

***THE FUTURE OF WORK IN ONTARIO:
DISCUSSION PAPER***

**SUBMISSION BY THE
ONTARIO FEDERATION OF LABOUR**

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The Future of Work in Ontario: A Discussion Paper
by the Ontario Ministry of Labour**

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Introduction

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. It has an affiliated union membership of over 600,000 members from all regions of the province. With most unions in Ontario affiliated, membership includes nearly every job category and occupation.

As a province-wide central labour body the OFL works to develop and coordinate policy as passed at our conventions and by our executive bodies. Over many years and a series of conventions the OFL has passed resolutions and policy papers on basic issues and rights of employment, such as minimum wage, hours of work and overtime legislation. The issues raised in this submission speak to those issues approved and voted on by democratically elected delegates and executive officers, plus new issues and concerns raised in the workplace as Ontario prepares to enter the twenty-first century.

The Ontario Federation of Labour has consulted with a number of provincial governments about reforms to employment legislation. Our goal has always been to increase the protection of the province's most vulnerable workers and that of our membership. Most often this goal takes us beyond the ranks of the labour movement. Non-union workers lack the protection of a collective agreement, they lack the ability to file a grievance or engage in collective bargaining. They lack even a voice on the key employment issues that impact on their daily working lives. For this very reason the OFL has tried to provide a voice where ever possible, to take up the issues that, from our long experience are the most pressing for unorganized workers, in the hopes that the government of the day will listen and ameliorate them.

We welcome the chance to submit to you our suggestions for updating the *Employment Standards Act*.

1 What do you see as the most important changes affecting your workplace?

The Ministry of Labour's discussion paper begins by making the obvious, but important point – the world of work is undergoing tremendous change. Employers are restructuring and downsizing. The sectors of the economy in which most people work are undergoing constant change such that while more manufacturing products are being produced for example, they are being produced with an ever shrinking percentage of the work force. At the same time a growth in employment can be found in the service sector. How work is organized and with what new technologies – the labour process – is also undergoing a continuous revolution. The pressure of the need to be profitable, to increase productivity in a market economy and face international competition are key factors confronting the world of work and compelling such change.

A number of these workplace changes are noted in the Ministry of Labour's discussion paper, though the paper is sadly lacking in terms of direction. It lacks both specific options for future legislative initiatives and proposed recommendations for policy changes that would enable the reader to support or suggests alternatives to the government's current thinking on the matters raised.

The basic changes noted as currently occurring in the workplace include:

- Demographic changes such as: a smaller youth share of the labour market; increases in immigration are highlighted as is the increased participation in the workforce of women.
- Changes in the occupations and sectors in which people work are noted, such as the growth of employment in the service sector. Over the last several decades this has primarily been the public and broader public sector as Ontario built a universal health care system, a public education sector and quality public services. As these areas have been down-sized by governments with other fiscal priority outlooks, the private service sector has become the center of employment growth in this sector. New services and new ways of identifying services now show managerial and professional service occupations at 34% of the work force. In significant part this figure involves the reclassification of certain service sector occupations. It is this latter service sector that shows the most growth, rather than what has traditionally been known as managerial.
- Changes in employee/employer relationships are also noted in the discussion paper. These are important as the growth of part time, contract, temporary and self-employed work become ever more prominent. The percentage of workers in full time (35 to 40 hours) employment has declined to 58% in 1997 from 67% in 1976. While shorter hours (and pay) is prominent for many, there is also a trend towards longer hours and more overtime for others.

There exists substantive literature and considerable debate on all of the identified developments. Perhaps the most heated debate at the time of writing is on the particular nature of the section

of the discussion paper entitled “the Competitive Global Economy.” New trade agreements for investors such as the North American Free Trade Agreement (NAFTA) have not only facilitated more exports, often at the expense of the domestic economy, but have left us witness to other changes such as deregulation, cuts to valued social services, a significant withdrawal of government from intervention in the economy and rising inequality and unemployment.

Unemployment¹

Missing from the discussion paper are not only examples and options about how the government could assist people with the tumultuous changes in the nature of work and employment (legislative initiatives, new regulations, re-regulation and basic enforcement), but also any options, suggestions or indeed recognition of the impact of unemployment on the labour market. The following paragraphs therefore discuss the significance of this phenomena.

