence measures that are less severe than Part III prosecutions. There is a fundamental legal difference between the NOCs, and Part I tickets/summonses and Part III prosecutions. NOCs are administrative monetary penalties (AMPs), while tickets/summonses and Part III prosecutions are regulatory offences. Administrative penalties are generally considered to be a more flexible mechanism for enforcing compliance insofar as they can be imposed without judicial involvement and do not have to comply with the stricter procedural requirements that regulatory offences attract. Moreover, administrative penalties, including their size and the procedures for imposing them, can be addressed entirely in enabling legislation, in this case the *ESA*, and do not require amendments to the *POA* or new or revised regulations. Because AMPs can be imposed without a conviction and a formal finding of guilt, they might be perceived as having a lesser deterrent effect; however, that depends on whether an employer who receives a NOC

³⁵ We are cognizant of the fact that the goal of deterrence is also to achieve compliance with the law and that there can be terminological confusion by characterizing deterrence as different from compliance. However, much of the enforcement literature has adopted the compliance-deterrence distinction and so we have decided to use it here despite its potential to obscure this basic point.

perceives it differently than one who is issued a ticket or summons.³⁶ Here, we do not differentiate between NOCs and tickets in seriousness, since both involve low-level penalties and decisions. Part III prosecutions, however, are more serious and thus are considered separately from NOCs and tickets.

4.2.1 Notices of Contravention (NOCs)

While the power of ESOs to issue NOCs and tickets is fairly recent, NOCs are the older of the two, dating from the amendment of the *ESA* in 2000. Section 113 provides:

113. (1) If an employment standards officer believes that a person has contravened a provision of this Act, the officer may issue a notice to the person setting out the officer's belief and the prescribed penalty for that contravention.

The penalty for a first contravention is \$250, for a second contravention in a three-year period it is \$500 and for a third or subsequent contravention in a three-year period it is \$1,000 (set out in Ontario Regulation 289/01). If the contravention affects more than one employee, and is not for a violation of a posting or record-keeping requirement, the fine is multiplied by the number of employees. A person who is served with a NOC is deemed to have contravened the *ESA* unless he or she applies to the OLRB for a review within 30 days (as described in section five). NOCs are available for any violation of the *Act* and so could potentially be used widely. However, according to the Administrative Manual for Employment Standards, NOCs:

[ma]y be issued when an officer believes that a person (which includes a corporation) contravened any provision of the Act. Particular consideration should be given to issuing an NOC when the officer believes that the employer was aware of their responsibilities under the Act but was deliberately non-compliant. It is Program policy that a Certificate of Offence ("ticket") under the Provincial Offences Act is the preferred compliance tool, rather than an NOC. Accordingly, an NOC is typically issued only if the provision that was contravened is not a "ticketable offence" (i.e. is not listed in any of the three schedules of offences for which a Certificate of Offence may be issued) (Ministry of Labour 2013a, s

³⁶ The Supreme Court of Canada recently commented on the distinction between an AMP and a crime and upheld their use. See *Guindon v. Canada* (2015). For a discussion of AMPs and their use, see Law Reform Commission of Saskatchewan (2012). For a more detailed discussion of administrative penalties and regulatory offence prosecutions in the context of occupational health and safety regulation (favouring administrative penalties), see Brown (1992).

7.5.7).

It appears to be that the view of the Ministry of Labour that NOCs are primarily to be used for deliberate non-compliance, notwithstanding that the statute provides that NOCs may be issued for any contravention regardless of whether or not it is deliberate. Indeed, the *ESA* makes it clear that NOCs may be issued in conjunction with other compliance and deterrence measures.

113 (7) An employment standards officer may issue a notice to a person under this section even though an order has been or may be issued against the person under section 74.14, 74.16, 74.17, 103, 104 or 108 or the person has been or may be prosecuted for or convicted of an offence with respect to the same contravention.

It should also be noted that NOCs must be served on the violator in accordance with s.95 of the Act, which permits service through a variety of means, including verifiable mail. This makes it easier to serve NOCs than tickets, which must be served in person.

Whether because of Ministry of Labour policy or for some other reason(s), ESOs rarely issue NOCs. Over the six-year period for which data are available, there were almost 46,000 complaints which detected a violation. In about half of those cases (48%), the employer did not voluntarily comply, but in only 392 instances, or 1% of all complaints with violations, were NOCs issued (see Appendix B, Table 4.1). While NOCs are used somewhat more frequently when violations are detected on inspections than they are when they are detected by complaint, the incidence is still extremely low. Overall, while Compliance Orders were issued in over three-quarters of all inspections in which violations were detected, NOCs were issued in only 2% (see Appendix B, Table 4.2). (However, the frequency of the use of NOCs for 2014/15 is substantially higher than in previous years, perhaps indicating a shift in policy.) If we combine the total number of violations detected on complaints and inspections for the three years for which we have complete data (2012/13 to 2014/15), we find that NOCs were used in 1% of cases where violations were detected.

In terms of sanctions, about three-quarters of all NOCs are for the lowest amount, \$250, indicating that they are primarily issued to first offenders. In about a quarter of cases, the fine is for more than \$250, either because multiple employees were affected or it was a second or subsequent offence. Employers infrequently seek to

have NOCs reviewed by the OLRB (10% of NOCs stemming from complaints, 4% of NOCs stemming from inspections; see Appendix B, Table 5.1), perhaps reflecting the small stakes generally involved. The more troubling finding is that a high percentage of employers apparently do not pay the NOC penalty. Only 51% of complaint NOCs and 68% of inspection NOCs are satisfied. For the three years where complete information is available (2012/13 to 2014/15) only 50% of \$125,000 in NOC penalties assessed in relation to complaints and investigations have been recovered (see Appendix B, Table 4.3). **On the basis of these findings, an option is to make administrative monetary penalties more effective by increasing their amounts, strengthening collection processes, streamlining policies surrounding how they can be challenged, and augmenting the resources provided to the administrative tribunal that determines challenges to penalties.**

4.2.2 Part I Tickets

The *ESA* makes it an offence to contravene the act or its regulations, or to fail to comply with an order or direction issued by an ESO (s.132). Regulatory offences can be prosecuted in two different ways. Part I of the *POA* ³⁷ allows for officers to commence a prosecution by way of a certificate of offence, better known as a ticket.³⁸ Ontario Regulation 950, made pursuant to the *POA*, determines which violations of provincial statutes are ticketable offences. There were no ticketable offences under the *ESA* until the regulation was amended in 2004 (O. Reg. 162/04); since that time ESOs have been empowered to issue tickets when they detect violations of the listed offences. There are currently 59 ticketable *ESA* violations; they range across the statute and include both non-monetary violations (e.g., failure to post materials) and monetary ones (e.g., failure to pay minimum wages). The amount of the fine is set by the Chief Justice of the Ontario Court of Justice. Currently it is \$295 for every violation. As well, there is a victim fine surcharge added to each fine of \$60 and an administrative fee of \$5, for total of \$360 (O.Reg. 161/00).³⁹ Money collected from these fines goes to the municipality in

³⁷ (R.S.O. 2000, c. P. 33)

³⁸ There is also a provision in the *POA* for commencing a Part I prosecution by issuing a summons. The maximum penalty on conviction is \$1,000. To our knowledge, summonses are not frequently used in *ESA* enforcement.

³⁹ The \$5 administrative fee does not seem to be added in all cases. As well, if the ticket is contested the amount of the fine may be reduced.

which the offence occurred, while the victim fine surcharge goes into a Victims' Justice Fund and is used to compensate the victims of crime. A defendant who receives a ticket can contest the charge and is entitled to a judicial hearing at which the prosecutor has the burden of proving guilt beyond a reasonable doubt.

As noted above, it is the policy of the Ministry of Labour that where an offence is ticketable, ESOs should issue tickets rather than NOCs. ESOs are not advised to issue tickets only for intentional violations as is the case of NOCs, but it may be the case that ESOs operate with a similar understanding about the appropriate use of tickets. In any event, it is clear that tickets are also infrequently issued, with about 277 issued per year, on average (see Appendix B, Table 4.4).⁴⁰ Over the three years for which we have reliable data on violations detected both by complaint and inspection and on the use of deterrence tools (2012/13 to 2014/15), tickets were issued in roughly 3.5% of all cases where violations were found, and 3.9% of cases where monetary violations were found.⁴¹ Assuming that NOCs and tickets are not being issued in the same cases, adding together the number of NOCs and tickets issued each year, low-level deterrence measures were used in 4.6% of all cases with violations and 5.1% of all cases with monetary violations.

About 7% of tickets issued are contested (based on data from 2008/09 to 2012/13 only, see Appendix B, Table 4.4), and the majority of these result in convictions (the remainder are primarily withdrawn or dismissed). No data are available on the percentage of tickets paid, preventing comparisons to the analysis provided above for NOCs.

In light of the infrequent use of NOCs and tickets, consideration could be given to the routine imposition of one or the other when employers commit monetary violations. Consideration could also be given to advising ESOs that low-level sanctions are not appropriate for intentional wrongdoing.

⁴⁰ These data are compiled from information published in the Ministry of Labour's online 'Convictions Archive' collected across many years:
<http://www.labour.gov.on.ca/english/es/pubs/enforcement/archive.php>

⁴¹ These can only be considered rough estimates, since violations are grouped based on the fiscal year the complaint was received or the business was inspected, and prosecutions are grouped based on the fiscal year of the conviction. Still, it is evident that rates of NOC use are quite low.

4.2.3 Part III Prosecutions

The second way in which regulatory offences can be prosecuted is through an information requirement. Part III of the *POA* sets out the procedure to be followed. Unlike tickets, ESOs do not have the power to lay an information requirement, but rather can make a recommendation, which initiates the process for determining whether to launch a Part III prosecution. Ultimately, it is up to the Legal Services Branch of the Ministry of Labour, which is part of the Ministry of the Attorney General, to determine whether to launch a Part III prosecution based on the strength of the evidence and whether a prosecution would be in the public interest. Defendants are entitled to a judicial trial and their guilt must be proven beyond a reasonable doubt. If convicted, defendants are liable to be fined up to \$50,000 or imprisoned for up to 12 months. Corporations are liable to be fined up to \$100,000 for a first offence, \$250,000 for a second offence and \$500,000 for a third or subsequent offence. Directors of corporations can also be charged if the director fails to comply with an Order to Pay Wages issued against the directors pursuant to ss.106 and 107 (s.136). Finally, where the employer is a corporation, an officer, director or agent of the corporation may be prosecuted for authorizing or permitting or acquiescing in the contravention (s.137).

The AMES (Ch. 7A) now provides ESOs with guidance on when to recommend prosecutions.⁴² The manual advises that the purpose of prosecutions is to deter potential offenders. The threshold criterion for recommending a prosecution is that sufficient evidence exists to establish the offence. Beyond that, the manual sets out six factors that should be taken into consideration (AMES 7A.2):

- The seriousness or gravity of the offence
- History of compliance with the *ESA*
- Any mitigating or aggravating circumstances
- The availability of effective alternatives to prosecution
- Program identification of targeted contraventions for general deterrence
- The necessity of maintaining public confidence in the legislation

⁴² We are uncertain about when Chapter 7A was first added to the AMES but received a copy in March 2016.

More detailed information on each factor follows. For example, in regard to the factor of seriousness, the failure to comply with an order is the first issue identified, but this is followed by nine other considerations including violations of core entitlements such as minimum wage, repeat violations, multiple contraventions, etc. The AMES then states that Part I prosecutions are generally used for first offenders or less serious offenders while Part III prosecutions are generally used for more serious offenders and/or repeat offenders. It also notes that it is program policy that a prosecution against a director of a corporation should only be commenced under Part III.

In fact, Part III prosecutions are used exceedingly infrequently. Each prosecution can involve more than one defendant and more than one charge. In the period between 2008/09 and 2014/15, there were 92 businesses prosecuted for ES violations under the POA, involving 292 charges. For the three years for which complete data are available (2012/13 to 2014/15), 41 prosecutions were launched, comprising roughly 0.18% of cases with violations detected by complaints and inspections (0.20% of cases with detected monetary violations). Moreover, penalties for Part III violations are relatively low. The total value of penalties of all fines in those years was \$835,926. The average fine per business was \$20,388, while the average penalty per charge was \$7,740. This average penalty per charge is only 15% of the \$50,000 maximum penalty for individuals, and 8% of the maximum of \$100,000 for corporations (for a first offence).

There are a few notable exceptions. For instance, in the case of *R v. Blondin* (2012), the Ministry of Labour had issued one hundred and thirteen Orders to Pay Wages totalling over \$125,000. The owner refused to comply and was prosecuted. Justice of the Peace Bubrin extensively cited a decision of the Ontario Court of Appeal in an occupational health and safety case, *Regina v. Cotton Felts*, on the importance of deterrence in sentencing. In *Cotton Felts* the court held, “[A]bove all, the amount of the fine will be determined by the need to enforce regulatory standards by deterrence” and then went on to talk about both specific and general deterrence.⁴³ He then sentenced the defendant to three months imprisonment and a fine of \$40,000. His corporations were fined an additional \$240,000. These fines were in addition to an order to pay restitution to the employees whose rights were violated. While the Blondin case is

⁴³ *Regina v. Cotton Felts* (1982) 2 C.C.C. (3d) 287 cited in *R. v. Blondin*, 2012 ONCJ 826 (CanLII).

exceptional in terms of the sentence, the violation of the *ESA* for which Blondin was charged was not. Employers are rarely prosecuted for the initial violation of the Act (e.g., failing to pay wages) but rather for disobeying orders to pay or interfering with ESOs. That is, they are prosecuted for defying the authority of the state rather than for violating workers' rights.⁴⁴ Of the 57 charges filed under Part III in 2013/14 and 2014/15, only about half (27; 47%) were related to non-payment of wages.⁴⁵

An option thus is to mandate that Part III prosecutions are normally initiated where there is evidence that an *ESA* violation has been intentional.

4.2.4 Criminal Prosecutions

A comprehensive analysis of the application of the *Criminal Code* to violations of ES is beyond the scope of this study, but often the line between a regulatory offence and crime is the presence of *mens rea* – a guilty mind – which typically requires an unlawful intent or reckless disregard. For that reason, it is somewhat unusual to advise ESOs that they should especially think about regulatory offence charges in contexts where the employer has a guilty mind. After all, speeding tickets are issued without regard to whether the driver intended to speed or was reckless in failing to keep the vehicle within the speed limit. The fact that the driver was driving in excess of the speed limit is sufficient to make the regulatory offence complete, absent a defense of due diligence. The addition of intentional or reckless behaviour would lead to consideration of a criminal charge, such as dangerous driving.

Therefore, one might ask whether criminal prosecutions should be considered in cases which involve intentional violation of the legal obligation to pay wages. For example, in some instances an employer might have by deceit, falsehood or other fraudulent means defrauded an employee of money owed under the *ESA*.⁴⁶ In such a case, the employer would not only have violated the *ESA*, but would have also

⁴⁴ It is typically easier to establish the offence of failure to abide by an order (i.e. the Crown just has to establish that an order was issued and then not complied with) than it is to establish the initial contravention. However, it is not clear to us that this tendency satisfactorily explains why there is almost never a prosecution in the first instance for the violation of workers' rights.

⁴⁵ Fourteen of the charges are made under the general offence section of the *ESA* (s.132), so it is not possible to determine the violation that gave rise to the charge.

⁴⁶ It is interesting to note that in 1935 the *Criminal Code* was amended to make it a crime to intentionally pay a worker less than the established minimum wage. Although the law was not enforced, it remained on the books until the early 1950s.

committed the crime of fraud.⁴⁷ Interestingly, the defendant in *R v. Blondin* (2012) was arrested in Alberta in 2014 and charged with five counts of fraud and one count of theft in relation to a moving company scam (Ho 2014). It is an open question as to whether he could have been criminally prosecuted for fraud for his ES violations in Ontario. **For this reason, in cases where there is intentional violation of the *ESA*, an option is to refer egregious cases to the Crown for possible criminal prosecution.**

4.3 Balancing Compliance and Deterrence in ES Enforcement

Overall, Ontario's ES enforcement regime clearly privileges the use of compliance tools over the use of deterrence tools. Moreover, when deterrence tools are used, they tend to result in relatively small penalties (\$250 or \$360), which employers may perceive as just a cost of doing business. With the exception of a few notable cases, it is unclear whether the deterrence tools that are being used in Ontario truly have the effect of deterring unlawful behaviours. The compliance-deterrence literature contains numerous suggestions about how best to combine compliance and deterrence measures, but regardless of the model chosen, be it a pyramid or regulatory jujitsu, there is near universal agreement that deterrence measures must be a meaningful part of an enforcement strategy so that employers have confidence that there is a level playing field and also recognize that they cannot expect simply to pay what they owe in the event they are caught violating the *ESA*. Moreover, deterrence measures, especially administrative penalties and regulatory offences, should not be reserved for employers with a guilty mind, which is primarily the realm of the criminal law. Deterrence is also useful in spurring employers to become knowledgeable about their *ESA* obligations and to develop systems to ensure that their obligations are being met. To this end, consistent with the preceding analysis, an overarching option is to **expand the use of deterrence measures for the enforcement of *ESA* violations, including their more frequent use, the imposition of higher penalties, and greater publicity to promote general deterrent effects.**

⁴⁷ *Criminal Code*, R.S.C. 1985, c. C-46, s. 380.

5. OLRB Reviews

5.1 Introduction

The *ESA* provides that applications for review may be made in three situations: 1) ESO Orders to Pay Wages, Fees, Reinstate and/or Comply;⁴⁸ 2) the refusal of an ESO to make an Order; and, 3) Notice of Contravention. The OLRB, which hears the review applications, is a quasi-judicial administrative tribunal that makes decisions entirely independent of the Ministry of Labour; consequently, once the application for review is made, the matter leaves the jurisdiction of the Ministry of Labour. While the OLRB rules and procedures apply, the right to a review is granted by the *ESA*, which also establishes the parameters for the review. For example, with respect to reviews of ESO orders, the Act provides that applications for reviews must be made within 30 days of the order being served but provides that under certain conditions an extension of time may be granted by the OLRB (s. 116(4)(5)). Here, we do not provide a complete description of the rules governing reviews, but only describe several key elements to support the analysis that follows. The discussion below focuses on applications for review of Orders to Pay Wages, Compensate, or Reinstate and Compliance Orders, followed by a brief discussion of NOC reviews.

If an employer is seeking review of an Order to Pay Wages (s.103), s/he must pay the full amount ordered to the Director of Employment Standards, who will hold the money in trust but, if the order for which the review is sought is for a violation of the leave of absence or reprisal provision, then the employer is required to pay the lesser of the full amount or \$10,000.⁴⁹ Directors are not required to post the amount of the order, even to the extent of their liability, as a condition of having it reviewed. Considering the period between 2011/12 and 2014/15, 83% of employer-initiated reviews of monetary orders were accompanied by a deposit, while 13% of Director-initiated reviews of monetary orders were accompanied by a deposit. These monies are distributed in accordance with the terms of a settlement if one is reached or according to the Board's decision (s.117).

⁴⁸ As noted above, we do not address Orders to Pay Fees (or their review) in this study.

⁴⁹ There are further refinements in the legislation but it is not necessary to go into greater detail for our purposes.

The rationale for not requiring directors to post the amount of the order, even to the extent of their liability, as a condition of having it reviewed is not clear, although it may reflect a continuing unease about making directors personally responsible for unpaid wages, even though a limited obligation to do so has been included in general incorporation acts in Canada from the beginning (Tucker 2008). However, the absence of a requirement to post the amount of the order as a condition of review may encourage directors to challenge orders more frequently than might otherwise be the case and, more importantly, it increases the risk that workers who are owed money will ultimately be unable to recover it.⁵⁰ Indeed, the rate of recovery for complaints where a Director Order to Pay Wages has been issued is lower than when an Order to Pay Wages issued to the employer alone (see section six). One option is **to require that directors post the amount of an Order to Pay Wages to the extent of their liability as a condition of having it reviewed.**

For reviews of orders (or failures to issue an order), the *ESA* provides that the OLRB shall determine its own practice and procedure (s. 116(9)), but also grants the OLRB a number of explicit powers, including the power to summarily dismiss an application without a hearing because it does not make out an arguable case. About one-fifth of all applications for review are dismissed summarily, that is without a hearing (20%, see Appendix B, Table 5.2), which constitutes about one-fifth of all applications. Employer and director applications are summarily dismissed about 24% of the time, while employee applications are summarily dismissed about 13% of the time. The data do not provide an explanation for this difference in summary dismissal rates.

Also of particular interest is s.120 which empowers the OLRB to authorize a labour relations officer (LRO) to attempt to effect a settlement of a disputed order. There is no requirement that the ESO who issued the order participate in the settlement process but settlements of Compliance Orders must be approved by the Director of Employment Standards. According to the *OLRB Information Bulletin No. 24* (January

⁵⁰ The Ministry of Labour advises that the rationale for not requiring directors to pay into trust is because the money assessed to be owing is already either put into trust as part of a review of the underlying corporate order, or subject to collection if it wasn't reviewed. This scheme is premised on the scope of review of a Director's Order to Pay Wages being limited only to the issue of whether the director was a director at the time that the unpaid corporate liabilities accrued; the review is not to look into the merits of the corporate order. However, we cannot find any statutory basis for so limiting a Director's Order to Pay Wages and are advised that the OLRB allows directors to challenge the merits of the order.