Unemployment in Ontario has averaged above 9 percent for 6 consecutive years (1991 - 1996). This is the longest period of sustained unemployment since the 1930s. In contrast, the recession of the early 1980s saw unemployment fall to 5 percent after 5 years. Five years after the bottom of the 1991-1992 recession unemployment still exceeded 9%. Only in 1997 did unemployment significantly fall, although it still exceeds 7 percent.(See Figure 1)

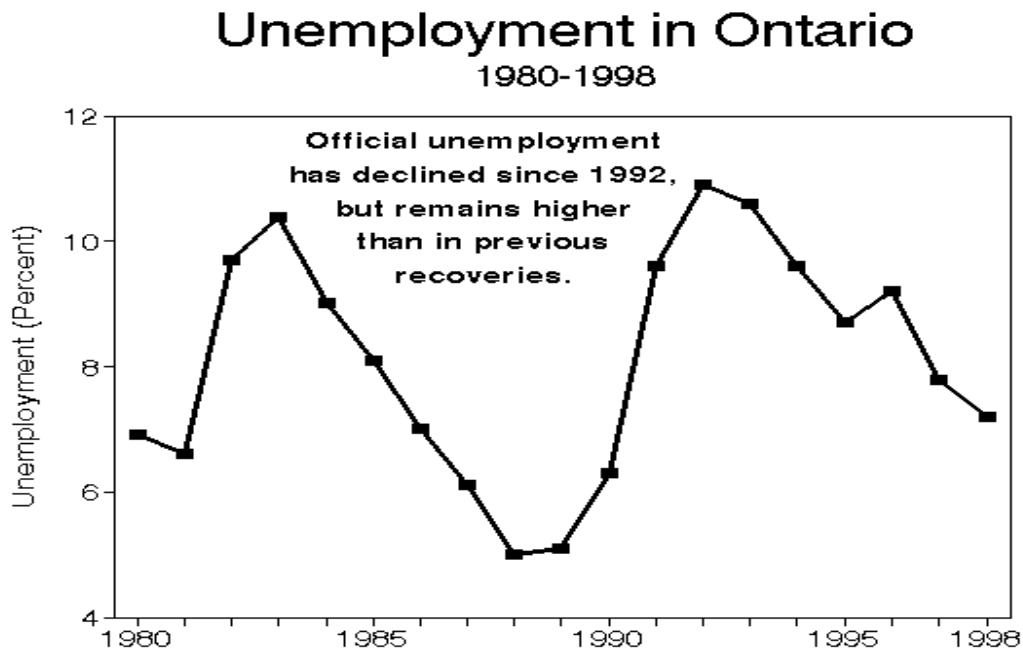


Figure 1

As bad as the official unemployment figures are, they only partially tell us the true extent of the jobs crisis in Ontario. The official figures only tally those who meet the definition of “actively looking for work,” and thereby exclude those Ontarians who would like to work but are so discouraged by the depressed conditions that they have given

up looking. Nonetheless, these people represent a pool of unutilized people who are out of work and need to be considered in a more all inclusive definition of unemployed.