2016), LROs do not decide cases or act as advisors to any of the parties; their role is to help the parties reach a settlement. In so doing, they will often explain the case law, but they do not offer legal advice (OLRB 2016). Settlements are final and binding unless the employee can demonstrate to the Board that it was entered into as a result of fraud or coercion (s.120(5)). As with other adjudicatory bodies, settlements are an important dispute resolution mechanism to manage case load, but the settlement process must be designed to limit the opportunity for strategic behaviour that allows one party to gain unfair leverage over the other. If cases are not summarily dismissed, settled or withdrawn, they are adjudicated by the OLRB, which holds an evidentiary hearing. The OLRB has the same powers as an ESO and may substitute its findings for those of the ESO (s. 119(6)). In short, the review is not an appeal, but rather a trial *de novo*.

5.2 A Brief Methodological Note

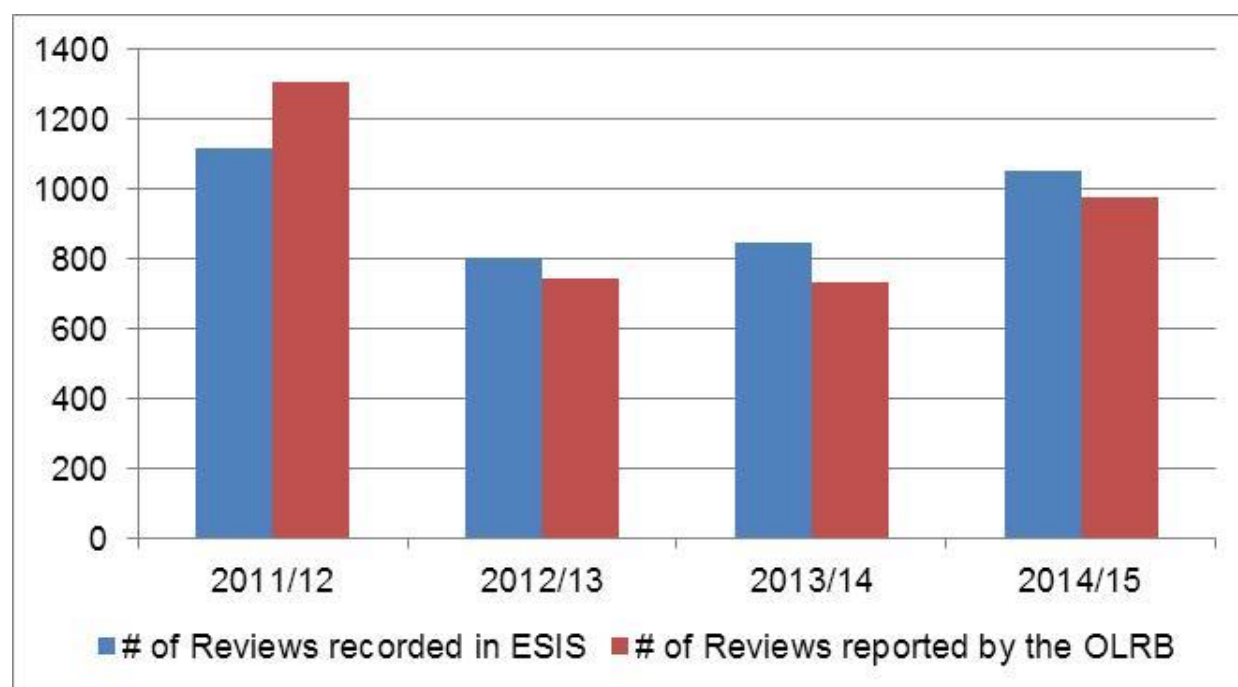
As in other sections of this study, and unless otherwise indicated, our analysis herein is based on the ESIS database. The OLRB maintains its own database of information about applications for review, but we do not have access to it for the purposes of this study. The only public report of OLRB reviews of *ESA* applications (described by the OLRB as “Appeals”) is in the OLRB’s annual reports. In attempting to compare the data from those reports with the ESIS data, we have discovered some differences. Where possible, below we include information from the OLRB Annual Reports to complement our analysis of ESIS data, but without access to the OLRB database we cannot fully explain these differences or offer a view as to which database might be more accurate. One key difference in this analysis is that, as described previously, cases are typically classified by the fiscal year in which the complaint was submitted, or the inspection took place, and not based on the date when the review was initiated. In addition, only reviews where a final decision has been recorded in ESIS are included in some of these analyses, resulting in substantially lower numbers of cases for the 2014/15 fiscal year.

5.3 The Landscape of Review Applications

5.3.1 Frequency

Graph 5.1 presents the total number of reviews received annually, as reported by the OLRB and as recorded in ESIS.⁵¹ After a substantial decrease between 2011/12 and 2012/13, the number of applications for review appears to be slowly increasing, though it is not possible to discern whether this constitutes a trend.

Graph 5.1: Comparisons Between Reviews Recorded in the Ministry of Labour Employment Standards Information System (ESIS) and Reported by the OLRB, 2011/12 to 2014/15



Based on the ESIS, applications for review are made in about 8% of all assessed complaints; this proportion varies little over the four years covered (see Appendix B, Table 5.1). Applications for review of orders arising out of inspections are very rare, likely reflecting the fact that most orders on inspections are not written for monetary violations. About 62% of all applications for review are initiated by employers; 31% by employees and the remainder (7%) by directors of corporations (see Appendix B, Table 5.2).

⁵¹ To provide an accurate comparison, for Graph 5.2 only, reviews are classified by the fiscal year when the Ministry of Labour received notice of the review. Reviews in-progress are also retained.

Overall, about one in five (19%) complaints for which monetary orders are issued are subject to a review application, the majority of which are initiated by employers. Directors subject to an order seek review in about one in ten cases (9%). Employees primarily seek review when the ESO has denied a complaint; applications for review of denials are made in 7% of such cases (see Appendix B, Table 5.1).

5.3.2 Outcomes

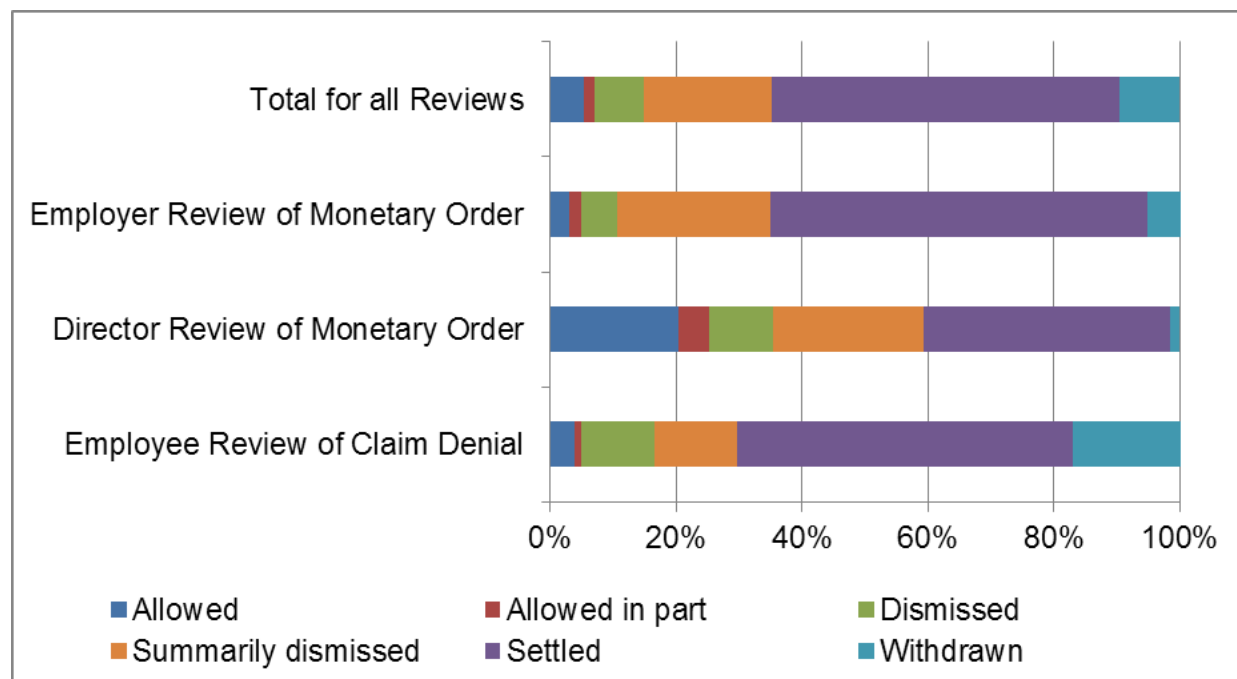
Reviews can have five outcomes: allowed; allowed in part; dismissed; settled; and withdrawn.⁵² By far, the largest number of applications are resolved through settlements (about 55%, see Appendix B, Table 5.2), whose importance we flagged earlier. (When withdrawn applications are excluded from the calculation, the ESIS data show that 77% are settled, a proportion consistent with that reported by the OLRB). The next most common outcomes are summary dismissal (20%) and withdrawal of the application (10%). Overall, only 5% of reviews are allowed, 2% are allowed in part and 8% are dismissed after a hearing.

Another way of describing the outcomes of reviews is by who is applying and the type of order being challenged. Graph 5.2 tracks the three most common reviews: employees challenging denials, employers challenging monetary orders and directors challenging monetary orders. While the profile of outcomes is roughly similar for employers and employees, with the main differences being withdrawn and dismissed complaints, directors' applications for a review of a monetary order clearly have a different outcome profile than other types of reviews. If we measure success as the rate at which reviews are allowed or allowed in part, directors fare far better (25%) than employers (5%) and employees (5%; see Appendix B, Table 5.3); it is not possible to ascertain the dynamics behind these findings, though this may be related to the fact that, at least in some cases, directors reviews are limited to an assessment of whether they were a director at the time that the liabilities accrued, and not the merits of the order (or failure to issue an order). By contrast, directors are more likely to have an adjudicated application dismissed than employers (10% compared to 6%), although fully 12% of employees applications are adjudicated and dismissed. Directors are the least

⁵² In this analysis, we treat each individual request for review as a separate instance regardless of whether multiple applications for review are related to the same complaint or inspection.

likely to settle (39%) compared to employers (60%) and employees (53%). Notably, employees withdraw complaints far more frequently than others, 17% compared to 5% for employers and 2% for directors, perhaps reflecting their inability to effectively independently navigate the OLRB review process.

Graph 5.2: Outcomes of OLRB Reviews, Overall and by Type, 2011/12 to 2014/15⁵³



5.3.3 Financial Outcomes

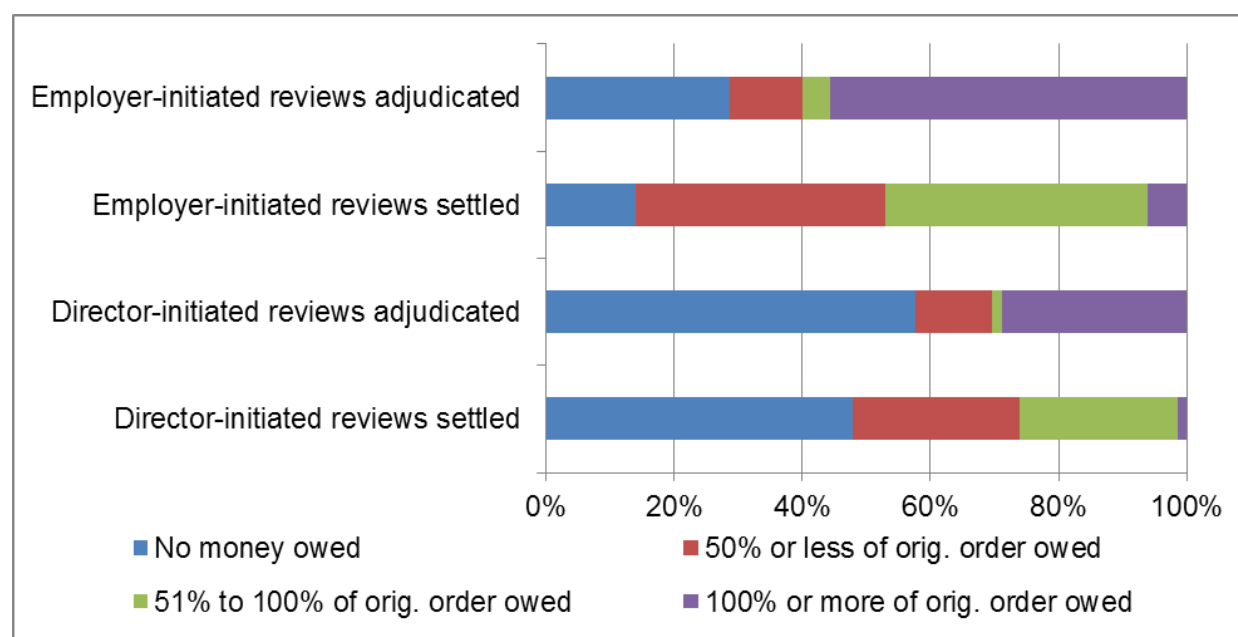
Turning our attention to financial outcomes, beginning with an analysis of employer and director applications for review, Graph 5.3 illustrates the stark differences in outcomes between reviews that are adjudicated by the OLRB and those that are settled. With respect to employer-initiated reviews of monetary orders, settlements produce far worse outcomes for employees than do adjudications. As recorded in ESIS, in the case of employer-initiated reviews, employees are more likely to get nothing (no money owed) from settlements, compared to if the review was adjudicated (14% compared to 29%) and are much less likely to get 100% of what was ordered (6% compared to 56%; see Appendix B, Table 5.3).⁵⁴ This tendency is partially offset by

⁵³ In this analysis, we treat cases dismissed without a hearing as summarily dismissed.

⁵⁴ We have been advised that in some cases, the OLRB settlement award is recorded as \$0 because the employer has made arrangements to pay an agreed upon amount directly to the employee, instead of

employees more frequently getting part of what was ordered in settlement than adjudications (80% to 15%), which is to be expected since settlement would normally involve a compromise. However, in the context of employer-initiated reviews of monetary orders, it is employees who appear to be giving up part of what the ESO has assessed as being owed. Moreover, unless it can be assumed that employees are substantially more likely to agree to settlements only when the likelihood of employer success or partial success is strong, the fact that adjudications uphold an ESOs decision 56% of the time suggests that employees are frequently foregoing some part of their entitlement as a cost of getting a settlement. A comparison between adjudicated and settled director-initiated reviews of monetary orders shows a roughly similar pattern.

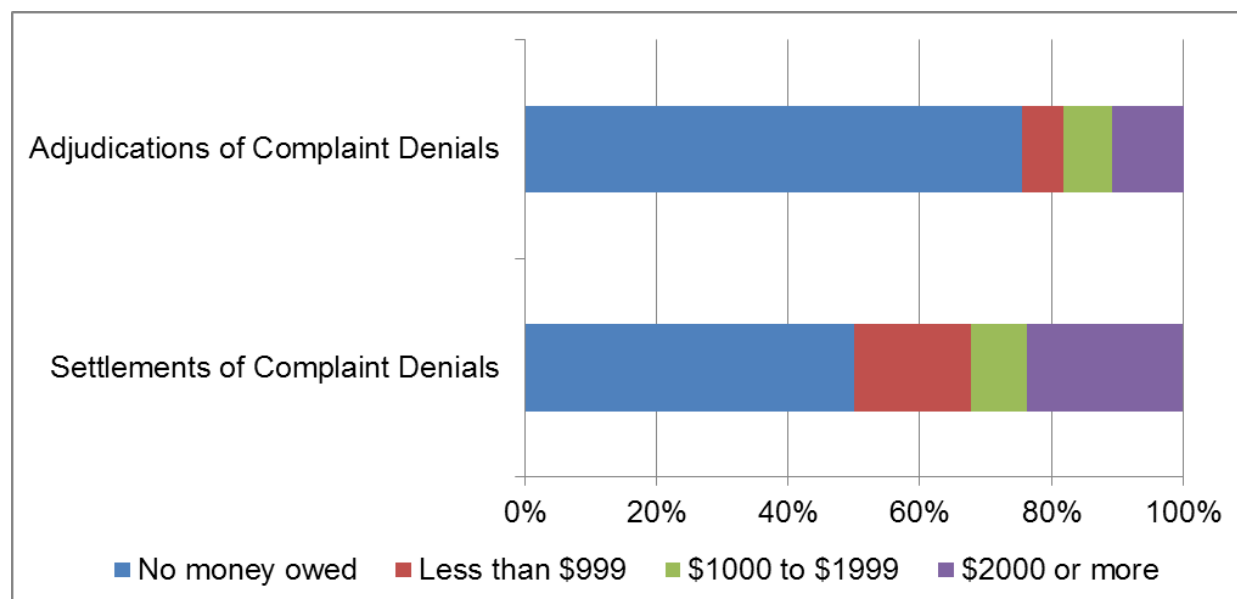
Graph 5.3: A Comparison of Adjudication and Settlement Outcomes for Employer- and Director-Initiated Reviews of Monetary Orders by the OLRB, 2011/12 to 2014/15



In the context of employee applications for review of denials by ESOs, however, settlements produce more favourable results to employees. As Graph 5.4 shows, half of these settlements (50%) result in some money being awarded compared to in only 25% of adjudicated cases. Moreover, settlements also result in higher-value awards to employees than adjudications.

having it paid from the monies held in trust by the OLRB. We do not know how often this occurs or the rationale for permitting it.

Graph 5.4: A Comparison of Adjudication and Settlement Outcomes for Employee-Initiated Reviews of Complaint Denials by the OLRB, 2011/12 to 2014/15



More research into the OLRB settlement process would be required to better understand its dynamics and explain its outcomes, but we can suggest a few possible factors. To begin, it is helpful to understand the incentive structure facing the parties. If a case goes to adjudication, the OLRB is more likely than not to uphold ESO orders in their entirety (about 55% of the time in employer-initiated reviews and 75% of the time in employee-initiated reviews). Therefore, the initiator has an incentive to settle, while the other party would be better off holding out for adjudication, everything else being equal. The fact that employees agree to settlements of employer-initiated reviews well over half the time (60%), therefore, raises a question about whether there are institutional pressures operating on employees that are leading them to accept inferior outcomes.⁵⁵

First and foremost, the OLRB is focused on dispute resolution in the context of a labour relations system in which “give and take” is the norm. Where getting to “yes” is

⁵⁵ A similar question could be asked about employers settling in employee-initiated reviews, but for several reasons there is less cause for concern, including the fact that employee-initiated reviews are much less frequent and employees gain no strategic advantage in their dealings with ESOs and employers by threatening to initiate a review. Finally, many of the factors discussed below, such as the implications of delay in attempting to obtain money that is owed, do not operate for employers when faced with an employee-initiated review for a failure to issue an order or for an order that provides less than what the employee believes is actually owed.

the overarching goal, there are likely to be strong incentives to settle disputes rather than support for ensuring that minimum standards are upheld. In addition, all mass adjudication regimes are under pressure to avoid the creation of backlogs that result in delay and the OLRB is no exception. Each year the OLRB carries forward hundreds of *ESA* review cases from previous years (see Table 5.1).

Table 5.1: *ESA* Review Cases Carried Over to Next Fiscal Year

	Fiscal Year			
	2011/12	2012/13	2013/14	2014/15
Number of Cases Pending	628	359	377	614

Because the OLRB does not have the power to limit the submission of applications, it must find other ways of managing its workload, and settlement is the principal tool it has to reduce the pressure on scarce adjudicatory resources. For example, in 2014/15, 86% of all OLRB cases were resolved without a hearing, including 88% of *ESA* cases (OLRB Annual Report 2014/15). In this environment, LRO success in settling cases is likely to be institutionally encouraged, even if that involves employees foregoing a non-trivial amount of their assessed entitlement.

For employees, there is also the question of delay which might also generate pressure to settle. Although the timeline for applying for review is rather short (30 days), the time to disposition after an application has been made is not. In 2014/15, 36% of *ESA* cases were not disposed of within 168 days. We do not have data on the average amount of time it takes after an application for review has been filed until an *ESA* case is adjudicated, but it would be safe to assume that almost all adjudicated cases are resolved after, perhaps well after, the 168 day mark. The overwhelming majority of *ESA* complaints are made after the employment relationship has been severed and so it can be reasonably assumed that many complainants lack resources that enable them to hold out for final adjudication and so again may be tempted to settle for less than their entitlement. Finally, it is notable that the Director of *ESA* is required to approve settlements of s.108 Compliance Orders but not s.103 Orders to Pay Wages or s.104 Orders to Pay Compensation. This removes any external check on the OLRB settlement process.

In view of the preceding findings, an option is **to modify the OLRB review process and to better protect employees. In particular, consideration might be given to creating an independent worker advisor to assist workers whose monetary entitlements are being challenged before the OLRB.**

5.4 Review of Notices of Contravention

We discuss the use of Notices of Contravention in the previous section on compliance and deterrence measures. As noted, an employer can challenge a Notice of Contravention by applying to have it reviewed by the OLRB (s.122). The *ESA* further provides that on a NOC review the onus is on the Director of the *ESA* to establish on a balance of probabilities that the person against whom the notice was issued contravened the Act. As previously demonstrated, NOCs are used infrequently. Between 2011/12 and 2014/15, ESOs issued an NOC for 244 complaints, and in 25 of these complaints (10% of the time) employers sought a review of one or more NOCs (NOCs issued as a result of an inspection were even less likely to be reviewed; see Appendix B, Table 5.1). Approximately a quarter of applications for review of a NOC (26%) were summarily dismissed, 19% were withdrawn and 11% were settled. Among the 43% of cases that were adjudicated by the OLRB, the application for review was dismissed about half of the time. Assuming that the settlements provided the employer with some relief, we can conclude that employer challenges to NOCs yielded them a benefit of some kind – by allowing the review, in whole or in part, or by way of a settlement – about a third of the time.