Labour Force Participation in Ontario 1980-1998

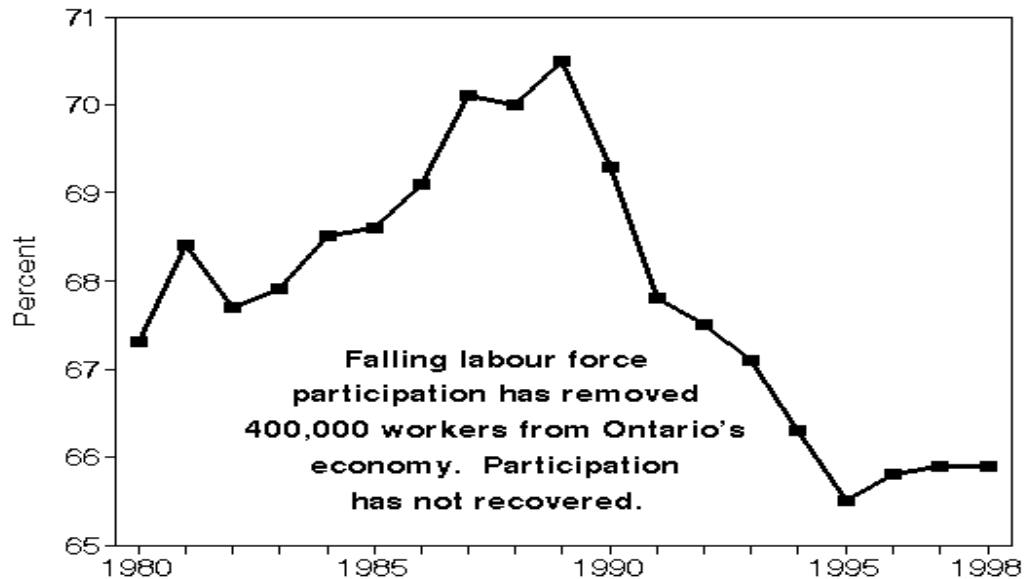


Figure 2

As illustrated above in Figure 2, labour force participation in Ontario has dropped dramatically since the recession of the early 1980s. In 1989 the participation rate was 70 percent. By 1995 it had fallen to 66 percent. There has been no recovery in labour force participation since then, even though there has been some modest growth in employment.

If the labour force participation rate had remained at its pre-recession 1989 level, over 400,000 more people in Ontario would be active in the labour market (i.e. either working or actively looking for work) (see Figure 3). This decline in labour force participation represents not only a huge step backwards for Ontario's economy, not only untold hardship for hundreds of thousands of citizens, but also a massive downward drag on those employed. Hours of work, compensation levels, benefits and job security are all impacted negatively. Employment standards and the enforcement of employment standards therefore become more important than ever.

This is particularly true of the two thirds of the workforce that lacks the protection of a collective agreement. But even unionized workers feel the downward pressure noted above when they negotiate a new collective agreement or try to maintain employment levels in the workplace.

Unemployment: Official & Adjusted 1980-1998



Figure 3

Youth

The official unemployment rate for youth (15-24 years) as of January 1999, fell for the first time since September 1990 to 13.6%. This is still twice the rate for the population as a whole which is 6.8%. The problems of discouraged workers and hidden unemployment is even more ruinous and tragic for young people than for the population as a whole. From a labour force participation rate of 74 percent in the pre-recession period the current situation reveals a dramatic decline to a rate of 65%. The rate is now only 62% (see Figure 4). In short, youth in the 1990s are living in the 1930s labour market.

Youth Labour Force Participation 1980-1998

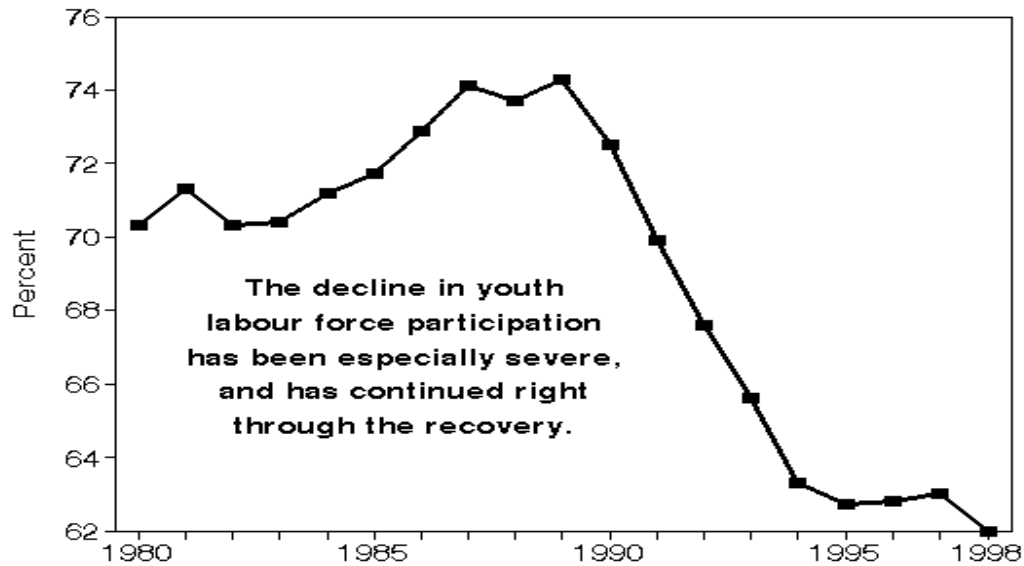


Figure 4

Non-standard Work

The job numbers only tell part of the story. What the nature of those jobs are and what the level of compensation for them is, tell another big part. Non-standard work of various kinds has grown dramatically over the last decade. Part-time work, seasonal, contractual employment all fit into this category as do home workers. Over half of the new jobs since mid-1995 are classified as self-employed. While job growth in the self employed category is centered in the relatively expensive urban areas such as Toronto and Ottawa, the average wage level is surprisingly low. Currently, the majority of job growth in Ontario is part-time in the service sector.

Most of these jobs lack any job security, pensions, benefits or even unemployment insurance coverage. The importance of higher standards and stronger enforcement are essential to Ontarians who lack the more traditional long-time relationship of full-time employees and the protection of a collective agreement.

As the *Growing Gap* report notes, working time in Canada only looks stable, "Canadians still work, on average, a 37-hour week" like they did a generation ago. But today this average masks an increasingly polarized reality. Whereas in 1976 almost two-thirds of Canadians (65%) worked between 35 and 40 per week, in 1997 only a little more than half did (54%).²

Today, part-time jobs make up almost one in five jobs, whereas in the mid-1970s they consisted of one in ten. Nearly a third of part-time employees (31.5%) would prefer full-time work. This is three times the number who wanted full-time work in the mid-1970s. About 50% of those part-timers are young people. Nearly 25% of all the paid employment of women is part-time.

While more and more people than are working part-time and a growing percentage are doing so involuntarily, others are finding themselves working regular “voluntary” overtime. As the *Growing Gap* report notes: “A remarkable symmetry is emerging. One in five jobs are now part time. Similarly, almost one in five employees worked overtime in any given week in 1997.”³ Over half of overtime today is unpaid. On average the overtime worked is equivalent to an extra day per week – an additional 9 hours. While such unpaid overtime is common amongst non-unionized employees it is also found amongst **salaried** unionized employees in the broader public sector and in the private service sector, in contrast to the paid overtime in the **waged** industrial and resource sectors. In short, legislated improvements to employment standards are needed to ensure payment for overtime on the one hand and on the other to curb overtime as one essential component in a more equitable distribution of work.

In concluding this section it is evident that despite relatively strong job creation in Ontario between 1997 and at least early 1998, the nature of the labour market remains one in which unemployment and non-standard work is dominant for many workers. This has dragged down the real compensation levels of the vast majority. Those employed have been unable to negotiate wage increases that keep up with rising productivity and profits. The total value of wages, salaries and benefits paid out in the province grew by 6.9 % between 1995 and 1997. This can be compared to an 11.1% increase in corporate profits during the same period and a 16.7% growth in small business profits. In a context where the share of the economic pie continues to shrink for workers, even though the total pie is growing for the provincial economy as a whole, employment standards can play a vital role in helping those on the bottom by raising standards and ensuring that they are implemented.

Raise the Minimum Wage

A primary mechanism by which the downward drag on income levels can be ameliorated is to raise the minimum wage. The Ontario Federation of labour has long held that the minimum wage should be indexed to 70% of the average industrial wage.⁴ The general minimum wage has been frozen by the current government at \$6.85 since January 1995. Overwhelmingly, such work is part-time or contract. But even if the impossible happened and someone was able to work 40 hours per week all year at minimum wage, s/he would only earn **\$14, 248.00**. This is their gross income! **This is \$3,000.00 less than the poverty line for a single person in an Ontario city!**

According to Statistics Canada (1996 averages):

- earnings among people who are not full-year, full-time earners averages \$7,700.⁰⁰;
- fully $\frac{3}{4}$ of these people (not full-year, full-time earners) earned less than \$15,000.⁰⁰ which is below the poverty line for single persons in most Ontario cities;
- even among full-time, full-year earners, large numbers are low earners. Almost $\frac{1}{4}$ of women full-time, full-year earners earn less than \$20,000.⁰⁰ a year which is below the poverty line for a two person household.

Ontario government statistics on earnings and employment among people leaving welfare show that:

- among sole-support parents who have left welfare, the big majority (75% to 90%) are in temporary or casual jobs where average hourly wages are less than \$10 an hour and gross weekly earnings are between \$320 and \$360.

Many Ontarians work for minimum wages – typically retail sales clerks, resort and hotel workers, farm workers, couriers, fast food workers and restaurant workers. In fact, one out of ten workers in Ontario.

It is time for the lowest paid people to benefit from the growing economy. The minimum wage sets a “floor” for everyone. Increasing the minimum wage would benefit us all. It is time the minimum wage be increased above the poverty line and indexed so as not to be eroded in future years.

2 How can workplace standards better reflect changes in the nature of relationships between employees and employers?

As pointed out in the Ministry's discussion paper and in answer to Question 1 above, the primary changes in the working relationship are toward increasing insecurity of employment for employees. We have several recommendations that will offer increased protection to employees in various non-standard and contingent employment relationships:

◆ ***No exemptions from minimum standards***

The *Employment Standards Act* has long, long lists of people who are not covered by some or all sections of the *Act* – from baby-sitters, to cab drivers, to farm workers, to hotel workers, to camp counselors, to many professionals, to group home workers, and so on. The ESA should be simplified – by ensuring that one law applies to everyone.