6. Recovery of Monetary Entitlements

A key component of ES enforcement is recovering any monies that are owed. In this section, we focus primarily on the recovery of monetary entitlements that arise as a result of individual complaints. Compared to complaints, a smaller proportion of workplace inspections generate monetary entitlements, and among those that do, the vast majority are satisfied through voluntary compliance by an employer, resulting in a relatively high recovery rate (see Appendix B, Table 6.3), and thus they are not discussed below.

Although it is not our focus here, for both complaints and inspections, Compliance Orders, which by definition do not include a monetary component, are very likely to be satisfied (97% for those stemming from complaints, and almost 100% for those stemming from inspections). Given the wide range of violations that are subject to a Compliance Order, what is required to satisfy one also varies considerably. For example, an employer that fails to post the Ministry of Labour prepared *ESA* poster may be subject to a Compliance Order which is satisfied by posting (s.2). ESOs are required to verify that the order has been complied with and this can be done either by observation or by having the employer complete and return a Notification of Compliance Form (AMES, 7.5.7). Assuming a large majority of Compliance Orders involve posting and record-keeping violations, this might account for the extremely high rates of satisfaction for Compliance Orders. Nevertheless, the high rates of Compliance Orders which are satisfied, particularly for workplace inspections, highlight the importance of proactively-oriented enforcement in promoting adherence to the law.

6.1 Recovery Mechanisms for Complaints

As previously described, the complaints process provides a number of paths for the resolution of monetary claims. First, workers are encouraged to attempt to resolve *ESA* complaints with their employer. In some unknown proportion of cases, the matter is resolved and it is probably fair to assume that some workers recover monies from their employer.⁵⁶ Second, after an ESO becomes involved, the employer may settle, with or without facilitation by the ESO. As described in section two, we know that the use of settlements is increasing, and that settlements, especially those that are facilitated, appear to result in less favourable outcomes for employees compared to complaints assessed by an ESO, assuming that all else is equal. However, we can also be fairly confident that when complaints are settled, the settlement amount is recovered by the employee. If a complaint is not settled (and not withdrawn), the ESO assesses whether the employee has experienced an *ES* violation, and if so, what monies s/he is entitled to. At that point, the employer may voluntarily comply with the ESO's finding. Voluntary compliance is achieved in about half of complaints with a monetary entitlement (51%),

⁵⁶ We have no way of knowing the outcome of self-help measures and whether the resolution provides employees with their full entitlement or is less than the full entitlement. Presumably, in most cases when an employer has agreed to pay something, that amount is recovered by the employee.

and where this happens recovery is complete. From 2009/10 to 2014/15, employees recovered almost \$33 million through employer's voluntary compliance with ESOs' assessments.

If voluntary compliance is not achieved, the ESO will normally issue an Order to Pay Wages or an Order to Compensate and/or Reinstate; from this point onwards, recovery becomes a concern.⁵⁷ As previously described, an Order to Pay Wages can be issued against an employer, a Director, or a related employer. Orders to Compensate and/or Reinstate are issued to employers to achieve restitution in specific circumstances. Where wage orders remain unpaid, the order can be filed with a court and have the same status as a court order (s.126). We have no data on this practice or its frequency.⁵⁸ As well, Orders may be turned over for collection (*ESA*, Part XXIV). While collections were privatized for many years, recently they have come to be carried out by a collections unit in the Ministry of Finance.⁵⁹

6.2 Recovery Rates for Complaints with Monetary Orders

In stark contrast to Compliance Orders, recovery rates for monetary orders are quite low. When all complaints with a monetary order during the period between 2009/10 and 2014/15 are considered, only 39% were fully satisfied, 6% were partially satisfied, and 60% were not satisfied.⁶⁰ In monetary terms, of the \$47.5 million that was ordered to be paid to workers, only about \$19 million was collected (40%), constituting a collective loss of about \$28 million to workers over six years (see Appendix B, Table 6.1). When we consider how recovery rates for complaints with monetary orders have changed across time, rates of full recovery appear to be deteriorating from 2010/11

⁵⁷ In about a quarter of complaints with monetary entitlements where the employer does not voluntarily comply, no Order is issued, primarily because the business is formally bankrupt insolvent. Presumably in these cases, no recovery occurs except via formal bankruptcy/insolvency mechanisms, as described in section seven.

⁵⁸ In a commentary directed to us, the MOL advises that it files unpaid wage orders with the court 100% of the time.

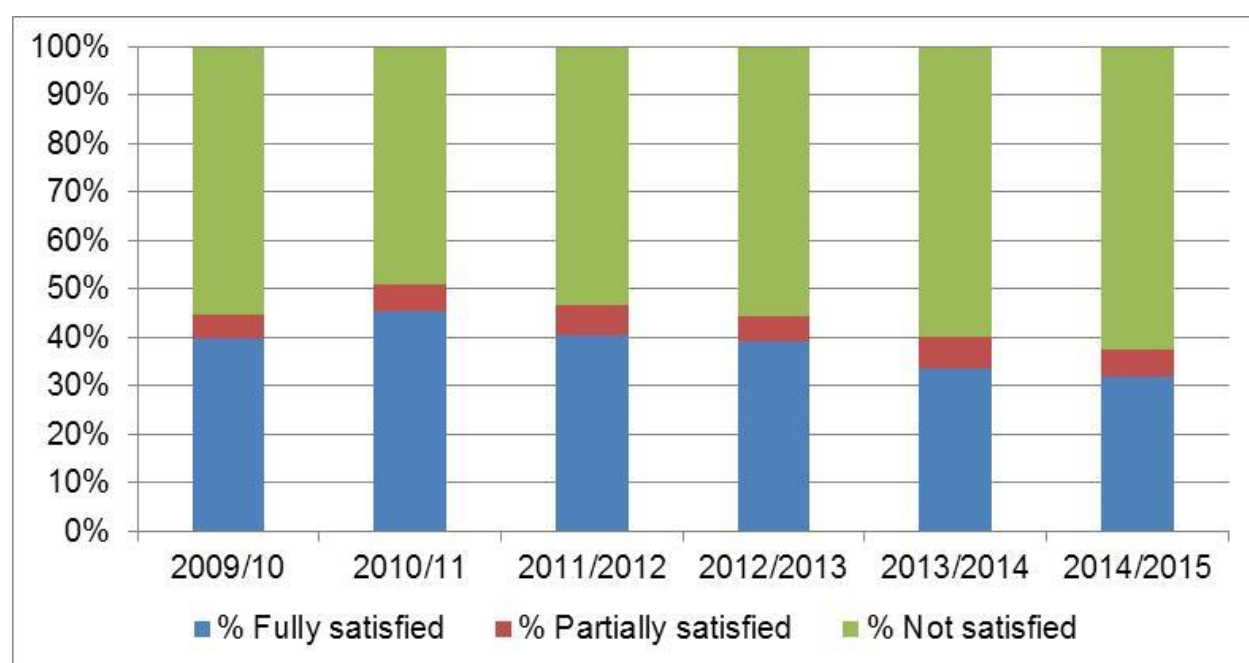
⁵⁹ In 2014, collections became the responsibility of the MOF. In addition to the sums owed, the Director may authorize the collector to collect a reasonable fee and/or costs from the employer, which is added to the amount of the order in question: however, the numbers of recovery measures to which fees or costs are attached are sufficiently low that they are not reported here.

⁶⁰ In cases where an order has been reduced to zero dollars as the result of an OLRB review, the order is considered to be satisfied. Similarly, in cases where an order has been partially reduced as the result of an OLRB review, the order is considered to be satisfied if the reduced amount is paid. In cases where a Director's Order to Pay Wages has been issued, even if it is for a lesser amount than the employer Order to Pay Wages, if the Director's Order is satisfied, full recovery is deemed to have occurred.

onwards (see Graph 6.1). This deterioration is obviously a concerning trend for which there could be many possible reasons but for which we have no explanatory data.

Globally, 70% of complaints with monetary orders are sent to collections for recovery, with some inconsistent variation across time. Of those orders sent to collection, only one in five (20%) is subsequently fully satisfied, while the remainder are not, a disturbingly low success rate that clearly contributes to the low rate of recovery for monetary orders.

Graph 6.1: Outcomes of Monetary Orders Issued in Response to ES Complaints, 2009/10 to 2014/15



Considering those complaints with monetary orders, there are several trends related to which complaints are fully satisfied. Interestingly, workers who have been fired are more likely to have their order fully satisfied than workers who are still on the job, who quit or have been laid off (see Appendix B, Table 6.2). Complaints relating to a retail trade business are also slightly more likely to have their orders fully satisfied. Finally, complaints with unpaid wage entitlements are less likely to be fully satisfied, a rather concerning result, given the prominence of unpaid wage entitlements among complaints overall. We have no clear explanation for these divergent trends, except to suggest that they reflect the different types of circumstances in which an employer is willing and able to comply with an Order to Pay Wages.

6.3 Recovery Rates for Complaints with Different Types of Orders

Rates of recovery are not consistent across different types of monetary orders. For Orders to Pay Wages, there were differences in the rate of recovery depending on whether the Order was made solely against the employer, against the employer and one or more directors or against the employer and a related employer. Overall, recovery rates are lower for complaints where a Director Order to Pay Wages or a related employer Order to Pay Wages is issued (see Appendix B, Table 6.1). Considering the period under study, for complaints where an Order to Pay Wages is issued only to an employer, 41% are fully satisfied, whereas in cases when a Director Order to Pay Wages is issued, only 28% are fully satisfied, and in cases where a related employer Order to Pay Wages is issued, 26% are fully satisfied. This finding may reflect that fact that Director and related employer Orders to Pay Wages are made in more difficult situations, particularly those where there are already problems in obtaining recovery from the direct employer. Notably, the collections process seems to be more effective when directors are involved; 27% of complaints with a Director Orders to Pay Wages that were sent to collections are ultimately satisfied, compared to only 17% for cases with an Order to Pay Wages issued only to the direct employer and 16% for cases with an Order to Pay Wages issued to a related employer.

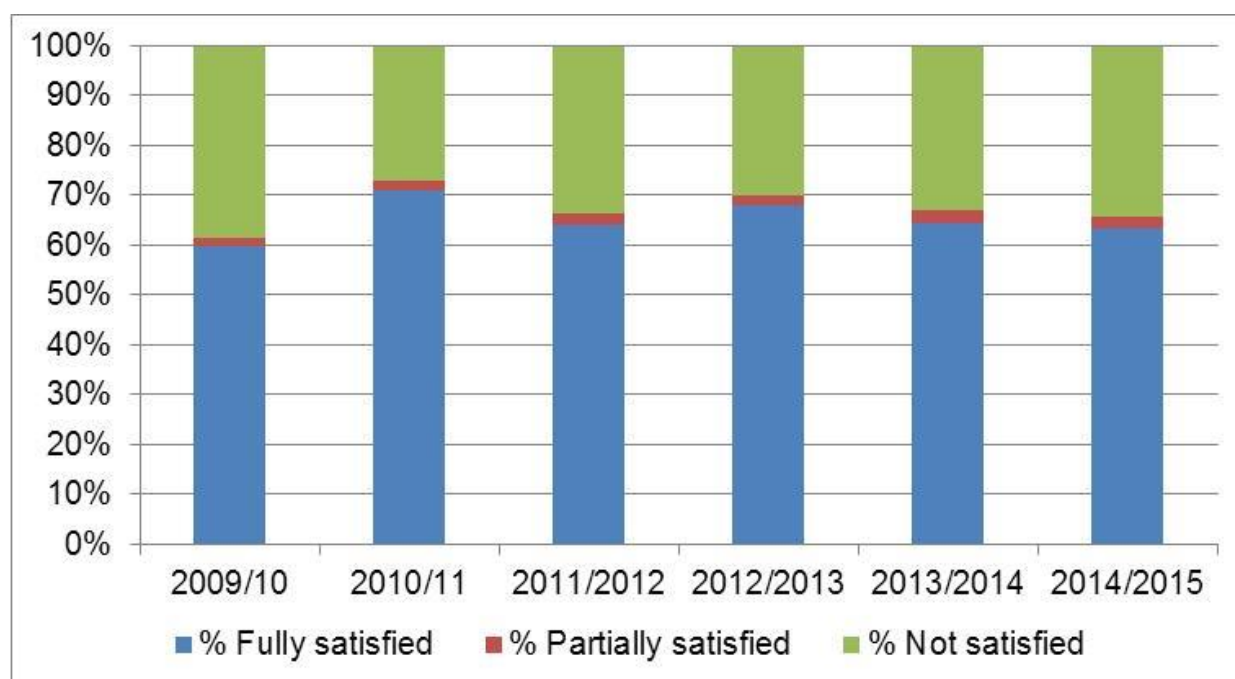
Though they are fewer in number, recovery rates for Orders to Compensate and/or Reinstate are substantially higher than for Orders to Pay Wages. Indeed, fully three-quarters (76%) of complaints with an Order to Compensate and/or Reinstate have these orders satisfied. These relatively high rates of collection likely reflect the particular circumstances in which these Orders are issued. Few orders to reinstate are issued and so most workers only receive compensation for the *ESA* violation they experienced. More importantly for recovery purposes, the employers subject to these orders are overwhelmingly likely to be in business at the time the order is issued, which facilitates recovery, even though Orders to Compensate and/or Reinstate tend to be for higher dollar amounts than Orders to Pay Wages.

6.4 Improving Recovery Strategies

The enforcement system fails when workers who have experienced monetary violations are unable to recover the money owed to them. These data show that, in

most cases, when employers do not voluntarily comply with ESOs' assessments, recovery rates are quite low. When voluntary and ordered compliance are considered together, the rate of full recovery for monetary entitlements hovers at about 65%. Put another way, about a third of complainants who are deemed to have money owed to them as a result of a validated ES violation ultimately receive no money. Of greater concern, however, is that this rate appears to have slightly declined in the most recent years (see Graph 6.2), resulting from the combination of the smaller proportion of complaints resolved through voluntary compliance, and the decline in complaints where monetary orders are fully satisfied, though it is not yet possible to establish whether this reflects a larger trend.

Graph 6.2: Recovery of Monetary Entitlements for Complaints, Including Both Those with Employer Voluntary Compliance and Those Requiring the Use of a Compliance Tool, 2009/10 to 2014/15



The perception that complainants may not receive the money that they are owed, even after their complaint has been validated by an ESO, may be contributing to the increased willingness of complainants to accept settlements earlier on in the complaints process. If workers are aware, or are made aware, of the difficulty they may experience recovering a monetary order, they may feel that they are better off accepting less, instead of facing the possibility that they may never recover the full amount to which

they are entitled. Thus, the damage attributed to relatively low recovery rates are not limited simply to the amount of money that is not recovered from monetary orders, but may also include the potential loss to complainants who settle for an amount that is below what they would be entitled to if their complaint was assessed. It is therefore necessary to consider the backward linkages between problems in the recovery system and its implications for the dispute resolution mechanisms that are available under the *ESA* (see sections two and five). Since many settlements are reached prior to an ESO assessing a complaint, we cannot estimate the amount of losses workers may suffer as a result of a lack of faith in the province's recovery and collections systems, but they may be considerable.

The most straightforward and certain way to insure that workers are paid their monetary entitlements under the *ESA* is for there to be a provincially-based fund which makes up for any shortfalls in wages that result from non-recovery. One option may be **the creation of an Ontario wage protection fund**. The structure of such a fund, including any limits on the amount of recovery,⁶¹ and how it should be funded⁶² are issues that would need to be considered in such an option. The measures that follow are inferior from the point of view of providing workers with low-cost and certain means of recovering their *ESA* entitlement. However, if the wage protection fund option is not pursued, other options merit consideration. One alternative approach to assuring that workers are able to secure the monies they are owed is by **requiring employers to post a bond or to carry some form of insurance that would guarantee there would be monies available to satisfy workers' claims even in the case of a bankruptcy**.

Another approach to assuring recovery is through the imposition of liabilities on parties who are not the direct employer. Currently, both director and related-employer liability are available, but they do not necessarily yield higher rates of recovery. This stands in contrast to a substantial body of literature that suggests that the expansion of liabilities across the supply chain lead to better outcomes for workers (Hardy and Howe 2015; Hyde 2012; Weil 2010; Rawling 2006). Further study may yield insights as to the

⁶¹ Currently, the federal *Wage Earner Protection Act* limits recovery to a little less than \$4,000, an amount that may leave some employees' monetary entitlements unfulfilled.

⁶² A fund of this sort existed briefly in Ontario in the early 1990s but, as it used public revenue to compensate workers for lost wages, its source of funding was criticized for allowing employers "to socialize the costs of business failure" (Fudge 1991, 92).

reasons why this is not the case in Ontario's ES enforcement system. For instance, related-employer liability is currently only available in a limited number of circumstances and certainly does not cover many arms-length relationships that typically exist in supply chains. An option is to **further investigate Director and related employer liability, with a view to reforming the current legislation to expand these liabilities, including (a) making related employer liability apply to supply chain and contracting-out arrangements, and/or (b) expanding the scope of ES entitlements that Directors might be liable for.**

By way of conclusion, it should be emphasized that overall the collections system is producing low rates of recovery for both compliance and deterrence tools; indeed, overall, recovery rates have been declining since 2010/11. In addition to the evidence of low rates of recovery of monetary entitlements presented above, as indicated in section four, recovery rates of fines resulting from NOCs are also low. Despite moving responsibility for collections away from private collection agencies and into a unit within the Ministry of Finance, there does not seem to have been a noticeable improvement in collection rates for the 2014/15 fiscal year. Consequently, **an option is to investigate the current collections regime with a view to finding ways to improve its overall performance.**

7. The Special Case of Bankruptcy

A substantial amount of the monies owed to workers are from employers who are insolvent or bankrupt (i.e., businesses that are either bankrupt, under the *Companies' Creditors Arrangement Act* (CCAA) protection, or in receivership).⁶³ Recognized as a longstanding problem by provincial policymakers almost since the inception of the *ESA* (Thomas 2003), recovery of unpaid wages in cases of bankruptcy or insolvency is difficult because workers become one of several creditors owed money and are paid subject to priority ranking as determined by federal bankruptcy and insolvency legislation. Large companies (i.e., with 20 or more employees) subject to complaints are more likely to be formally bankrupt or insolvent than those that are small, which are

⁶³ In this analysis, only complaints assigned to one of the Ministry of Labour's specialized Bankruptcy/Insolvency Claims Units are considered to relate to formally bankrupt or insolvent businesses (i.e., regardless of the complainant's report of a business' status).

more likely to cease operating without formally declaring bankruptcy (see Appendix B, Table 7.1). Furthermore, those in declining manufacturing and primary industries, where large firms have been prominent historically, are also more likely to be subject to formal bankruptcy proceedings. Not surprisingly, ES violations for termination pay and for severance pay are particularly prominent among complaints relating to formally bankrupt or insolvent businesses.

The Ministry of Labour assists employees by filing Proofs of Claim with the Trustee in Bankruptcy or the Monitor, but that is the limit of its ability to recover money from formally bankrupt/insolvent entities. No data were available to us on the recovery of workers' wages under federal bankruptcy and insolvency law, but despite the fact that recent legislation better protects workers' wages than was the case in the past, it is still reasonable to assume that workers only recover a fraction of what they are owed. Given these circumstances, an option is to undertake **further study of Ontario workers' wage recovery in bankruptcy.**

Having said that, there is the question of how the Ministry of Labour assists workers in recovering ES entitlements when their employers are insolvent or bankrupt. Based on the assessment of an ESO, the Ministry of Labour has the option of filing a Proof of Claim with the Trustee in Bankruptcy or the Monitor. Among complaints where the business appears to be bankrupt or insolvent and where monetary entitlements are still owing, the ESIS data show that only 7% have a Proof of Claim filed by the Ministry. Further, complaints where a Proof of Claim has been filed are more likely to have ES violations for unpaid wages, vacation pay/time and public holiday pay, whereas complaints relating to formally bankrupt/insolvent businesses where no Proof of Claim was filed were more likely to have ES violations for termination pay and for severance pay. Entitlement amounts are also lower for complaints where a Proof of Claim has been filed, compared to those where it has not, a finding likely associated with the smaller percentage of severance pay and termination pay entitlements (see Appendix B, Table 7.2).

In general, these results are difficult to interpret, since we do not know what determines whether or not a Proof of Claim is issued, except that ESOs are advised not to issue Proofs of Claim in the rare case when they are satisfied that no recovery is

possible. As a result, we cannot suggest any options with respect to the use of Proofs of Claim, except to **review the use of Proofs of Claim as part of the broader study of wage recovery in bankruptcy and insolvency situations.**

Finally, as discussed in the context of recovery more generally, many workers face serious difficulties collecting the monies that they are found to be owed. One instance, analogous to bankruptcy and insolvency, that we have not discussed here, is the problem of companies that go out of business but that do not formally file for bankruptcy or insolvency. These findings further support the consideration of the option made in section six (on recovery) for an Ontario wage protection fund or other measures to secure wage payments.

Moreover, to reduce the cost of operating such a fund, it could be subrogated to the claims of workers so that the monies paid out, or at least a share of them, can be recovered through the bankruptcy process.

C. Conclusion and Options for Legislative and Regulatory Reform

Building on the conceptual framework outlined in Part A that identified the two crucial dimensions of Ontario's ES enforcement regime – namely, reactive versus proactive enforcement and compliance versus deterrence – and based on original statistical and documentary analysis that demonstrates its overwhelmingly complaint-driven and compliance orientation, the options we identify for legislative and regulatory reform aim to suggest pathways for combining reactive measures to address individual complaints and proactive measures to achieve the strategic objective of reducing the incidence of violations in the first place. Arriving at an optimal combination of pathways should not entail neglecting the former in favour of the latter but, rather, should simultaneously strengthen reactive measures and increase proactivity. One promising technique for bridging between these two dimensions is to augment the use of proactive measures, including strategies such as the greater use of expanded investigations. Strengthening reactive and proactive measures cannot be separated from the second dimension of our analysis of ES enforcement, that is, the use of compliance and deterrence (general and specific). As this study shows, the extreme reliance on

compliance measures in Ontario provides employers with few incentives to avoid ES violations in the first place. Deterrence measures are an essential requirement of a strategic approach to enforcement but while the *ESA*, the *POA* and the *Criminal Code* provide regulators with a wide range of deterrence tools, they are rarely used.

Options for Reform:

1. Complaints & Claims Options

- 1.1. Remove the discretion of the Director of Employment Standards to impose a requirement on employees to contact their employer before submitting a complaint (pg. 24).
- 1.2. Expand options for third-party and anonymous complaints (pg. 24).
- 1.3. Give ESOs the power to order liquidated damages in addition to the amount of the order to pay. If this power is granted, consideration could be given as to whether liquidated damages should be mandatory in certain cases and whether they should be fixed as a percentage of what is owed (pg. 34)

2. Settlement Options

- 2.1. Further investigate the role of settlements with a view to limiting their use, especially the use of those facilitated by ESOs (pg. 39).
- 2.2. Protect workers in the settlement process so as to avoid arrangements that fall below minimum entitlements (pg. 39).
- 2.3. Investigate further whether problems in recovering the amounts ESOs order employers to pay (s. 6) place downward pressure on settlement outcomes (pg. 39).

3. Inspection Options

- 3.1. Review, and possibly suspend, the practice of providing employers with advance notice of inspection (pg. 40).
- 3.2. Strengthen the proactive model of enforcement with a view, in particular, to identifying monetary violations of the type being detected via complaints (pg. 46).
- 3.3. Increase the role of expanded investigations as a bridge between the reactive and proactive dimensions of the *ESA* enforcement regime (pg. 46).

4. Compliance & Deterrence Options

- 4.1. Investigate related-employer liability, including the possibility of extending it substantially beyond its current boundaries to supply chain situations (pg.48).
- 4.2. Make administrative monetary penalties more effective by increasing their amounts, strengthening collection processes, streamlining policies surrounding how they can be challenged, and augmenting the resources provided to the administrative tribunal that determines challenges to penalties (pg. 53).
- 4.3. Routinely impose NOCs and Part I regulatory offence prosecutions when employers commit monetary violations (pg. 54).
- 4.4. Advise ESOs that low-level sanctions are not appropriate for intentional wrongdoing. In cases where there is intentional violation of the *ESA*, mandate that Part III prosecutions normally be initiated (pg. 57).
- 4.5. Consider referring egregious cases to the Crown for possible criminal prosecution (pg. 58).
- 4.6. Overall, expand the use of deterrence measures including their more frequent use, the imposition of higher penalties, and greater publicity to promote general deterrent effects (pg. 58).

5. Options for OLRB Reviews

- 5.1. Require directors to post the amount of an Order to Pay Wages to the extent of their liability as a condition of having it reviewed (pg. 60).
- 5.2. Better protect employees in the settlement process in the context of the OLRB review process; specifically, consider creating an independent worker advisor to assist workers whose monetary entitlements are being challenged before the OLRB (pg. 68).

6. Recovery Options

- 6.1. Create a provincial wage protection fund and address crucial issues related to its funding and coverage limits (pg. 74).
- 6.2. If a provincial wage protection fund is not created, require employers to post a bond or carry insurance sufficient to fund potential *ESA* liabilities (pg. 74).

- 6.3. Further investigate Director and related employer liability, with a view to reforming the current legislation to expand these liabilities, including (a) making related employer liability apply to supply chain and contracting out arrangements, and/or (b) expanding the scope of ES entitlements that Directors might be liable for (pg. 75).
- 6.4 Investigate the current collections regime with a view to finding ways to improve its performance (pg. 75).

7. Bankruptcy Options

- 7.1. Undertake further study of Ontario workers' wage recovery in bankruptcy and insolvency proceedings (pg. 76).
- 7.2. Review the use of Proofs of Claim, perhaps as part of the broader study of wage recovery in bankruptcy and insolvency situations (pg. 77).
- 7.3. If an Ontario Wage Protection Fund is created, consider having the fund subrogated to the claims of workers so that the monies paid out, or at least a share of them, can be recovered through the bankruptcy process (pg. 77).

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Appendix A: Methodological Notes

Statistical Data Source

This analysis relies on data collected in the Ontario Ministry of Labour's Employment Standards Information System (ESIS). ESIS was first implemented in 2007, and it is used primarily as an information tracking and case management system, which stores information on ES complaints and inspections, their movement through the ES assessment and enforcement process, and their outcomes. In addition to its role as a case management system, ESIS is designed to allow ESOs to quickly generate standardized letters used in various aspects of the ES enforcement process by pre-populating many fields. Finally, and more generally, ESIS is used to manage ESOs' workloads collectively, by routing complaints for investigation and other tasks to Officers in specific regions. ESIS information is stored in a SQL database, paired with a user-interface that allows ESOs to enter data, record activities, and generate letters. As the primary administrative database of ES enforcement activities in Ontario, ESIS data provide a source of information that is not otherwise available.

The ESIS database uses a modular structure that links information through unique record identifiers. At present, there are eight main modules: claim records, events/inspections, compliance tools, operating location, legal entities, appeals (OLRB reviews), hours of work applications, and compliance checks (self-assessments). ESIS data were provided to the authors in an anonymized form, by suppressing key fields in each module. The analysis in this study relies primarily on information from the claims records, events/inspections, compliance tools, and appeals modules. Since these modules were launched in ESIS at various points in time, this study uses different time periods for different parts of the analysis, in order to make the best use of the available data. Information in some key fields – such as those relating to industry or company size – was/is not always collected consistently. In order to ensure data quality, information is only reported for fiscal years in which there is a robust collection of data available for the relevant fields; typically, 50% of cases was used as a minimum threshold. More complete information about complaints, investigations, reviews, and the use of compliance/deterrence tools is only available for the most recent years.

Information is entered into ESIS by a wide range of MOL personnel (ESOs, claims processors, registrars, payment recorder, OLRB review recorder), as well as by complainants themselves, through the online claim submission form. In addition, ESOs may update or verify some of the information entered by a complainant during their investigation. These practices have several implications for the data and any data analysis. First, complainants may enter inconsistent information in their claim form, and this is sometimes preserved in the data (and sometimes reconciled). Second, for ESOs particularly, data entry – and especially high-quality data entry – is secondary to their main job functions. As a result, although the ESIS data are comprehensive, they are of somewhat low-quality in terms of their internal consistency and completeness. As noted in the body of text, in this analysis our general approach has been to let these inconsistencies persist since the removal of cases with inconsistent information would result in a substantial loss of data, reducing a central feature of the ESIS database as a near-complete census of Ontario's ES enforcement activities and their outcomes.

Additionally, it should be emphasized that ESIS was designed to be applicable to a wide range of situations, many of which have the potential to be atypical in some way or another. As a result, the database contains many open-text fields, which allow complainants and ESOs to provide narratives about the specific situation of each case. While this approach is certainly desirable from a case management perspective, open-text fields do not lend themselves well to statistical analysis; because of time and resource constraints, the analysis in this study does not incorporate any of the rich and detailed information contained in these open-text fields. Further, in order to provide users with maximum flexibility, the ESIS appears to have relatively few required-answer or forced-choice fields. As a result, some cases are missing information for key fields, with little indication as to why – these fields may not be applicable to the case, a complainant may not have known the answer to a question, or they may have been skipped in error. Following the convention adopted typically in data analysis, cases that are missing information for a field are retained in the analysis, but excluded from reports based on that field. In cases where a large proportion of cases are missing information (such as for claim amounts), this situation is noted.

Data Analysis Approach

A key feature of both the ESIS and, concomitantly, this analysis, is its multi-level, relational structure, organized typically around many-to-one relationships. For example, a single employer (or legal entity), might be linked to multiple complaints; a single complaint might be linked to claims for multiple employment standards, and a complainant's monetary entitlement for a single employment standard might be linked to multiple payment records. This study relies primarily on three different units of analysis situated in this relational structure. The unit used most often is that of the complaint or the inspection (i.e., the case). However, in sections one and three of the research findings, we occasionally shift to analyze claims for individual ES (where, as previously noted, a case can include more than one claim). Finally, in section four of the research findings, on OLRB reviews, in some instances, we use applications for review as the unit of analysis; and, here, again, there can be multiple applications for review relating to a single case.

To facilitate analysis, data from the main ESIS modules was imported from SQL into SPSS, the software program used for the statistical analysis. For each desired unit of analysis (and for complaints and inspections separately), SQL data tables were merged into flat files that captured the breadth of the available information, using the same unique identifiers that facilitate joins in SQL. For each data table, in-progress, suspended, voided or rescinded entries were removed prior to amalgamation. Finally, the SQL tables that designate field labels were imported via Excel in order to semi-automatically generate a comprehensive set of syntax to label the SPSS data files.

The descriptive statistics produced for this data analysis are primarily the result of substantial data manipulation, in order to map the progress of each case (complaint or inspection) throughout the ES enforcement system. Once the trajectories of each case were established, we undertook analysis relating to key demographic features, such as fiscal year, firm size, and industrial location, in order to better understand the variations between cases. Since these data are necessarily cross-sectional, it is not possible to identify causal relationships, and the preceding analysis should be interpreted with this caveat in mind.

The challenges of using the ESIS data in this analysis, as enumerated above, are typical of any research relying on administrative data. The scope and detail captured by ESIS, however, allows for a rich analysis of ES enforcement in Ontario that would not otherwise be possible.

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Table 1.1a: Characteristics of ES Complaints, 2008/09 to 2014/15

	Fiscal Year when Complaint was Submitted							Total
	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	
# of non-unionized Ontario employees per year	4,022,798	3,922,695	4,027,600	4,082,212	4,077,938	4,193,062	4,247,521	
# of complaints submitted per fiscal year	23,286	20,382	17,093	16,132	15,050	15,507	14,885	122,335
# of non-unionized employees per complaint	173	192	236	253	271	270	285	240
# of complaints for fiscal year that have been closed*	23,216	20,314	16,968	15,995	14,847	15,175	14,378	120,893
AMONG ALL ACCEPTED COMPLAINTS								
Complainant Work Status								
Still Working	7.3%	8.9%	8.6%	9.4%	8.7%	8.5%	9.3%	8.6%
Fired	25.3%	28.0%	29.1%	27.1%	29.4%	28.1%	28.6%	27.8%
Laid Off	17.2%	18.4%	14.1%	13.5%	12.8%	12.5%	11.4%	14.6%
Quit	22.2%	20.8%	24.9%	24.0%	25.5%	26.2%	28.2%	24.2%
Other	28.0%	24.0%	23.3%	26.0%	23.6%	24.6%	22.5%	24.8%
Employer Status								
In business ^a	77.9%	86.0%	91.1%	85.0%	90.5%	89.9%	92.5%	86.9%
Out of business or bankrupt/insolvent	22.1%	14.0%	8.9%	15.0%	9.5%	10.1%	7.5%	13.1%
Company Size^b								
1 to 5 employees	--	--	--	--	15.3%	18.4%	18.3%	14.5%
6 to 10 employees	--	--	--	--	19.2%	19.4%	18.2%	16.8%
11 to 19 employees	--	--	--	--	19.5%	18.4%	18.0%	17.2%
20 to 49 employees	--	--	--	--	18.9%	18.2%	18.5%	18.9%
50 to 199 employees	--	--	--	--	15.7%	15.1%	15.8%	17.0%
200 or more employees	--	--	--	--	11.4%	10.6%	11.3%	15.5%
Industry (based on the NAICS)^c								
Accommodation and food services	--	--	20.2%	19.2%	21.1%	21.6%	21.3%	20.7%
Retail trade	--	--	15.3%	14.2%	14.1%	12.5%	12.8%	13.9%
Service Industries - primarily private-sector ^d	--	--	25.5%	27.7%	24.2%	23.6%	25.9%	25.5%
Service Industries - primarily public-sector ^e	--	--	11.2%	11.8%	12.7%	12.2%	12.5%	12.2%
Manufacturing and primary industries ^f	--	--	27.8%	27.0%	27.8%	30.0%	27.5%	27.8%
Employment Standard(s) Claimed								
Unpaid wages	41.2%	43.9%	48.5%	52.6%	50.5%	52.0%	52.4%	48.0%
Termination pay	47.1%	45.4%	41.5%	43.2%	44.1%	43.0%	41.8%	44.0%
Vacation pay/time	38.4%	35.1%	36.9%	39.9%	34.0%	34.2%	31.5%	35.9%
Severance pay	18.7%	16.5%	12.8%	13.6%	13.3%	13.5%	12.6%	14.8%
Overtime pay	9.0%	8.6%	10.5%	10.8%	11.2%	11.2%	11.7%	10.2%
Public holidays/pay	8.7%	9.5%	11.1%	12.3%	11.7%	11.7%	11.1%	10.7%
Reprisal	6.3%	7.4%	8.2%	7.8%	8.9%	9.8%	10.4%	8.2%
Daily/weekly rest periods	5.1%	6.3%	6.8%	6.6%	7.1%	7.5%	7.9%	6.6%
Deductions from wages	5.5%	6.1%	6.6%	6.8%	7.2%	7.1%	7.1%	6.5%
Leaves of absence	3.4%	4.6%	4.4%	3.9%	4.9%	4.9%	4.6%	4.3%
Minimum wage	2.1%	3.0%	4.5%	3.5%	3.4%	3.4%	3.5%	3.3%

Table 1.1b: Characteristics of ES Complaints, 2008/09 to 2014/15

		Fiscal Year when Complaint was Submitted						Total	
		2008/09	2009/10	2010/11	2011/12	2012/13	2013/14		2014/15
AMONG ALL ACCEPTED COMPLAINTS									
Total Amount Claimed (for all standards combined)									
Median		\$1,280	\$1,241	\$1,200	\$1,255	\$1,216	\$1,270	\$1,250	\$1,248
Less than \$300		11.4%	11.4%	11.6%	11.6%	11.8%	11.5%	11.8%	11.6%
\$300 to \$999		20.5%	21.6%	22.7%	24.4%	24.5%	23.9%	24.1%	22.9%
\$1,000 to \$1,999		13.1%	13.1%	14.2%	16.2%	16.1%	15.7%	16.5%	14.8%
\$2,000 to \$9,999		20.7%	21.2%	21.6%	24.6%	24.3%	24.6%	23.8%	22.7%
\$10,000 or more		8.9%	8.3%	6.7%	6.9%	6.6%	7.1%	7.3%	7.5%
Claim amount missing, or \$1 or less		25.4%	24.4%	23.2%	16.2%	16.7%	17.2%	16.6%	20.6%
Outcome of Complaint									
Settled		3.7%	5.8%	6.8%	9.9%	11.9%	12.4%	14.9%	8.7%
Withdrawn		18.6%	22.5%	20.4%	18.2%	21.0%	24.6%	26.1%	21.4%
Assessed		77.7%	71.7%	72.9%	71.9%	67.1%	63.0%	59.0%	69.9%
AMONG ASSESSED COMPLAINTS ONLY									
Presence of ES Violations									
No ES violation		29.7%	31.6%	29.6%	29.3%	32.1%	30.5%	33.4%	30.7%
One or more ES violations		70.3%	68.4%	70.4%	70.7%	67.9%	69.5%	66.6%	69.3%
Type of ES violations									
Monetary and non-monetary violations		0.5%	0.6%	0.6%	0.9%	1.2%	1.2%	1.2%	0.8%
Monetary violations only		69.3%	67.3%	69.0%	69.0%	65.8%	67.0%	64.2%	67.7%
Non-monetary violations only		0.5%	0.5%	0.7%	0.8%	0.9%	1.3%	1.3%	0.8%
Violation Rate									
Monetary violation		69.8%	67.8%	69.7%	69.9%	67.0%	68.1%	65.3%	68.5%
Non-monetary violation		1.0%	1.1%	1.4%	1.7%	2.2%	2.5%	2.5%	1.6%
AMONG VALIDATED COMPLAINTS ONLY									
Disposition									
Voluntary Compliance during Triage		19.2%	12.7%	16.6%	13.3%	13.1%	9.2%	10.0%	14.2%
Voluntary Compliance during Investigation		25.4%	34.9%	39.4%	37.4%	39.9%	43.0%	41.1%	36.0%
Compliance Ordered		55.4%	52.4%	44.0%	49.3%	47.0%	47.8%	48.9%	49.9%
Employment Standards Violated ⁹									
Termination pay		57.1%	51.2%	42.2%	41.6%	44.4%	43.5%	42.4%	47.3%
Vacation pay/time		48.4%	48.2%	45.8%	50.6%	44.9%	43.2%	42.5%	46.7%
Unpaid wages		37.9%	42.9%	47.2%	53.3%	49.1%	49.8%	50.4%	46.1%
Public holidays/pay		8.5%	10.3%	12.6%	13.3%	13.0%	14.3%	13.6%	11.8%
Severance pay		16.1%	11.4%	6.8%	6.3%	5.7%	5.2%	4.8%	9.0%
Overtime pay		6.4%	7.0%	8.8%	8.2%	7.9%	10.3%	10.5%	8.1%
Deductions from wages		4.7%	4.5%	4.7%	4.9%	5.1%	4.7%	4.8%	4.8%
Minimum wage		1.5%	2.3%	3.6%	2.0%	1.8%	2.4%	2.0%	2.2%
Reprisal		1.0%	1.2%	1.4%	1.2%	1.8%	3.0%	3.0%	1.6%

Table 1.1c: Characteristics of ES Complaints, 2008/09 to 2014/15

	Fiscal Year when Complaint was Submitted							Total
	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	
AMONG VALIDATED COMPLAINTS ONLY								
Median Entitlement Amount per Standard								
Total	\$1,517	\$1,099	\$970	\$1,016	\$975	\$1,119	\$1,093	\$1,109
Severance pay	\$6,898	\$7,808	\$6,273	\$5,148	\$5,694	\$5,869	\$6,180	\$6,651
Reprisal	\$2,275	\$3,352	\$2,732	\$3,350	\$2,800	\$2,722	\$2,602	\$2,909
Termination pay	\$2,845	\$1,232	\$1,040	\$1,098	\$961	\$1,124	\$970	\$1,266
Unpaid wages	\$626	\$583	\$652	\$693	\$630	\$724	\$782	\$662
Overtime pay	\$370	\$412	\$414	\$477	\$443	\$552	\$417	\$436
Minimum wage	\$180	\$280	\$268	\$308	\$412	\$598	\$219	\$293
Deductions from wages	\$186	\$208	\$225	\$237	\$250	\$250	\$276	\$225
Public holidays/pay	\$170	\$178	\$176	\$170	\$172	\$187	\$174	\$174
Vacation pay/time	\$152	\$141	\$150	\$145	\$126	\$178	\$159	\$150
Total Entitlement Amount								
Median	\$1,517	\$1,099	\$970	\$1,016	\$975	\$1,119	\$1,093	\$1,109
Less than \$300	17.0%	19.3%	20.3%	19.0%	19.8%	17.8%	17.8%	18.6%
\$300 to \$999	24.1%	28.3%	30.4%	30.6%	30.9%	29.0%	30.0%	28.6%
\$1,000 to \$1,999	13.8%	16.5%	18.2%	19.0%	18.8%	18.5%	19.0%	17.3%
\$2,000 to \$9,999	23.2%	25.1%	24.4%	26.2%	25.1%	28.2%	26.4%	25.2%
\$10,000 or more	21.8%	10.8%	6.7%	5.3%	5.4%	6.4%	6.8%	10.3%
Percentage of Original Claim Amount Awarded ^h								
0 to 49%	13.3%	14.0%	15.8%	18.2%	19.1%	19.4%	20.8%	16.7%
50 to 99%	23.9%	26.6%	27.0%	27.6%	28.9%	28.3%	28.9%	27.0%
100%	21.3%	21.6%	22.6%	16.7%	16.4%	14.2%	11.4%	18.5%
100 to 150%	26.7%	27.7%	25.0%	26.3%	25.9%	26.6%	27.6%	26.5%
More than 150%	14.8%	10.1%	9.5%	11.2%	9.7%	11.6%	11.2%	11.4%

* This analysis only includes closed claims

^a Includes companies where employer disposition is unknown or missing

^b Information about company size is only available for complaints submitted from 2012/13 onwards

^c Information about industry is only available for complaints submitted from 2010/11 onwards

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

^g Monetary violations only, among all validated complaints

^h Among complaints with monetary entitlements, and total claim amounts greater than \$1

Table 1.2a: Operational Status of Businesses that ES Complaints are Filed Against, 2008/09 to 2014/15

	Operational Status		Total
	In Business ^a	Out of Business or Bankrupt/Insolvent	
% of complaints relating to businesses with each status	86.9%	13.1%	100.0%
# of complaints relating to businesses with each status	105,003	15,890	120,893
AMONG ALL ACCEPTED COMPLAINTS			
Complainant Work Status			
Still Working	9.3%	4.1%	8.6%
Fired	31.2%	5.0%	27.8%
Laid Off	12.3%	30.1%	14.6%
Quit	26.9%	6.3%	24.2%
Other	20.3%	54.4%	24.8%
Company Size^b			
1 to 5 employees	14.7%	12.5%	14.5%
6 to 10 employees	16.8%	16.8%	16.8%
11 to 19 employees	17.2%	17.4%	17.2%
20 to 49 employees	18.7%	21.0%	18.9%
50 to 199 employees	17.4%	13.6%	17.0%
200 or more employees	15.2%	18.7%	15.5%
Industry (based on the NAICS)^c			
Accommodation and food services	19.9%	27.5%	20.7%
Retail trade	14.3%	10.7%	13.9%
Service Industries - primarily private-sector ^d	25.9%	21.2%	25.5%
Service Industries - primarily public-sector ^e	12.3%	11.1%	12.2%
Manufacturing and primary industries ^f	27.6%	29.6%	27.8%
Employment Standard(s) Claimed			
Unpaid wages	47.8%	49.1%	48.0%
Termination pay	41.1%	63.2%	44.0%
Vacation pay/time	34.3%	46.7%	35.9%
Severance pay	11.7%	35.3%	14.8%
Overtime pay	11.1%	4.9%	10.2%
Public holidays/pay	11.0%	8.4%	10.7%
Reprisal	9.3%	1.0%	8.2%
Daily/weekly rest periods	7.4%	1.4%	6.6%
Deductions from wages	7.2%	2.2%	6.5%
Leaves of absence	4.9%	0.5%	4.3%
Minimum wage	3.5%	1.5%	3.3%

Table 1.2b: Operational Status of Businesses that ES Complaints are Filed Against, 2008/09 to 2014/15

	Operational Status		
	In Business ^a	Out of Business or Bankrupt/Insolvent	Total
AMONG ALL ACCEPTED COMPLAINTS			
Total Amount Claimed (for all standards combined)			
Median	\$1,100	\$3,000	\$1,248
Less than \$300	12.7%	4.3%	11.6%
\$300 to \$999	23.9%	15.7%	22.9%
\$1,000 to \$1,999	14.9%	14.0%	14.8%
\$2,000 to \$9,999	21.4%	31.2%	22.7%
\$10,000 or more	5.6%	19.8%	7.5%
Claim amount missing, or \$1 or less	21.4%	15.0%	20.6%
Outcome of Complaint			
Settled	9.7%	2.2%	8.7%
Withdrawn	23.4%	8.1%	21.4%
Assessed	66.9%	89.8%	69.9%
AMONG ASSESSED COMPLAINTS ONLY			
Presence of ES Violations			
No ES violation	35.1%	9.0%	30.7%
One or more ES violations	64.9%	91.0%	69.3%
Type of ES violations			
Monetary and non-monetary violations	0.9%	0.3%	0.8%
Monetary violations only	63.0%	90.7%	67.7%
Non-monetary violations only	1.0%	0.1%	0.8%
Violation Rate			
Monetary violation	63.9%	90.9%	68.5%
Non-monetary violation	1.9%	0.3%	1.6%
AMONG VALIDATED COMPLAINTS ONLY			
Disposition			
Voluntary Compliance during Triage	17.9%	1.0%	14.2%
Voluntary Compliance during Investigation	44.7%	5.2%	36.0%
Compliance Ordered	37.4%	93.8%	49.9%
Employment Standards Violated ^g			
Termination pay	39.9%	73.3%	47.3%
Vacation pay/time	46.2%	48.6%	46.7%
Unpaid wages	45.9%	46.8%	46.1%
Public holidays/pay	13.1%	7.0%	11.8%
Severance pay	4.0%	26.5%	9.0%
Overtime pay	9.5%	3.2%	8.1%
Deductions from wages	5.7%	1.4%	4.8%
Minimum wage	2.6%	0.9%	2.2%
Reprisal	2.1%	0.1%	1.6%

Table 1.2c: Operational Status of Businesses that ES Complaints are Filed Against, 2008/09 to 2014/15

	Operational Status		Total
	In Business ^a	Out of Business or Bankrupt/Insolvent	
AMONG VALIDATED COMPLAINTS ONLY			
Median Entitlement Amount per Standard			
Total	\$836	\$4,477	\$1,109
Severance pay	\$4,658	\$7,836	\$6,651
Reprisal	\$2,891	\$3,693	\$2,909
Termination pay	\$858	\$4,333	\$1,266
Unpaid wages	\$574	\$1,059	\$662
Overtime pay	\$444	\$374	\$436
Minimum wage	\$284	\$347	\$293
Deductions from wages	\$240	\$153	\$225
Public holidays/pay	\$180	\$141	\$174
Vacation pay/time	\$115	\$328	\$150
Total Entitlement Amount			
Median	\$836	\$4,477	\$1,109
Less than \$300	22.5%	5.2%	18.6%
\$300 to \$999	32.4%	15.2%	28.6%
\$1,000 to \$1,999	18.4%	13.2%	17.3%
\$2,000 to \$9,999	22.4%	34.8%	25.2%
\$10,000 or more	4.2%	31.6%	10.3%
Percentage of Original Claim Amount Awarded ^h			
0 to 49%	18.5%	10.3%	16.7%
50 to 99%	27.4%	25.6%	27.0%
100%	19.9%	13.3%	18.5%
100 to 150%	25.4%	30.5%	26.5%
More than 150%	8.8%	20.4%	11.4%

^a Includes companies where employer disposition is unknown or missing

^b Information about company size is only available for complaints submitted from 2012/13 onwards

^c Information about industry is only available for complaints submitted from 2010/11 onwards

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

^g Monetary violations only, among all validated complaints

^h Among complaints with monetary entitlements, and total claim amounts greater than \$1

Table 1.3a: Industry of Businesses that ES Complaints are Filed Against, 2010/11 to 2014/15

	Industrial Sector (based on the NAICS) ^c					
	Accommodation and food services	Retail trade	Service Industries Primarily private- sector ^d	Service Industries Primarily public- sector ^e	Manufacturing and primary industries ^f	Total
% of Ontario workers employed in each industry*	8.9%	14.7%	27.2%	17.1%	32.0%	100%
% of Ontario businesses in each industry**	6.6%	12.8%	38.0%	13.5%	29.0%	
# of Ontario businesses in each industry**	108,039	208,988	618,367	219,222	472,654	
% of complaints relating to each industry*	20.7%	13.8%	25.4%	12.1%	28.0%	
# of complaints relating to each industry	12,223	8,140	15,042	7,178	16,583	59,166
AMONG ALL ACCEPTED COMPLAINTS						
Complainant Work Status						
Still Working	7.0%	9.3%	8.9%	12.3%	6.0%	8.2%
Fired	31.4%	34.5%	28.2%	26.9%	25.3%	28.8%
Laid Off	8.6%	11.0%	13.4%	11.7%	18.2%	13.2%
Quit	27.8%	23.3%	25.6%	23.3%	24.7%	25.2%
Other	25.2%	22.0%	23.8%	25.7%	25.7%	24.6%
Employer Status						
In business ^a	85.0%	91.1%	91.1%	90.0%	88.4%	88.9%
Out of business or bankrupt/insolvent	15.0%	8.9%	8.9%	10.0%	11.6%	11.1%
Company Size^b						
1 to 5 employees	10.8%	12.9%	18.7%	16.3%	18.0%	15.7%
6 to 10 employees	23.0%	14.1%	16.1%	16.3%	17.4%	17.7%
11 to 19 employees	28.1%	13.9%	13.9%	17.8%	15.4%	17.8%
20 to 49 employees	23.2%	18.6%	12.5%	20.1%	19.9%	18.5%
50 to 199 employees	10.5%	17.4%	18.4%	15.9%	18.6%	16.3%
200 or more employees	4.6%	23.0%	20.4%	13.7%	10.7%	14.0%
Claims Per Standard						
Unpaid wages	56.0%	43.4%	52.7%	52.8%	50.3%	51.4%
Termination pay	46.7%	51.5%	45.1%	41.9%	43.4%	45.5%
Vacation pay/time	37.0%	33.5%	37.0%	36.1%	36.5%	36.3%
Severance pay	9.4%	16.1%	13.1%	12.7%	18.0%	14.1%
Public holidays/pay	16.5%	10.9%	11.8%	11.2%	10.7%	12.3%
Overtime pay	11.5%	9.8%	11.0%	9.2%	14.3%	11.6%
Reprisal	9.4%	10.2%	9.8%	9.7%	7.9%	9.2%
Daily/weekly rest periods	11.5%	8.8%	6.0%	7.3%	4.8%	7.3%
Deductions from wages	8.1%	7.6%	7.5%	5.2%	7.1%	7.2%
Leaves of absence	3.6%	5.3%	5.1%	6.0%	3.7%	4.5%
Minimum wage	6.6%	3.6%	3.5%	2.7%	2.2%	3.7%

Table 1.3b: Industry of Businesses that ES Complaints are Filed Against, 2010/11 to 2014/15

	Industrial Sector (based on the NAICS) ^c					Total
	Accommodation and food services	Retail trade	Service Industries Primarily private- sector ^d	Service Industries Primarily public- sector ^e	Manufacturing and primary industries ^f	
Total Amount Claimed (for all standards combined)						
Median	\$725	\$1,210	\$1,390	\$1,404	\$1,990	\$1,315
Less than \$300	18.8%	11.9%	10.2%	9.5%	5.9%	10.9%
\$300 to \$999	31.5%	23.4%	23.5%	22.5%	18.7%	23.7%
\$1,000 to \$1,999	14.0%	14.8%	16.2%	16.5%	17.4%	16.0%
\$2,000 to \$9,999	16.5%	22.7%	26.3%	25.9%	30.6%	24.9%
\$10,000 or more	2.8%	7.3%	7.5%	6.5%	11.2%	7.4%
Claim amount missing, or \$1 or less	16.4%	19.9%	16.3%	19.2%	16.1%	17.1%
Outcome of Complaint						
Settled	11.5%	11.9%	11.7%	12.1%	11.7%	11.7%
Withdrawn	13.7%	14.7%	13.7%	15.0%	12.1%	13.5%
Assessed	74.9%	73.4%	74.7%	72.9%	76.2%	74.8%
AMONG ASSESSED COMPLAINTS ONLY						
Presence of ES Violations						
No ES violation	21.7%	30.9%	29.4%	31.8%	33.5%	29.5%
One or more ES violations	78.3%	69.1%	70.6%	68.2%	66.5%	70.5%
Type of ES violations						
Monetary and non-monetary violations	1.5%	1.1%	0.9%	1.3%	0.8%	1.0%
Monetary violations only	75.8%	66.5%	68.7%	65.7%	65.1%	68.5%
Non-monetary violations only	1.0%	1.4%	1.0%	1.3%	0.6%	1.0%
Violation Rate						
Monetary violation	77.3%	67.6%	69.6%	67.0%	65.9%	69.5%
Non-monetary violation	2.5%	2.5%	1.9%	2.6%	1.4%	2.0%
AMONG VALIDATED COMPLAINTS ONLY						
Disposition						
Closed - Voluntary Compliance during Triage	11.4%	14.8%	10.6%	10.8%	10.2%	11.3%
Closed - Voluntary Compliance during Investigation	38.4%	47.0%	40.6%	42.6%	34.7%	39.6%
Compliance Ordered	50.2%	38.2%	48.8%	46.5%	55.1%	49.2%
Employment Standards Violated ^g						
Unpaid wages	55.1%	41.3%	52.4%	52.1%	48.7%	50.5%
Vacation pay/time	46.3%	39.5%	46.9%	47.5%	45.9%	45.6%
Termination pay	44.6%	50.4%	43.7%	42.4%	40.0%	43.6%
Public holidays/pay	18.2%	12.0%	13.7%	12.7%	11.9%	13.9%
Overtime pay	9.1%	7.6%	7.9%	7.3%	12.6%	9.3%
Severance pay	2.3%	7.5%	5.9%	4.5%	9.2%	6.0%
Deductions from wages	5.0%	5.9%	5.2%	2.9%	4.9%	4.9%
Minimum wage	4.2%	2.1%	2.2%	1.6%	1.3%	2.3%
Reprisal	2.0%	2.4%	2.2%	2.2%	1.7%	2.1%

Table 1.3c: Industry of Businesses that ES Complaints are Filed Against, 2010/11 to 2014/15

Industrial Sector (based on the NAICS) ^c						
	Accommodation and food services	Retail trade	Service Industries Primarily private- sector ^d	Service Industries Primarily public- sector ^e	Manufacturing and primary industries ^f	Total
Median Entitlement Amounts per Standard						
Total	\$647	\$923	\$1,136	\$118,810	\$1,544	\$1,062
Severance pay	\$2,906	\$4,983	\$5,000	\$5,000	\$7,744	\$5,785
Reprisal	\$1,811	\$2,000	\$3,362	\$4,455	\$4,548	\$2,834
Termination pay	\$510	\$900	\$1,200	\$1,143	\$1,998	\$1,045
Unpaid wages	\$489	\$549	\$768	\$852	\$962	\$707
Overtime pay	\$413	\$329	\$487	\$429	\$533	\$461
Minimum wage	\$266	\$294	\$440	\$376	\$862	\$380
Deductions from wages	\$103	\$265	\$300	\$231	\$450	\$250
Public holidays/pay	\$167	\$147	\$166	\$182	\$204	\$175
Vacation pay/time	\$78	\$150	\$200	\$186	\$206	\$157
Total Entitlement Amount						
Median	\$647	\$923	\$1,136	\$1,200	\$1,529	\$1,062
Less than \$300	27.9%	21.0%	16.8%	16.5%	11.8%	18.5%
\$300 to \$999	35.1%	31.3%	29.5%	27.6%	25.3%	29.7%
\$1,000 to \$1,999	17.0%	17.7%	17.9%	20.5%	20.9%	18.8%
\$2,000 to \$9,999	17.9%	23.9%	28.9%	29.4%	32.1%	26.7%
\$10,000 or more	2.1%	6.1%	6.8%	6.0%	9.9%	6.4%
Percentage of Original Claim Amount Awarded^h						
0 to 49%	17.1%	19.6%	17.6%	19.6%	18.9%	18.3%
50 to 99%	28.1%	29.0%	28.9%	26.6%	28.8%	28.5%
100%	15.5%	15.3%	15.2%	16.4%	15.6%	15.5%
100 to 150%	28.2%	25.5%	26.1%	26.8%	26.7%	26.7%
More than 150%	11.1%	10.6%	12.2%	10.7%	9.9%	10.9%

* Data from Statistics Canada Labour Force Survey, public-use microdata, 2010-2015

** Data from Statistics Canada CANSIM Tables: 551-0001, 551-0003, 551-0005, 552-0001

^a Includes companies where employer disposition is unknown or missing

^b Information about company size is only available for complaints submitted from 2012/13 onwards

^c Information about industry is only available for complaints submitted from 2010/11 onwards

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

^g Monetary violations only, among all validated complaints

^h Among complaints with monetary entitlements, and total claim amounts greater than \$1

Table 1.4a: Company Size of Businesses that ES Complaints are Filed Against, 2012/13 to 2014/15

	Company Size ^b						Total
	1 to 5 employees	6 to 10 employees	11 to 19 employees	20 to 49 employees	50 to 199 Employees	200 or more Employees	
% of non-unionized Ontario workers employed in each company size*	-----22.5%-----			-----77.5%-----			100%
% of Ontario companies with each employee size**	56.2%	18.7%	12.0%	8.2%	4.1%	1.0%	
% of complaints relating to each company size ^b	17.3%	19.0%	18.7%	18.5%	15.5%	11.1%	
# of complaints relating to each company size	4,037	4,437	4,366	4,335	3,629	2,595	23,399
AMONG ALL ACCEPTED COMPLAINTS							
Complainant Work Status							
Still Working	4.7%	6.1%	7.7%	8.7%	11.0%	13.7%	8.2%
Fired	23.9%	27.2%	27.8%	28.4%	31.8%	40.2%	29.1%
Laid Off	11.7%	13.3%	12.7%	14.6%	12.9%	9.2%	12.6%
Quit	32.6%	28.9%	27.3%	23.9%	20.9%	16.2%	25.7%
Other	27.1%	24.4%	24.4%	24.4%	23.3%	20.6%	24.3%
Employer Status							
In business ^a	91.2%	89.5%	88.7%	87.4%	89.1%	93.3%	89.6%
Out of business or bankrupt/insolvent	8.8%	10.5%	11.3%	12.6%	10.9%	6.7%	10.4%
Industry (based on the NAICS)^c							
Accommodation and food services	14.4%	27.8%	33.6%	27.2%	14.4%	7.6%	22.1%
Retail trade	11.2%	11.1%	10.5%	13.5%	15.2%	24.7%	13.6%
Service Industries - primarily private-sector ^d	31.2%	23.6%	20.3%	17.0%	28.5%	31.5%	24.7%
Service Industries - primarily public-sector ^e	12.7%	11.6%	11.8%	13.5%	11.7%	13.7%	12.4%
Manufacturing and primary industries ^f	30.5%	26.0%	23.8%	28.8%	30.2%	22.5%	27.1%
Claims Per Standard							
Unpaid wages	68.1%	58.6%	54.7%	48.3%	40.0%	27.0%	51.2%
Termination pay	37.1%	43.4%	46.4%	48.5%	50.1%	54.8%	46.1%
Vacation pay/time	41.2%	37.4%	34.8%	32.4%	28.9%	21.1%	33.5%
Severance pay	6.0%	7.6%	9.6%	15.1%	23.3%	30.1%	14.0%
Public holidays/pay	15.8%	14.4%	13.7%	10.8%	8.0%	6.3%	11.9%
Overtime pay	14.3%	12.6%	13.2%	12.2%	9.0%	6.2%	11.7%
Reprisal	9.0%	10.2%	8.2%	9.5%	10.9%	11.7%	9.8%
Daily/weekly rest periods	8.2%	8.8%	8.3%	8.1%	6.9%	5.8%	7.8%
Deductions from wages	8.0%	8.3%	8.5%	8.3%	6.1%	4.7%	7.6%
Leaves of absence	2.8%	3.2%	3.4%	4.5%	7.7%	9.1%	4.8%
Minimum wage	5.3%	4.4%	4.1%	2.6%	2.5%	1.4%	3.6%

Table 1.4b: Company Size of Businesses that ES Complaints are Filed Against, 2012/13 to 2014/15

	Company Size ^b						Total
	1 to 5 employees	6 to 10 employees	11 to 19 employees	20 to 49 employees	50 to 199 Employees	200 or more Employees	
Total Amount Claimed (for all standards combined)							
Median	\$1,248	\$1,173	\$1,170	\$1,425	\$1,600	\$1,808	\$1,311
Less than \$300	10.8%	12.7%	12.3%	10.4%	10.4%	9.5%	11.2%
\$300 to \$999	26.3%	26.5%	26.5%	22.5%	19.6%	17.6%	23.7%
\$1,000 to \$1,999	19.5%	17.5%	16.8%	17.1%	13.8%	10.9%	16.3%
\$2,000 to \$9,999	26.1%	25.8%	24.1%	25.4%	24.9%	23.8%	25.1%
\$10,000 or more	5.1%	4.2%	5.3%	8.8%	11.1%	12.0%	7.3%
Claim amount missing, or \$1 or less	12.2%	13.4%	15.0%	15.9%	20.1%	26.3%	16.4%
Outcome of Complaint							
Settled	13.7%	15.9%	15.1%	14.9%	15.2%	12.5%	14.7%
Withdrawn	9.3%	11.3%	13.2%	13.3%	14.5%	19.3%	13.1%
Assessed	77.0%	72.8%	71.7%	71.8%	70.2%	68.2%	72.2%
AMONG ASSESSED COMPLAINTS ONLY							
Presence of ES Violations							
No ES violation	20.3%	23.3%	24.9%	31.4%	42.5%	51.0%	30.3%
One or more ES violations	79.7%	76.7%	75.1%	68.6%	57.5%	49.0%	69.7%
Type of ES violations							
Monetary and non-monetary violations	1.8%	1.7%	1.5%	1.4%	0.5%	0.7%	1.4%
Monetary violations only	77.0%	73.6%	72.3%	65.9%	55.5%	46.0%	67.0%
Non-monetary violations only	0.9%	1.4%	1.3%	1.2%	1.5%	2.3%	1.3%
Violation Rate							
Monetary violation	78.8%	75.3%	73.8%	67.4%	56.1%	46.7%	68.3%
Non-monetary violation	2.7%	3.1%	2.7%	2.6%	2.0%	3.0%	2.7%
AMONG VALIDATED COMPLAINTS ONLY							
Disposition							
Closed - Voluntary Compliance during Triage	7.7%	11.9%	13.2%	14.0%	14.9%	20.8%	12.7%
Closed - Voluntary Compliance during Investigation	36.5%	40.0%	40.1%	39.0%	43.9%	51.0%	40.4%
Compliance Ordered	55.8%	48.1%	46.7%	47.1%	41.2%	28.3%	46.9%
Employment Standards Violated⁹							
Unpaid wages	64.4%	55.9%	51.6%	46.8%	35.0%	17.6%	49.8%
Termination pay	31.7%	40.0%	45.5%	47.8%	52.0%	61.0%	43.8%
Vacation pay/time	51.5%	46.8%	41.6%	42.0%	33.2%	20.3%	42.2%
Public holidays/pay	17.6%	16.7%	14.9%	11.8%	6.4%	5.7%	13.5%
Overtime pay	10.9%	9.4%	10.0%	8.9%	6.4%	3.5%	8.9%
Deductions from wages	4.3%	5.1%	6.6%	5.8%	4.6%	2.7%	5.1%
Severance pay	0.3%	0.7%	2.0%	3.3%	14.0%	29.1%	5.1%
Reprisal	2.6%	2.6%	2.4%	2.1%	3.5%	3.9%	2.7%
Minimum wage	2.5%	2.7%	3.2%	1.8%	1.2%	0.3%	2.2%
Hours of Work (non monetary)	1.1%	1.3%	1.1%	1.4%	0.9%	1.5%	1.2%

Table 1.4c: Company Size of Businesses that ES Complaints are Filed Against, 2012/13 to 2014/15

		Company Size ^b					Total	
		1 to 5 employees	6 to 10 employees	11 to 19 employees	20 to 49 employees	50 to 199 Employees		200 or more Employees
Median Entitlement Amounts per Standard								
Total		\$1,048	\$928	\$990	\$1,135	\$1,202	\$1,275	\$1,048
Reprisal		\$2,506	\$2,115	\$3,605	\$2,712	\$1,794	\$2,725	\$2,510
Severance pay		\$808	\$3,157	\$4,112	\$8,102	\$5,653	\$5,740	\$5,497
Termination pay		\$815	\$750	\$944	\$1,092	\$1,248	\$1,680	\$980
Unpaid wages		\$849	\$670	\$677	\$701	\$711	\$297	\$708
Minimum wage		\$678	\$228	\$1,014	\$294	\$366	\$484	\$437
Overtime pay		\$419	\$359	\$407	\$489	\$776	\$676	\$430
Deductions from wages		\$313	\$220	\$273	\$269	\$237	\$118	\$252
Public holidays/pay		\$184	\$165	\$203	\$206	\$181	\$123	\$180
Vacation pay/time		\$132	\$140	\$120	\$209	\$204	\$153	\$152
Total Entitlement Amount								
Median		\$1,048	\$928	\$990	\$1,135	\$1,202	\$1,275	\$1,048
Less than \$300		16.3%	20.1%	19.7%	18.1%	18.8%	19.2%	18.6%
\$300 to \$999		32.1%	32.2%	30.5%	28.7%	26.7%	24.8%	30.0%
\$1,000 to \$1,999		22.1%	20.5%	19.7%	18.4%	16.0%	14.4%	19.3%
\$2,000 to \$9,999		26.3%	24.6%	26.2%	28.6%	26.5%	23.7%	26.2%
\$10,000 or more		3.1%	2.6%	3.8%	6.2%	12.1%	17.9%	5.9%
Percentage of Original Claim Amount Awarded ^h								
0 to 49%		16.4%	19.6%	20.5%	22.0%	23.4%	20.3%	20.0%
50 to 99%		29.1%	27.7%	27.9%	30.9%	30.7%	32.5%	29.3%
100%		15.7%	13.3%	12.0%	13.7%	10.8%	12.1%	13.3%
100 to 150%		28.9%	28.5%	27.3%	24.1%	24.8%	23.3%	26.7%
More than 150%		10.0%	10.8%	12.3%	9.2%	10.3%	11.8%	10.6%

* Data from Statistics Canada Labour Force Survey, public-use microdata, 2011-2015

** Data from Statistics Canada CANSIM Tables: 551-0001, 551-0003, 551-0005, 552-0001. Company size is grouped slightly differently: 1-4 employees, 5-9 employees, 10-19 employees, 20-49 employees, 50-199 employees, 200 or more employees

^a Includes companies where employer disposition is unknown or missing

^b Information about company size is only available for complaints submitted from 2012/13 onwards

^c Information about industry is only available for complaints submitted from 2010/11 onwards

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

^g Monetary violations only, among all validated complaints

^h Among complaints with monetary entitlements, and total claim amounts greater than \$1

Table 2.1a: Characteristics of Settled ES Complaints, Facilitated and Non-Facilitated, 2008/09 to 2014/15

	Claim Outcomes			Total	Settlement Types		Total
	Assessed	Withdrawn	Settled		Facilitated	Non-Facilitated	
% of complaints	69.9%	21.4%	8.7%	100.0%	17.8%	82.2%	100.0%
# of complaints	84,471	25,869	10,553	120,893	1,879	8,674	10,553
AMONG ALL ACCEPTED COMPLAINTS							
Complainant Work Status							
Still Working	6.7%	14.1%	10.2%	8.6%	5.8%	11.1%	10.2%
Fired	28.4%	24.3%	30.9%	27.8%	37.3%	29.5%	30.9%
Laid Off	15.6%	11.9%	13.9%	14.6%	12.4%	14.3%	13.9%
Quit	22.7%	29.6%	23.4%	24.2%	23.1%	23.5%	23.4%
Other	26.6%	20.1%	21.6%	24.8%	21.4%	21.6%	21.6%
Employer Status							
In business ^a	83.1%	95.0%	96.7%	86.9%	97.7%	96.5%	96.7%
Out of business or bankrupt/insolvent	16.9%	5.0%	3.3%	13.1%	2.3%	3.5%	3.3%
Company Size^b							
1 to 5 employees	18.4%	12.3%	16.0%	17.3%	18.8%	15.5%	16.0%
6 to 10 employees	19.1%	16.4%	20.5%	19.0%	23.2%	20.0%	20.5%
11 to 19 employees	18.5%	18.8%	19.2%	18.7%	17.2%	19.5%	19.2%
20 to 49 employees	18.4%	18.8%	18.8%	18.5%	15.3%	19.5%	18.8%
50 to 199 employees	15.1%	17.3%	16.1%	15.5%	16.6%	16.0%	16.1%
200 or more employees	10.5%	16.4%	9.4%	11.1%	8.9%	9.5%	9.4%
Industry (based on the NAICS)^c							
Accommodation and food services	20.7%	20.9%	20.2%	20.7%	18.2%	20.6%	20.2%
Retail trade	13.5%	14.9%	14.0%	13.8%	16.4%	13.5%	14.0%
Service Industries - primarily private-sector ^d	25.4%	25.7%	25.3%	25.4%	24.9%	25.4%	25.3%
Service Industries - primarily public-sector ^e	11.8%	13.4%	12.6%	12.1%	13.0%	12.5%	12.6%
Manufacturing and primary industries ^f	28.6%	25.1%	27.9%	28.0%	27.4%	28.0%	27.9%

Table 2.1b: Characteristics of Settled ES Complaints, Facilitated and Non-Facilitated, 2008/09 to 2014/15

		Claim Outcomes			Total	Settlement Types		Total
		Assessed	Withdrawn	Settled		Facilitated	Non-Facilitated	
Claims per standard								
	Unpaid wages	47.8%	50.3%	44.1%	48.0%	45.1%	43.9%	44.1%
	Termination pay	48.5%	28.4%	46.4%	44.0%	54.1%	44.7%	46.4%
	Vacation pay/time	37.5%	31.6%	33.9%	35.9%	34.8%	33.7%	33.9%
	Severance pay	16.5%	9.2%	14.8%	14.8%	17.9%	14.2%	14.8%
	Public holidays/pay	10.9%	8.2%	15.0%	10.7%	13.2%	15.3%	15.0%
	Overtime pay	10.2%	7.4%	17.2%	10.2%	15.5%	17.6%	17.2%
	Reprisal	8.4%	5.6%	12.5%	8.2%	11.4%	12.7%	12.5%
	Daily/weekly rest periods	6.3%	6.6%	9.1%	6.6%	8.5%	9.2%	9.1%
	Deductions from wages	6.6%	5.6%	8.3%	6.5%	9.0%	8.2%	8.3%
	Leaves of absence	4.2%	3.5%	7.7%	4.3%	7.5%	7.7%	7.7%
	Minimum wage	3.3%	2.5%	4.8%	3.3%	5.6%	4.6%	4.8%
Claim amounts								
	Median (excluding missing)	\$880	\$500	\$1,054	\$800	\$1,400	\$1,000	\$772
	Less than \$300	10.6%	15.9%	8.7%	11.6%	6.1%	9.3%	8.7%
	\$300 to \$999	22.4%	25.6%	19.8%	22.9%	16.8%	20.4%	19.8%
	\$1,000 to \$1,999	15.0%	13.5%	15.9%	14.8%	16.3%	15.8%	15.9%
	\$2,000 to \$9,999	23.9%	16.6%	28.2%	22.7%	31.6%	27.4%	28.2%
	\$10,000 or more	8.3%	4.8%	7.7%	7.5%	9.1%	7.4%	7.7%
	Claim amount missing, or \$1 or less	19.7%	23.6%	19.7%	20.6%	20.0%	19.7%	19.7%

^a Includes companies where employer disposition is unknown or missing

^b Information about company size is only available for complaints submitted from 2012/13 onwards

^c Information about industry is only available for complaints submitted from 2010/11 onwards

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, warehousing

Table 3.1a: Characteristics of ES Inspections, 2011/12 to 2014/15

	Fiscal Year when Investigation Occurred				Total
	2011/12	2012/13	2013/14	2014/15	
% of inspections in each year	14.6%	33.6%	27.1%	24.7%	100.0%
# of inspections in each year	1,026	2,350	1,897	1,731	7,004
Presence of ES Violations					
No ES violation	241	531	480	612	1,864
One or more ES violations	785	1,819	1,417	1,119	5,140
Presence of ES Violations (% of Violations)					
No violation	23.5%	22.6%	25.3%	35.4%	26.6%
Any violation	76.5%	77.4%	74.7%	64.6%	73.4%
Type of ES violations					
Monetary and non-monetary violations	30.2%	30.6%	31.5%	22.5%	28.8%
Monetary violations only	10.9%	10.6%	9.8%	8.1%	9.8%
Non-monetary violations only	27.3%	29.2%	26.1%	25.2%	27.1%
Violation reported but no information on type	8.1%	7.0%	7.3%	8.8%	7.7%
Violation Rate					
Monetary violation	41.1%	41.2%	41.2%	30.6%	38.6%
Non-monetary violation	57.5%	59.9%	57.6%	47.8%	55.9%
Inspection Type					
Expanded investigation	22.7%	10.6%	17.1%	30.0%	18.9%
Targeted inspection (includes THAs)	44.9%	64.4%	49.2%	47.5%	53.2%
Regular or other type of inspection	32.4%	25.0%	33.7%	22.5%	27.8%
Company Size					
1 to 5 employees	29.7%	29.5%	30.0%	28.6%	29.5%
6 to 10 employees	23.8%	22.7%	20.6%	22.7%	22.3%
11 to 19 employees	17.1%	15.2%	18.6%	17.6%	17.0%
20 to 49 employees	17.1%	17.7%	15.8%	16.0%	16.7%
50 or more employees	12.2%	14.9%	15.0%	15.1%	14.6%
Industry (based on the NAICS)					
Accommodation and food services	24.1%	36.4%	34.2%	32.0%	32.9%
Retail trade	9.7%	29.4%	19.9%	22.5%	22.2%
Service Industries - primarily private-sector ^d	29.7%	17.6%	15.2%	22.6%	20.0%
Service Industries - primarily public-sector ^e	20.4%	7.5%	14.4%	10.9%	12.1%
Manufacturing and primary industries ^f	16.1%	9.2%	16.3%	12.0%	12.8%

Table 3.1b: Characteristics of ES Inspections, 2011/12 to 2014/15

	Fiscal Year when Investigation Occurred				
	2011/12	2012/13	2013/14	2014/15	Total
AMONG INSPECTIONS WITH VIOLATIONS					
Entitlements by Employment Standard					
Monetary Entitlements					
Public holidays/pay	49.3%	45.0%	47.4%	43.7%	46.1%
Overtime pay	21.7%	20.9%	21.1%	18.2%	20.5%
Vacation pay/time	14.8%	16.0%	13.6%	15.7%	15.1%
Minimum wage	3.4%	3.6%	4.0%	3.5%	3.7%
Unpaid wages	2.3%	2.2%	3.8%	2.8%	2.8%
Non-Monetary Entitlements					
Record keeping	37.7%	40.5%	36.2%	33.3%	37.4%
Excess daily/weekly hours of work	42.0%	34.6%	35.0%	36.7%	36.3%
Vacation pay - Written agreement	33.3%	34.3%	32.9%	33.5%	33.6%
Wage statements	20.8%	18.8%	20.9%	18.3%	19.6%
Public holidays/pay	16.0%	16.7%	18.6%	17.8%	17.3%
Poster/postering	14.0%	16.0%	15.6%	14.0%	15.1%
Vacation pay/time	14.8%	16.0%	13.6%	15.7%	15.1%
Deductions from wages	5.4%	8.3%	7.1%	6.9%	7.2%
Eating periods	6.3%	7.1%	7.0%	7.5%	7.1%
Daily/weekly rest periods	6.4%	6.2%	5.1%	6.9%	6.1%
Total entitlement amount per business					
Median	\$659	\$769	\$747	\$730	\$731
Less than \$300	30.6%	28.3%	29.8%	30.2%	29.5%
\$300 to \$999	27.7%	28.1%	26.2%	25.5%	27.0%
\$1,000 to \$1,999	16.4%	17.5%	15.9%	16.6%	16.7%
\$2,000 to \$9,999	18.5%	20.9%	23.0%	23.4%	21.6%
\$10,000 or more	6.9%	5.3%	5.1%	4.3%	5.3%
Disposition					
Voluntary Compliance	89.9%	85.9%	92.4%	88.8%	88.9%
Compliance Ordered	10.1%	14.1%	7.6%	11.2%	11.1%

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

Table 3.2a: Outcomes of ES Inspections, by Type of Inspection, 2011/12 to 2014/15

	Type of Inspection			Total
	Expanded Investigation	Targeted Inspection (includes THAs)	Regular or Other Type of Inspection	
% of each type of inspection	18.9%	53.2%	27.8%	100%
# of each type of inspection	1,327	3,728	1,948	7,003
Presence of ES Violations				
No ES violation	18.0%	28.0%	29.8%	26.6%
One or more ES violations	82.0%	72.0%	70.2%	73.4%
Type of ES violations				
Monetary and non-monetary violations	32.9%	27.8%	27.9%	28.8%
Monetary violations only	13.3%	8.4%	10.0%	9.8%
Non-monetary violations only	27.4%	28.0%	25.4%	27.1%
Violation reported but no information on type	8.5%	7.8%	6.9%	7.7%
Violation Rate				
Monetary violation	46.1%	36.2%	37.9%	38.6%
Non-monetary violation	60.2%	55.8%	53.3%	55.9%
Company Size				
1 to 5 employees	16.6%	33.1%	30.0%	29.5%
6 to 10 employees	23.9%	21.9%	21.9%	22.3%
11 to 19 employees	22.6%	15.1%	17.2%	17.0%
20 to 49 employees	18.2%	16.0%	17.1%	16.7%
50 or more employees	18.8%	13.8%	13.7%	14.6%
Industry (based on the NAICS)				
Accommodation and food services	33.9%	32.9%	32.2%	32.9%
Retail trade	14.2%	23.6%	25.1%	22.2%
Service Industries - primarily private-sector ^d	19.6%	22.2%	15.8%	20.0%
Service Industries - primarily public-sector ^e	10.1%	14.2%	9.2%	12.1%
Manufacturing and primary industries ^f	22.1%	7.0%	17.7%	12.8%

Table 3.2b: Outcomes of ES Inspections, by Type of Inspection, 2011/12 to 2014/15

		Type of Inspection			
		Expanded Investigation	Targeted Inspection (includes THAs)	Regular or Other Type of Inspection	Total
AMONG INSPECTIONS WITH VIOLATIONS					
Entitlements by Employment Standard					
Monetary Entitlements					
	Public holidays/pay	48.7%	44.3%	47.3%	46.1%
	Overtime pay	24.9%	19.2%	19.5%	20.5%
	Vacation pay/time	7.7%	6.0%	8.4%	7.0%
	Minimum wage	3.3%	4.0%	3.3%	3.7%
	Unpaid wages	2.9%	2.3%	3.6%	2.8%
Non-Monetary Entitlements					
	Record keeping	34.6%	38.3%	37.8%	37.4%
	Daily/weekly rest periods	39.4%	35.1%	36.3%	36.3%
	Vacation pay - Written agreement	31.1%	34.5%	33.8%	33.6%
	Public holidays/pay	17.7%	17.0%	17.7%	17.3%
	Poster/postering	14.2%	16.2%	13.9%	15.1%
	Vacation pay/time	14.5%	14.3%	17.2%	15.1%
	Deductions from wages	7.1%	7.1%	7.5%	7.2%
	Excess daily/weekly hours of work	6.9%	6.4%	8.4%	7.1%
	Eating periods	6.9%	6.4%	8.4%	7.1%
	Wage statements	7.7%	5.6%	5.8%	6.1%
Total entitlement amount per business					
	Median	\$962	\$686	\$733	\$731
	Less than \$300	26.0%	31.1%	29.4%	29.5%
	\$300 to \$999	24.3%	27.3%	28.6%	27.0%
	\$1,000 to \$1,999	16.3%	17.3%	15.7%	16.7%
	\$2,000 to \$9,999	26.0%	20.3%	20.3%	21.6%
	\$10,000 or more	7.4%	4.0%	6.0%	5.3%
Disposition					
	Voluntary Compliance	91.2%	88.2%	88.7%	89.0%
	Compliance Ordered	8.8%	11.8%	11.3%	11.0%

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

Table 3.3a: Outcomes of ES Inspections, by Industry, 2011/12 to 2014/15

	Industrial Sector (based on the NAICS)					Total
	Accommodation and food services	Retail trade	Service Industries Primarily private- sector ^d	Service Industries Primarily public- sector ^e	Manufacturing and primary industries ^f	
% of Ontario workers employed in each industry*	9.0%	14.7%	27.3%	17.1%	31.9%	100%
% of Ontario businesses in each industry**	6.6%	12.8%	38.0%	13.5%	29.0%	
# of Ontario businesses in each industry**	108,039	208,988	618,367	219,222	472,654	
% of inspections in each industry	32.9%	22.2%	20.0%	12.1%	12.8%	100%
# of inspections in each industry	2,275	1,537	1,380	834	886	6,912
Presence of ES Violations						
No ES violation	21.9%	27.7%	28.1%	31.2%	28.6%	26.4%
One or more ES violations	78.1%	72.3%	71.9%	68.8%	71.4%	73.6%
Type of ES violations						
Monetary and non-monetary violations	33.2%	27.9%	27.1%	28.2%	23.4%	28.9%
Monetary violations only	10.9%	9.3%	8.8%	11.3%	8.1%	9.8%
Non-monetary violations only	26.1%	27.0%	29.7%	21.8%	30.5%	27.1%
Violation reported but no information on type	7.9%	8.1%	6.2%	7.6%	9.5%	7.8%
Violation Rate						
Monetary violation	44.1%	37.2%	35.9%	39.6%	31.5%	38.8%
Non-monetary violation	59.3%	54.9%	56.8%	50.0%	53.9%	56.0%
Inspection Type						
Expanded investigation	19.6%	12.1%	18.6%	15.9%	32.7%	19.0%
Targeted investigation (includes THAs)	53.4%	56.7%	59.4%	62.9%	29.1%	53.4%
Regular or Other Type of Investigation	27.0%	31.2%	22.0%	21.2%	38.1%	27.7%
Company Size						
1 to 5 employees	26.9%	35.4%	36.9%	23.8%	19.9%	29.4%
6 to 10 employees	26.0%	23.5%	19.2%	18.9%	18.7%	22.3%
11 to 19 employees	20.6%	13.5%	12.9%	17.8%	18.8%	17.0%
20 to 49 employees	18.4%	15.1%	11.3%	18.5%	20.9%	16.6%
50 or more employees	8.1%	12.5%	19.7%	21.1%	21.6%	14.6%

Table 3.3b: Outcomes of ES Inspections, by Industry, 2011/12 to 2014/15

	Industrial Sector (based on the NAICS)					Total
	Accommodation and food services	Retail trade	Service Industries Primarily private- sector ^d	Service Industries Primarily public- sector ^e	Manufacturing and primary industries ^f	
AMONG INSPECTIONS WITH VIOLATIONS						
Entitlements by Employment Standard						
Monetary Entitlements						
Public holidays/pay	51.3%	45.7%	41.6%	50.9%	35.9%	46.3%
Overtime pay	19.2%	22.5%	17.5%	22.3%	25.0%	20.6%
Vacation pay/time	6.9%	6.0%	7.8%	7.8%	7.1%	7.0%
Minimum wage	5.7%	2.4%	2.8%	2.9%	2.4%	3.7%
Unpaid wages	3.7%	2.1%	2.2%	3.7%	1.3%	2.8%
Non-Monetary Entitlements						
Record keeping	40.7%	39.9%	38.2%	26.0%	33.9%	37.6%
Excess daily/weekly hours of work	34.9%	38.6%	35.5%	38.4%	36.8%	36.4%
Vacation pay - Written agreement	38.1%	32.8%	28.5%	37.0%	28.6%	33.8%
Wage statements	19.4%	20.2%	23.6%	16.2%	16.4%	19.7%
Public holidays/pay	16.8%	18.8%	16.4%	18.8%	15.8%	17.3%
Poster/postering	17.6%	12.5%	17.0%	11.8%	12.9%	15.2%
Vacation pay/time	15.1%	18.9%	14.2%	9.1%	15.3%	15.1%
Deductions from wages	6.9%	6.5%	7.5%	5.7%	10.0%	7.2%
Eating periods	7.8%	6.1%	5.7%	9.4%	6.6%	7.1%
Daily/weekly rest periods	6.0%	5.7%	5.3%	6.1%	8.2%	6.1%
Total entitlement amount per business						
Median	\$806	\$654	\$648	\$705	\$954	\$731
Less than \$300	27.6%	31.8%	31.9%	31.6%	25.1%	29.5%
\$300 to \$999	27.6%	26.0%	27.0%	26.7%	26.2%	26.9%
\$1,000 to \$1,999	18.3%	15.9%	12.7%	21.0%	14.0%	16.6%
\$2,000 to \$9,999	23.7%	20.1%	21.4%	16.1%	24.3%	21.6%
\$10,000 or more	2.8%	6.1%	7.1%	4.6%	10.4%	5.3%
Disposition						
Voluntary Compliance	89.9%	88.3%	87.7%	91.8%	87.4%	89.0%
Compliance Ordered	10.1%	11.7%	12.3%	8.2%	12.6%	11.0%

* Data from Statistics Canada Labour Force Survey, public-use microdata, 2010-2015

** Data from Statistics Canada CANSIM Tables: 551-0001, 551-0003, 551-0005, 552-0001

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

Table 3.4a: Outcomes of ES Inspections, by Company Size, 2011/12 to 2014/15

	Company Size					Total
	1 to 5 employees	6 to 10 employees	11 to 19 employees	20 to 49 employees	50 or more employees	
% of Ontario workers employed in each company size*		-----22.7%-----			-----77.3%-----	100%
% of Ontario companies based on employee size**	56.2%	18.7%	12.0%	8.2%	4.1%	100%
% of companies of each size inspected	29.5%	22.3%	17.0%	16.7%	14.6%	100%
# of companies of each size inspected	1,751	1,323	1,008	992	868	5,942
Presence of ES Violations						
No ES violation	30.0%	22.1%	21.5%	25.3%	32.3%	26.4%
One or more ES violations	70.0%	77.9%	78.5%	74.7%	67.7%	73.6%
Type of ES violations						
Monetary and non-monetary violations	26.0%	33.3%	29.7%	33.6%	23.3%	29.1%
Monetary violations only	7.5%	9.7%	13.1%	10.2%	8.9%	9.6%
Non-monetary violations only	29.2%	27.1%	29.3%	24.6%	28.3%	27.8%
Violation reported but no information on type	7.3%	7.9%	6.4%	6.4%	7.3%	7.1%
Violation Rate						
Monetary violation	33.6%	42.9%	42.8%	43.8%	32.1%	38.7%
Non-monetary violation	55.2%	60.3%	58.9%	58.2%	51.6%	57.0%
Inspection Type						
Expanded investigation	9.4%	18.0%	22.3%	18.2%	21.5%	16.8%
Targeted investigation (includes THAs)	61.4%	53.7%	48.6%	52.3%	51.5%	54.6%
Regular or Other Type of Investigation	29.2%	28.3%	29.1%	29.4%	27.0%	28.7%
Industry (based on the NAICS)						
Accommodation and food services	30.6%	38.8%	40.5%	36.9%	18.5%	33.4%
Retail trade	27.3%	23.8%	18.0%	20.5%	19.3%	22.7%
Service Industries - primarily private-sector ^d	23.6%	16.2%	14.3%	12.8%	25.5%	18.9%
Service Industries - primarily public-sector ^e	9.8%	10.3%	12.7%	13.5%	17.6%	12.1%
Manufacturing and primary industries ^f	8.7%	10.8%	14.3%	16.3%	19.1%	12.9%

Table 3.4b: Outcomes of ES Inspections, by Company Size, 2011/12 to 2014/15

		Company Size					
		1 to 5 employees	6 to 10 employees	11 to 19 employees	20 to 49 employees	50 or more employees	Total
AMONG INSPECTIONS WITH VIOLATIONS							
Entitlements by Employment Standard							
Monetary Entitlements							
	Public holidays/pay	45.0%	50.5%	47.4%	44.1%	37.9%	45.6%
	Overtime pay	10.7%	20.1%	23.8%	32.7%	21.0%	20.5%
	Vacation pay	9.0%	6.6%	6.3%	4.7%	4.6%	6.6%
	Minimum wage	4.7%	4.4%	2.5%	3.4%	2.7%	3.7%
	Unpaid wages	2.5%	2.9%	2.9%	2.2%	2.9%	2.7%
Non-Monetary Entitlements							
	Record keeping	46.9%	41.6%	35.7%	32.7%	27.8%	38.6%
	Excess daily/weekly hours of work	21.3%	33.8%	42.8%	48.4%	48.2%	36.4%
	Vacation pay - Written agreement	36.9%	36.7%	35.7%	33.3%	22.7%	34.1%
	Wage statements	36.0%	21.2%	12.9%	9.7%	8.4%	20.1%
	Public holidays/pay	14.3%	19.8%	18.9%	15.8%	16.8%	17.0%
	Poster/postering	23.1%	14.8%	12.4%	12.2%	8.0%	15.3%
	Vacation pay/time	15.0%	19.2%	14.3%	11.8%	14.9%	15.3%
	Deductions from wages	3.2%	5.7%	8.5%	10.0%	12.8%	7.2%
	Eating periods	3.6%	9.3%	7.0%	8.0%	10.5%	7.2%
	Daily/weekly rest periods	4.3%	5.0%	5.5%	8.1%	9.0%	5.9%
Total entitlement amount per business							
	Median	\$403	\$666	\$810	\$1,247	\$1,797	\$711
	Less than \$300	43.2%	29.4%	29.5%	23.0%	17.6%	30.3%
	\$300 to \$999	30.4%	31.2%	26.0%	23.7%	20.1%	27.3%
	\$1,000 to \$1,999	14.1%	21.3%	13.9%	15.2%	14.3%	16.1%
	\$2,000 to \$9,999	11.4%	16.2%	27.4%	28.1%	31.5%	21.2%
	\$10,000 or more	0.9%	1.9%	3.2%	9.9%	16.5%	5.2%
Disposition							
	Voluntary Compliance	88.3%	90.4%	89.6%	90.4%	87.9%	89.4%
	Compliance Ordered	11.7%	9.6%	10.4%	9.6%	12.1%	10.6%

* Data from Statistics Canada Labour Force Survey, public-use microdata, 2011-2015

** Data from Statistics Canada CANSIM Tables: 551-0001, 551-0003, 551-0005, 552-0001. Company size is grouped slightly differently: 1-4 employees, 5-9 employees, 10-19 employees, 20-49 employees, 50-199 employees, 200 or more employees

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

Table 4.1: The Use of Compliance and Deterrence Tools as a Result of Complaints, 2009/10 to 2014/15

	Fiscal Year when Complaint was Submitted						Total
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	
# of complaints with any violation	9,957	8,702	8,133	6,767	6,643	5,650	45,852
Use of Compliance Orders							
# of complaints with a Compliance Order issued	52	73	52	46	120	74	417
% of complaints with a violation where a Compliance Order was issued	0.5%	0.8%	0.6%	0.7%	1.8%	1.3%	0.9%
Use of Notices of Contravention (NOC)							
# of complaints with at least one Notice of Contravention Issued	79	69	66	59	61	58	392
Total # of Notice of Contravention issued	84	82	75	63	80	65	449
% of complaints with a violation where a Notice of Contravention was issued	0.8%	0.8%	0.8%	0.9%	0.9%	1.0%	0.9%
Total amount of Notice of Contravention fines, per complaint							
\$250	75.9%	78.3%	78.8%	69.5%	67.2%	77.6%	74.7%
More than \$250	24.1%	21.7%	21.2%	30.5%	32.8%	22.4%	25.4%
AMONG COMPLAINTS WITH MONETARY VIOLATIONS THAT REQUIRED THE USE OF A COMPLIANCE TOOL							
Among complaints with monetary violations	9,878	8,613	8,040	6,675	6,516	5,541	45,263
# of complaints with monetary violations where employers voluntarily comply	4,671	4,800	4,035	3,500	3,347	2,788	23,141
# complaints with monetary violations where employers did not voluntarily comply	5,207	3,813	4,005	3,175	3,169	2,753	22,122
Use of Orders to Pay Wages							
# with only an employer Order to Pay Wages	2,382	2,155	2,075	1,863	1,838	1,806	12,119
# with a Directors Order to Pay Wages	648	616	614	674	621	384	3,557
# with a Related Employer Order to Pay Wages	3	40	24	78	38	33	216
% with only an employer Order to Pay Wages	45.7%	56.5%	51.8%	58.7%	58.0%	65.6%	54.8%
% with a Directors Order to Pay Wages	12.4%	16.2%	15.3%	21.2%	19.6%	13.9%	16.1%
% with a Related Employer Order to Pay Wages	0.1%	1.0%	0.6%	2.5%	1.2%	1.2%	1.0%
# with any type of Order to Pay Wages	3,032	2,808	2,709	2,563	2,483	2,217	15,812
% with any type of Order to Pay Wages	58.2%	73.6%	67.6%	80.7%	78.4%	80.5%	71.5%
Use of Orders to Compensate/Reinstate							
# with any type of Order to Compensate/Reinstate	89	122	97	109	141	115	673
# where reinstatement was required	6	5	5	1	6	--	23
% with any type of Order to Compensate/Reinstate	1.7%	3.2%	2.4%	3.4%	4.4%	4.2%	3.0%

Table 4.2: The Use of Compliance and Deterrence Tools as a Result of Inspections, 2012/13 to 2014/15

	Fiscal Year of Inspection			Total
	2012/13	2013/14	2014/15	
# of inspections with any violation	1,819	1,417	1,119	4,355
Use of Compliance Orders				
# of inspections with a Compliance Order issued	1,440	1,045	904	3,389
% of inspections with a violation where a Compliance Order was issued	79.2%	73.7%	80.8%	77.8%
Use of Notices of Contravention (NOC)				
# of complaints with at least one Notice of Contravention Issued	27	20	31	78
Total # of Notice of Contravention issued	38	21	34	93
% of complaints with a violation where a Notice of Contravention was issued	1.5%	1.4%	2.8%	1.8%
Total amount of Notice of Contravention fines, per complaint				
\$250	74.1%	75.0%	83.3%	77.9%
More than \$250	25.0%	16.7%	21.6%	22.1%
AMONG INSPECTIONS WITH MONETARY VIOLATIONS THAT REQUIRED THE USE OF A COMPLIANCE TOOL				
# of inspections with monetary violations	968	782	530	2,280
# of inspections with monetary violations where employers voluntarily comply	946	764	523	2,233
# of inspections with monetary violations that required the use of a compliance tool	22	18	7	47
Use of Orders to Pay Wages				
# with any type of Order to Pay Wages	11	11	4	26
% with any type of Order to Pay Wages	50.0%	61.1%	57.1%	55.3%

Table 4.3: Recovery of Notice of Contravention Fines

Among Complaints	Fiscal Year when Complaint was Submitted						Total
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	
# with any Notice of Contravention issued	79	69	66	59	61	58	392
Outcome of complaints with Notices of Contravention							
% with Notices of Contravention satisfied	50.6%	68.1%	50.0%	49.2%	44.3%	41.4%	51.0%
% with Notices of Contravention not satisfied	49.4%	31.9%	50.0%	50.8%	55.7%	58.6%	49.0%
% of complaints with Notices of Contravention sent to collections	48.1%	52.2%	42.4%	66.1%	59.0%	58.6%	53.8%
% of those sent to collections satisfied	21.1%	50.0%	33.3%	30.8%	19.4%	11.8%	27.6%
% of those sent to collections not satisfied*	78.9%	50.0%	66.7%	69.2%	80.6%	88.2%	72.4%
Total fines originally assessed**	\$27,295	\$24,000	\$22,000	\$25,500	\$24,250	\$19,750	\$142,795
Total fines recovered	\$13,910	\$14,054	\$11,018	\$13,665	\$9,525	\$6,803	\$68,976
% of fines recovered	51.0%	58.6%	50.1%	53.6%	39.3%	34.4%	48.3%

Among Inspections	Fiscal Year of Inspection			Total
	2012/13	2013/14	2014/15	
# with any Notice of Contravention issued	27	20	31	78
Outcome of inspections with Notices of Contravention				
% with Notices of Contravention satisfied	55.6%	90.0%	64.5%	67.9%
% with Notices of Contravention not satisfied	44.4%	10.0%	35.5%	32.1%
% of inspections with Notices of Contravention sent to collections	14.8%	10.0%	6.5%	10.3%
% of those sent to collections satisfied	25.0%	50.0%	--	25.0%
% of those sent to collections not satisfied*	75.0%	50.0%	100.0%	75.0%
Total fines originally assessed**	\$18,000	\$22,500	\$15,000	\$55,500
Total fines recovered	\$9,254	\$13,750	\$9,750	\$32,754
% of fines recovered	51.4%	61.1%	65.0%	59.0%

* Excluding complaints/inspections that are under OLRB review

** Does not account for changes to assessments as a result of OLRB reviews

Table 4.4: The Use of Deterrence Tools Under the *Provincial Offences Act*, 2008/09 to 2014/15*

	Fiscal Year of Conviction Date							Average
	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	
Part I Tickets Issued								
# of files/businesses	294	257	176	386	276	275	275	277
# of charges/tickets	337	280	207	445	318	326	340	322
Average fine per charge/ticket	\$356	\$353	\$356	\$359	\$356	\$357	\$356	\$356
Average fine per file/businesses	\$408	\$384	\$418	\$413	\$410	\$424	\$441	\$414
Total fines for all charges/tickets	\$119,900	\$98,735	\$73,595	\$159,610	\$113,295	\$116,525	\$121,145	\$114,686
# of files/businesses that are contested**	20	18	14	17	28	not avail.	not avail.	--
Part III Offense Convictions								
# of files/businesses	26	14	5	6	18	15	8	13
# of charges	104	44	14	22	48	42	18	42
Average fine per charge	\$16,007	\$2,484	\$1,949	\$8,205	\$9,490	\$6,982	\$4,844	\$7,137
Average fine per file/business	\$64,029	\$7,806	\$5,457	\$30,083	\$25,306	\$19,549	\$10,899	\$23,304
Total fines for all convictions	\$1,664,755	\$109,290	\$27,284	\$180,500	\$455,500	\$293,235	\$87,191	\$402,536
# of files/businesses with jail sentence	1	0	0	0	1	1	0	--
# of files/businesses that are contested**	21	12	6	4	9	not avail.	not avail.	--

* Information about the number of Part I and Part III convictions and their associated fines are compiled from information published in the Ministry of Labour's online 'Convictions Archive' collected across many years: <http://www.labour.gov.on.ca/english/es/pubs/enforcement/archive.php>. Information about the number of contested convictions are drawn from ESA Prosecution/Administrative Tribunal Litigation Reports provided by the Ministry of Labour.

** Contested files are grouped based on the fiscal year of the file disposition date, which may differ from the fiscal year of the conviction.

Table 5.1: Prevalence of OLRB Reviews for Complaints, Inspections and Notices of Contravention, 2011/12 to 2014/15

FOR COMPLAINTS	Fiscal Year when Complaint was Submitted				Total
	2011/12	2012/13	2013/14	2014/15	
Total number of assessed complaints	11,503	9,963	9,562	8,479	39,507
Number of assessed complaints with an OLRB review*	877	800	707	663	3,047
Total number of reviews relating to assessed complaints**	987	888	798	728	3,401
% of assessed complaints with an OLRB review	7.6%	8.0%	7.4%	7.8%	7.7%
Total number of complaints with any monetary order	2,776	2,637	2,542	2,263	10,218
Number of complaints with any monetary order with a review	540	516	471	434	1,961
% complaints with any monetary order with a review	19.5%	19.6%	18.5%	19.2%	19.2%
Total number of complaints with a Directors Order to Pay Wages	614	674	621	384	2,293
Number of complaints with a review of a Directors Order to Pay Wages	54	81	47	13	195
% of complaints with a review of a Directors Order to Pay Wages	8.8%	12.0%	7.6%	3.4%	8.5%
Total number of complaints denied	3,370	3,196	2,919	2,829	12,314
Number of denied complaints with a review	234	223	175	184	816
% of denied complaints with a review	6.9%	7.0%	6.0%	6.5%	6.6%

FOR INSPECTIONS	Fiscal Year of Inspection			Total
	2012/13	2013/14	2014/15	
Total number of inspections where any order was issued	2,350	1,897	1,731	7,004
Number of inspections with a review of an order	7	12	1	24
Total number of reviews relating to inspections	30	18	3	51
% of inspections with a review of an order	0.3%	0.6%	0.1%	0.3%
Total number of inspections where a monetary order was issued	14	13	6	40
Number of inspections where a monetary order was issued with a review	4	6	1	15
% of inspections where a monetary order was issued with a review	28.6%	46.2%	16.7%	37.5%

FOR NOTICES OF CONTRAVENTION	Year of Complaint/Inspection which led to NOC				Total
	2011/12	2012/13	2013/14	2014/15	
# complaints with a Notice of Contravention issued	66	59	61	58	244
# of complaints with a Notice of Contravention reviewed	14	6	5	--	25
% of complaints with a Notice of Contravention reviewed	21.2%	10.2%	8.2%	--	10.2%
# inspections with a Notice of Contravention issued	<i>nr</i>	27	20	31	78
# of inspections with a Notice of Contravention reviewed	<i>nr</i>	2	1	--	3
% of inspections with a Notice of Contravention reviewed	<i>nr</i>	7.4%	5.0%	--	3.8%

* Includes reviews in-progress. Excludes the small number of reviews for complaints that were settled or withdrawn.

** Includes multiple reviews relating to a single assessed complaint

nr Indicates cells where the number of cases is too small to release or analyze

Table 5.2: OLRB Review Outcomes, 2011/12 to 2014/15

	Fiscal Year of Complaint/Inspection which led to Review				Total
	2011/12	2012/13	2013/14	2014/15	
# of reviews with final decision recorded in ESIS	941	825	725	409	2,900
Review Outcome					
Allowed*	5.8%	6.3%	4.0%	4.2%	5.3%
Allowed in part*	2.8%	1.3%	1.5%	1.2%	1.8%
Dismissed with a hearing*	9.6%	7.8%	6.9%	4.6%	7.7%
Dismissed without a hearing	18.0%	20.4%	22.6%	22.2%	20.4%
Settled	53.6%	57.6%	54.1%	56.5%	55.2%
Withdrawn	10.3%	6.7%	10.9%	11.2%	9.6%
OLRB Adjudication Status					
Adjudicated by the OLRB	18.2%	15.4%	12.4%	10.0%	14.8%
Not adjudicated by the OLRB	81.8%	84.6%	87.6%	90.0%	85.2%
% with Deposits	68.7%	73.6%	73.9%	82.7%	73.5%

* Indicates adjudicated applications

Table 5.3: OLRB Review Outcomes, by Type of Review, 2011/12 to 2014/15

	Review of Monetary Orders		Review of Claim Denials (by employees)**	Total for all Reviews
	Initiated by Employers	Initiated by Directors		
# of reviews with a final decision recorded	1,735	187	666	2,900
Type of File				
Claim	98.4%	99.5%	100.0%	98.6%
Inspection	1.6%	0.5%	--	1.4%
Review Outcome				
Allowed*	2.9%	20.3%	3.8%	5.3%
Allowed in part*	2.0%	4.8%	1.1%	1.8%
Dismissed with a hearing*	5.8%	10.2%	11.7%	7.7%
Dismissed without a hearing	24.3%	24.1%	13.1%	20.4%
Settled	59.8%	39.0%	53.2%	55.2%
Withdrawn	5.3%	1.6%	17.3%	9.6%
OLRB Adjudication Status				
Adjudicated by the OLRB	10.7%	35.3%	16.5%	14.8%
Not adjudicated by the OLRB	89.3%	64.7%	83.5%	85.2%
Had a Deposit (%)	82.6%	12.8%	--	73.5%
Financial Outcome of Adjudicated Reviews				
No money owed	28.6%	57.6%	--	--
50% or less of original order owed	11.4%	12.1%	--	--
More than 50% but less than 100% of original order owed	4.3%	1.5%	--	--
100% or more of original order owed	55.7%	28.8%	--	--
Financial Outcome of Settled Reviews				
No money owed	14.1%	47.9%	--	--
50% or less of original order owed	38.9%	26.0%	--	--
More than 50% but less than 100% of original order owed	40.9%	24.7%	--	--
100% or more of original order owed	6.2%	1.4%	--	--

* Indicates adjudicated applications

** These are the three most common types of ES reviews submitted to the OLRB

Table 6.1a: Outcomes of Compliance Tools Used in Complaints, 2009/10 to 2014/15

	Fiscal Year when Complaint was Submitted						
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	Total
Complaints with Compliance Orders							
# of complaints with any Compliance Order issued	52	73	52	46	120	74	417
Outcome of complaints with Compliance Orders							
% with Compliance Orders fully satisfied	100.0%	98.6%	100.0%	95.7%	95.0%	97.3%	97.4%
% with Compliance Orders not satisfied	--	1.4%	--	4.3%	5.0%	2.7%	2.6%
Complaints with Only an Employer Order to Pay Wages*							
# of complaints with only an employer Order to Pay Wages	2,382	2,155	2,075	1,863	1,838	1,806	12,119
Outcome of complaints with only an employer Order to Pay Wages							
% with Order to Pay Wages fully satisfied	40.7%	47.0%	41.3%	42.2%	36.9%	35.5%	40.8%
% with Order to Pay Wages partially satisfied	3.5%	4.1%	5.6%	3.4%	5.8%	4.1%	4.4%
% with Order to Pay Wages not satisfied	55.8%	48.9%	53.0%	54.4%	57.3%	60.4%	54.8%
% of complaints with only an employer Order to Pay Wages sent to collections	65.0%	60.9%	62.9%	67.2%	69.5%	59.1%	64.1%
<i>% of those sent to collections satisfied</i>	15.8%	20.8%	18.6%	20.5%	15.4%	9.8%	17.0%
<i>% of those sent to collections not satisfied**</i>	84.2%	79.2%	81.4%	79.5%	84.6%	90.2%	83.0%
Complaints with a Director Order to Pay Wages*							
# of complaints with a Director Order to Pay Wages	648	616	614	674	621	384	3,557
Outcome of complaints with a Director Order to Pay Wages							
% with Order to Pay Wages fully satisfied	32.4%	36.2%	32.4%	26.4%	19.8%	12.0%	27.5%
% with Order to Pay Wages partially satisfied	10.2%	9.3%	9.0%	9.1%	8.4%	8.6%	9.1%
% with Order to Pay Wages not satisfied	57.4%	54.5%	58.6%	64.5%	71.8%	79.4%	63.4%
% of complaints with a Director Order to Pay Wages sent to collections	94.3%	93.5%	96.6%	98.1%	96.9%	98.2%	96.1%
<i>% of those sent to collections satisfied</i>	30.1%	34.8%	32.1%	25.9%	19.3%	11.2%	26.6%
<i>% of those sent to collections not satisfied**</i>	69.9%	65.2%	67.9%	74.1%	80.7%	88.8%	73.4%
Complaints with Related Employer Order to Pay Wages*							
# with a Related Employer Order to Pay Wages	nr	40	24	78	38	33	213
Outcome of complaints with a Related Employer Order to Pay Wages							
% with Order to Pay Wages fully satisfied	nr	2.5%	33.3%	26.9%	34.2%	39.4%	26.3%
% with Order to Pay Wages partially satisfied	nr	22.5%	12.5%	3.8%	15.8%	---	9.9%
% with Order to Pay Wages not satisfied	nr	75.0%	54.2%	69.2%	50.0%	60.6%	63.8%
% of complaints with a Related Employer Order to Pay Wages sent to collections	nr	92.5%	83.3%	84.6%	76.3%	60.6%	80.8%
<i>% of those sent to collections satisfied</i>	nr	--	30.0%	21.2%	17.2%	10.0%	15.7%
<i>% of those sent to collections not satisfied**</i>	nr	100.0%	70.0%	78.8%	82.8%	90.0%	84.3%

Table 6.1b: Outcomes of Compliance Tools Used in Complaints, 2009/10 to 2014/15

	Fiscal Year when Complaint was Submitted						Total
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	
Complaints with any Order to Pay Wages*							
# of complaints with any Order to Pay Wages	3,032	2,808	2,709	2,563	2,483	2,217	15,812
Outcome of complaints with any Order to Pay Wages							
% with Order to Pay Wages fully satisfied (by any party)	39.0%	44.1%	39.3%	38.2%	32.4%	31.6%	37.7%
% with Order to Pay Wages partially satisfied (by any party)	4.9%	5.5%	6.4%	5.0%	6.6%	4.8%	5.5%
% with Order to Pay Wages not satisfied	56.1%	50.5%	54.3%	56.8%	60.9%	63.6%	56.7%
% of complaints with any Order to Pay Wages sent to collections	71.3%	68.5%	70.7%	75.3%	76.6%	65.8%	71.4%
<i>% of those sent to collections satisfied</i>	19.9%	24.6%	22.9%	22.7%	16.5%	10.2%	19.9%
<i>% of those sent to collections not satisfied**</i>	80.1%	75.4%	77.1%	77.3%	83.5%	89.8%	80.1%
Total assessments from any Order to Pay Wages***	\$7,990,685	\$7,539,680	\$7,151,827	\$6,712,530	\$7,176,324	\$6,944,749	\$43,515,796
Total payments of any Order to Pay Wages	\$3,166,534	\$3,353,369	\$2,830,829	\$2,622,812	\$2,126,257	\$1,816,993	\$15,916,795
% of assessments recovered	39.6%	44.5%	39.6%	39.1%	29.6%	26.2%	36.6%
Complaints with any Order to Compensate/Reinstate*							
# of complaints with any Order to Compensate/ Reinstate	89	122	97	109	141	115	673
Outcome of Complaints with any Order to Compensate/ Reinstate							
% with Order to Compensate/Reinstate fully satisfied	86.5%	90.2%	75.3%	77.1%	69.5%	62.6%	76.4%
% with Order to Compensate/Reinstate partially satisfied	3.4%	1.6%	1.0%	5.5%	6.4%	18.3%	6.2%
% with Order to Compensate/Reinstate not satisfied	10.1%	8.2%	23.7%	17.4%	24.1%	19.1%	17.4%
% with any Order to Compensate/ Reinstate sent to collections	13.5%	18.9%	20.6%	24.8%	34.0%	24.3%	23.5%
<i>% of those sent to collections satisfied</i>	41.7%	60.9%	31.6%	34.6%	31.3%	21.4%	35.3%
<i>% of those sent to collections not satisfied**</i>	58.3%	39.1%	68.4%	65.4%	68.8%	78.6%	64.7%
Total assessments from any Order to Compensate/Reinstate***	\$653,611	\$807,824	\$513,200	\$637,499	\$837,452	\$598,903	\$4,048,488
Total payments of any Order to Compensate/Reinstate	\$474,664	\$688,988	\$376,749	\$520,384	\$609,265	\$535,675	\$3,205,725
% of assessments recovered	72.6%	85.3%	73.4%	81.6%	72.8%	89.4%	79.2%

Table 6.1c: Outcomes of Compliance Tools Used in Complaints, 2009/10 to 2014/15

	Fiscal Year when Complaint was Submitted						Total
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	
Complaints with any monetary order*							
# of complaints with any monetary order	3,095	2,895	2,776	2,637	2,542	2,263	16,208
Outcome of Complaints with any monetary order							
% with order fully satisfied	39.9%	45.5%	40.4%	39.3%	33.4%	31.9%	38.7%
% with order partially satisfied	4.9%	5.5%	6.4%	5.2%	6.8%	5.7%	5.7%
% with order not satisfied	55.2%	49.1%	53.2%	55.6%	59.7%	62.4%	55.5%
% of complaints with any monetary order sent to collections	70.1%	66.8%	69.2%	73.6%	75.2%	64.7%	70.0%
% of those sent to collections satisfied	20.0%	24.7%	23.0%	22.7%	16.7%	10.2%	19.9%
% of those sent to collections not satisfied**	80.0%	75.3%	77.0%	77.3%	83.3%	89.8%	80.1%
Total assessments from any monetary order***	\$8,642,270	\$8,346,886	\$7,665,027	\$7,350,029	\$8,013,776	\$7,541,097	\$47,559,085
Total payments of any monetary order****	\$3,639,173	\$4,041,739	\$3,207,578	\$3,143,196	\$2,735,521	\$2,352,669	\$19,119,876
% of assessments recovered	42.1%	48.4%	41.8%	42.8%	34.1%	31.2%	40.2%
Complaints with any Monetary Violation (includes those where employers voluntarily comply)							
# of complaints with any monetary violation	9,878	8,613	8,040	6,675	6,516	5,541	45,263
# of complaints where employer complied voluntarily	4,671	4,800	4,035	3,500	3,347	2,788	23,141
# of complaints where a monetary order was issued	3,095	2,895	2,776	2,637	2,542	2,263	16,208
# of complaints with no voluntary compliance and no monetary order issued	2,112	918	1,229	538	627	490	5,914
Outcome of complaints with any monetary violation							
% satisfied (voluntarily or via an order)	59.8%	71.0%	64.1%	68.0%	64.4%	63.4%	65.0%
% partially satisfied	1.5%	1.8%	2.2%	2.0%	2.7%	2.3%	2.0%
% not satisfied	38.7%	27.2%	33.7%	30.0%	32.9%	34.3%	33.0%
Total entitlements assessed	\$35,856,987	\$23,367,775	\$19,731,404	\$15,968,140	\$18,737,380	\$15,338,308	\$128,999,993
Total entitlements recovered****	\$10,520,047	\$10,602,895	\$8,573,635	\$8,217,173	\$7,626,619	\$6,443,847	\$51,984,215
Recovered through employer voluntary compliance	\$6,880,874	\$6,561,155	\$5,366,057	\$5,073,977	\$4,891,097	\$4,091,178	\$32,864,339
Recovered through the use of monetary orders***	\$3,639,173	\$4,041,739	\$3,207,578	\$3,143,196	\$2,735,521	\$2,352,669	\$19,119,876
% of entitlements recovered	29.3%	45.4%	43.5%	51.5%	40.7%	42.0%	40.3%

* Among complaints with a monetary violation where the use of a compliance tool was required

** Excluding complaints that are under OLRB review

*** Does not account for changes to assessments as a result of OLRB reviews; excludes the 2% of complaints where the total order assessment was for more than 200% of the total entitlement for the complainant assessed by the ESO. Thus these figures provide an estimate of the total monetary recovery rates for individual complainants through MOL administrative processes, but not the total funds handled by the MOL in relation to ES complaints.

**** Does not include monies recovered via the OLRB review (disbursement of deposits) or settlement processes.

nr Indicates cells where the number of cases is too small to release or analyze

Table 6.2: Outcome of Monetary Orders Issued for Complaints, by Complaint Characteristics, 2009/10 to 2014/15

	Outcome of Monetary Orders			Total
	Fully Satisfied	Partially Satisfied	Not Satisfied	
% of complaints with a monetary order with each outcome	38.7%	5.7%	55.5%	100.0%
# of complaints with a monetary order with each outcome	6,280	927	9,001	16,208
Complainant Work Status				
Still Working	6.3%	5.8%	5.2%	5.6%
Fired	31.9%	18.1%	11.4%	19.7%
Laid Off	12.4%	18.0%	20.1%	17.0%
Quit	25.8%	27.5%	25.6%	25.8%
Other	23.6%	30.6%	37.8%	31.9%
Company Size^b				
1 to 5 employees	25.1%	25.3%	30.4%	28.3%
6 to 10 employees	23.0%	20.4%	24.8%	23.9%
11 to 19 employees	19.5%	16.5%	21.2%	20.3%
20 to 49 employees	15.8%	19.6%	16.3%	16.4%
50 to 199 employees	10.7%	15.1%	6.9%	8.7%
200 or more employees	5.9%	3.2%	0.3%	2.4%
Industry (based on the NAICS)^c				
Accommodation and food services	21.6%	25.4%	27.3%	25.0%
Retail trade	12.7%	9.1%	8.7%	10.2%
Service Industries - primarily private-sector ^d	27.4%	28.3%	24.8%	26.0%
Service Industries - primarily public-sector ^e	11.3%	13.2%	9.8%	10.6%
Manufacturing and primary industries ^f	27.0%	23.9%	29.4%	28.2%
Employment Standards Violated				
Unpaid wages	49.2%	70.0%	77.9%	66.3%
Vacation pay/time	48.7%	60.5%	60.2%	55.8%
Termination pay	43.8%	41.9%	41.5%	42.4%
Public holidays/pay	16.4%	17.3%	15.8%	16.1%
Overtime pay	12.4%	10.2%	9.2%	10.5%
Severance pay	5.7%	4.2%	2.9%	4.1%
Deductions from wages	6.4%	4.3%	2.2%	3.9%
Reprisal	6.5%	5.2%	1.1%	3.4%
Minimum wage	2.8%	3.3%	2.0%	2.4%
Total Entitlement Amount				
Median	\$1,591	\$2,228	\$1,597	\$1,621
Less than \$300	9.7%	4.2%	8.3%	8.6%
\$300 to \$999	26.0%	24.3%	26.8%	26.4%
\$1,000 to \$1,999	21.2%	18.4%	22.5%	21.8%
\$2,000 to \$9,999	33.6%	42.2%	36.4%	35.6%
\$10,000 or more	9.4%	10.9%	5.9%	7.5%

^b Information about company size is only available for complaints submitted from 2012/13 onwards

^c Information about industry is only available for complaints submitted from 2010/11 onwards

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

Table 6.3: Outcomes of Compliance Tools Used in Inspections, 2012/13 to 2014/15

	Fiscal Year of Inspection			
	2012/13	2013/14	2014/15	Total
Inspections with Compliance Orders				
# of inspections with any Compliance Order issued	1,440	1,045	904	3,389
Outcome of inspections with Compliance Orders				
% with Compliance Orders fully satisfied	100.0%	99.8%	99.8%	99.9%
% with Compliance Orders not satisfied	--	0.2%	0.2%	0.1%
Inspections with any monetary order				
# of inspections with any monetary order	14	13	6	33
Outcome of inspections with any monetary order				
% with order satisfied	57.1%	53.8%	66.7%	57.6%
% with order not satisfied	42.9%	46.2%	33.3%	42.4%
% of inspections with any monetary order sent to collections	14.3%	15.4%	16.7%	15.2%
Total assessments from any monetary order	\$118,404	\$58,472	\$17,215	\$194,091
Total payments of any monetary order*	\$99,264	\$45,161	\$13,606	\$158,031
% of assessments recovered	83.8%	77.2%	79.0%	81.4%
Inspections with any Monetary Violation (includes those where employers voluntarily comply)				
# with any monetary violation				
# of complaints where employer complied voluntarily	968	782	530	2,280
# of complaints where employer complied voluntarily	946	764	523	2,233
# of complaints where a monetary order was issued	14	13	6	33
Outcome of inspections with any monetary violation				
% satisfied (voluntarily or via an order)	98.3%	98.5%	99.1%	98.6%
% not satisfied	1.7%	1.5%	0.9%	1.4%
Total entitlements assessed	\$2,827,134	\$3,016,276	\$1,344,957	\$7,188,367
Total recovered*	\$2,704,060	\$2,894,572	\$1,321,110	\$6,919,741
% of entitlements recovered	95.6%	96.0%	98.2%	96.3%

* Does not include monies recovered via the OLRB review (disbursement of deposits) or settlement processes.

Table 7.1a: Operational Status of Businesses that ES Complaints are Filed Against, 2008/09 to 2014/15

	Operational Status			Total Complaints
	In Business ^a	Out of Business (not Bankrupt/ Insolvent)	Bankrupt/ Insolvent	
% of complaints relating to businesses with each status	86.9%	5.5%	7.7%	100.0%
# of complaints relating to businesses with each status	105,003	6,592	9,298	120,893
AMONG ALL ACCEPTED COMPLAINTS				
Company Size^b				
1 to 5 employees	14.7%	16.5%	5.8%	14.5%
6 to 10 employees	16.8%	20.5%	10.4%	16.8%
11 to 19 employees	17.2%	20.3%	12.4%	17.2%
20 to 49 employees	18.7%	19.7%	23.2%	18.9%
50 to 199 employees	17.4%	7.0%	24.7%	17.0%
200 or more employees	15.2%	15.8%	23.5%	15.5%
Industry (based on the NAICS)^c				
Accommodation and food services	19.9%	38.1%	13.9%	20.7%
Retail trade	14.3%	10.9%	10.5%	13.9%
Service Industries - primarily private-sector ^d	25.9%	21.6%	20.6%	25.5%
Service Industries - primarily public-sector ^e	12.3%	11.1%	11.0%	12.2%
Manufacturing and primary industries ^f	27.6%	18.3%	44.0%	27.8%
Employment Standard(s) Claimed				
Unpaid wages	47.8%	62.8%	39.4%	48.0%
Termination pay	41.1%	60.9%	64.8%	44.0%
Vacation pay/time	34.3%	51.9%	43.0%	35.9%
Severance pay	11.7%	20.2%	46.0%	14.8%
Overtime pay	11.1%	6.9%	3.5%	10.2%
Public holidays/pay	11.0%	13.4%	4.9%	10.7%
Reprisal	9.3%	1.5%	0.7%	8.2%
Daily/weekly rest periods	7.4%	2.0%	1.0%	6.6%
Deductions from wages	7.2%	2.8%	1.8%	6.5%
Leaves of absence	4.9%	0.7%	0.4%	4.3%
Minimum wage	3.5%	2.7%	0.7%	3.3%

Table 7.1b: Operational Status of Businesses that ES Complaints are Filed Against, 2008/09 to 2014/15

	Operational Status			
	In Business ^a	Out of Business (not Bankrupt/ Insolvent)	Bankrupt/ Insolvent	Total Complaints
AMONG ALL ACCEPTED COMPLAINTS				
Total Amount Claimed (for all standards combined)				
Median	\$1,100	\$1,915	\$4,978	\$1,248
Less than \$300	12.7%	6.0%	3.0%	11.6%
\$300 to \$999	23.9%	21.7%	11.4%	22.9%
\$1,000 to \$1,999	14.9%	18.4%	10.9%	14.8%
\$2,000 to \$9,999	21.4%	33.7%	29.4%	22.7%
\$10,000 or more	5.6%	10.1%	26.8%	7.5%
Claim amount missing, or \$1 or less	21.4%	10.1%	18.5%	20.6%
Outcome of Complaint				
Settled	9.7%	4.7%	0.4%	8.7%
Withdrawn	23.4%	13.6%	4.1%	21.4%
Assessed	66.9%	81.7%	95.5%	69.9%
AMONG ASSESSED COMPLAINTS ONLY				
Presence of ES Violations				
No ES violation	35.1%	13.7%	6.2%	30.7%
One or more ES violations	64.9%	86.3%	93.8%	69.3%
Type of ES violations				
Monetary and non-monetary violations	0.9%	0.6%	0.1%	0.8%
Monetary violations only	63.0%	85.6%	93.7%	67.7%
Non-monetary violations only	1.0%	1.0%	---	0.8%
Violation Rate				
Monetary violations	63.9%	86.2%	93.8%	68.5%
Non-monetary violations	1.9%	1.6%	0.1%	1.6%
AMONG VALIDATED COMPLAINTS ONLY				
Disposition				
Voluntary Compliance during Triage	17.9%	2.7%	---	14.2%
Voluntary Compliance during Investigation	44.6%	12.1%	1.4%	35.9%
Compliance Ordered	37.4%	85.3%	98.6%	49.9%
Employment Standards Violated ⁹				
Termination pay	39.9%	66.9%	76.9%	47.3%
Vacation pay/time	46.2%	59.6%	42.5%	46.7%
Unpaid wages	45.9%	65.5%	36.4%	46.1%
Public holidays/pay	13.1%	14.6%	2.7%	11.8%
Severance pay	4.0%	8.1%	36.8%	9.0%
Overtime pay	9.5%	6.0%	1.7%	8.1%
Deductions from wages	5.7%	1.2%	1.5%	4.8%
Minimum wage	2.6%	1.8%	0.3%	2.2%
Reprisal	2.1%	0.2%	0.1%	1.6%

Table 7.1c: Operational Status of Businesses that ES Complaints are Filed Against, 2008/09 to 2014/15

	Operational Status			Total Complaints
	In Business ^a	Out of Business (not Bankrupt/ Insolvent)	Bankrupt/ Insolvent	
AMONG VALIDATED COMPLAINTS ONLY				
Median Entitlement Amount per Standard				
Severance pay	\$4,658	\$5,905	\$8,003	\$6,651
Reprisal	\$2,891	\$6,359	\$500	\$2,909
Termination pay	\$858	\$1,487	\$5,888	\$1,266
Unpaid wages	\$574	\$982	\$1,170	\$6,621
Overtime pay	\$444	\$360	\$386	\$436
Minimum wage	\$284	\$487	\$79	\$293
Deductions from wages	\$240	\$214	\$138	\$225
Public holidays/pay	\$180	\$147	\$125	\$174
Vacation pay/time	\$115	\$261	\$417	\$150
Total Entitlement Amount				
Median	\$836	\$2,010	\$7,888	\$1,109
Less than \$300	22.5%	7.0%	4.2%	18.6%
\$300 to \$999	32.4%	23.3%	10.7%	28.6%
\$1,000 to \$1,999	18.4%	19.5%	9.7%	17.3%
\$2,000 to \$9,999	22.4%	40.2%	31.9%	25.2%
\$10,000 or more	4.2%	10.1%	43.6%	10.3%

^a Includes companies where employer disposition is unknown or missing

^b Information about company size is only available for complaints submitted from 2012/13 onwards

^c Information about industry is only available for complaints submitted from 2010/11 onwards

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

^g Monetary violations only, among all validated complaints

Table 7.2: The Use of Proof of Claims for Complaints with Monetary Entitlements Related to Bankrupt/Insolvent Businesses, 2009/10 to 2014/15

	No Proof of Claim*	Has a Proof of Claim	Total
% of complaints in group	93.0%	7.0%	100.0%
# of complaints in group	4,295	325	4,620
Company Size^b			
1 to 5 employees	6.2%	11.2%	7.1%
6 to 10 employees	9.7%	17.6%	11.0%
11 to 19 employees	14.6%	15.2%	14.7%
20 to 49 employees	21.7%	39.2%	24.7%
50 to 199 employees	27.8%	13.6%	25.3%
200 or more employees	20.0%	3.2%	17.2%
Industry (based on the NAICS)^c			
Accommodation and food services	13.9%	17.4%	14.3%
Retail trade	11.8%	14.0%	12.1%
Service Industries - primarily private-sector ^d	18.9%	13.3%	18.2%
Service Industries - primarily public-sector ^e	10.9%	6.4%	10.4%
Manufacturing and primary industries ^f	44.5%	48.9%	45.0%
Employment Standards Violated^g			
Termination pay	65.6%	59.4%	65.1%
Vacation pay/time	52.8%	56.3%	53.1%
Unpaid wages	47.9%	57.2%	48.6%
Severance pay	32.9%	10.5%	31.3%
Public holidays/pay	3.9%	7.4%	4.1%
Overtime pay	2.1%	5.5%	2.4%
Deductions from wages	1.0%	1.5%	1.0%
Total Entitlement Amount			
Median	\$4,507	\$2,395	\$4,262
Less than \$300	6.2%	6.8%	6.2%
\$300 to \$999	14.4%	16.9%	14.6%
\$1,000 to \$1,999	12.6%	20.9%	13.2%
\$2,000 to \$9,999	36.9%	37.5%	37.0%
\$10,000 or more	29.9%	17.8%	29.1%

* Among complaints related to bankrupt/insolvent companies with monetary entitlements where the employer did not voluntarily comply, and where monetary orders remain unsatisfied

^b Information about company size is only available for complaints submitted from 2012/13 onwards

^c Information about industry is only available for complaints submitted from 2010/11 onwards

^d Industries include: finance, insurance, real estate, leasing, professional, scientific and technical services, management, administrative and other support services

^e Industries include: educational services, health care and social assistance, public administration, information, culture, and recreation

^f Industries include: agriculture, forestry, fishing, mining, oil, gas, utilities, construction, manufacturing, wholesale trade, transportation, and warehousing

^g Monetary violations only, among all validated complaints