The ESA should also cover anyone required to “volunteer” or participate in a work placement as part of an employment or pre-employment program, including Ontario Works participants.

While the ESA already covers employees during any required “training” period, there are many employers in Toronto who need to be reminded that employees in training do not work for free or for less than minimum wage.

◆ ***Equal pay, benefits and rights for part-time workers***

More and more jobs are part-time. Employers are replacing full-time jobs with part-time ones and creating new part-time jobs, then treating part-time workers as second class workers – lower pay, no benefits, erratic scheduling. In Quebec, part-time workers must be paid the same wage as full-timers until their wages are twice as much as the minimum wage. In Saskatchewan there is a requirement for prorated benefits for part-timers (those who work more than 15 hours per week) and for posting schedules in advance. If part-time work is the way of the future, then the ESA of the future has to offer full recognition and protection to part-time workers.

◆ ***Full protection for home-workers and tele-workers***

A critical issue for the ESA in the 21st century will be to ensure that people who work from home are recognized as employees and fully protected by the ESA and

other employment legislation, such as the *Occupational Health and Safety Act*, whether they work on a computer, on the telephone, stuff envelopes, assemble jewelry, make auto parts, or sew garments.

◆ ***Clear distinction between employees and independent contractors***

The employment trend of the 90s is calling people self-employed when they are not. Cleaners come in to work one night and are told “Sign here. You’re no longer working for me, you’re in business for yourself.” The work hasn’t changed at all, but the cleaner is no longer protected by the ESA, or health and safety or workers’ compensation laws. The same thing is happening to all kinds of sales people, personal service providers, hotel workers, garment home-workers, house painters and even workers in factories! The *Employment Standards Act* should spell out the legal “tests” that make the distinction between an employee and a truly independent contractor, as the *Ontario Labour Relations Act* does. It should be clear that as long as employees are dependent on an employer, they are employees for the purposes of all legislation and thereby have the full legal protections of such.

◆ ***Recognition and accumulation of service with different employers***

More and more people are working more than one part-time job, or several contracts in a year in order to survive. They may work full-time, but not for one employer, or all year but for more than one employer in a sector – retail sales, restaurant work, tele-marketing, etc. The ESA should be changed so that they can accumulate their service in a sector in order to qualify for pregnancy and parental leave, public holidays and termination and severance. One way in which this could be accomplished is through a central registry. (This idea has been proposed earlier in submissions by UNITE (ILGWU) and the OFL.)⁵

Whatever the mechanism, if work and work relationships are to change so dramatically as we head into the twenty-first century then legislation should, in our view, reflect these changes.

◆ ***Joint responsibility between employers***

Contracting out – it's the employers' strategy of the 1990s. Large corporations contract out production to smaller ones in order to avoid having employees and the costs and the responsibilities that go with it. Although the contractors end up with legal responsibility for employment conditions, the large corporation still has overall control in that they constitute the market, dictate the price they will pay for the goods or service and thereby indirectly dictate compensation levels and

working conditions. We would therefore propose that both companies should be held jointly responsible for meeting the rules and regulations set out in the ESA.

One particular example of companies that need to be held jointly responsible are both parties to franchise arrangements. For instance, in a coffee shop chain in Toronto, the franchise owner controls every minor detail of the operation – and then claims not to be responsible for the fact that franchisee after franchisee violates minimum employment standards. Legislation needs to be drafted to correct such problems. Similarly, employment and placement agencies should also be held responsible for ensuring that workers placed through them receive the minimum entitlements under the ESA.

◆ ***Restore the Employee Wage Protection Program***

The Employee Wage Protection Program should be restored and funded directly by employers. Too many workers are being left high and dry by employers through no fault of their own. The travel industry has created a fund to ensure that stranded travelers can be recompensed; it is only fair that employers take responsibility for meeting their obligations to their employees.

◆ ***Strengthen the anti-reprisal measures in the ESA***

Both the *Occupational Health and Safety Act* and the *Ontario Labour Relations Act* have stronger clauses to protect employees from reprisals when exercising their rights under those Acts. We recommend that the ESA have an equally strong clause that allows Employment Standards Officer to attend a workplace immediately on being informed of a reprisal and to write an order that would protect the employees job for a substantial period of time.

◆ ***Prohibit unjust dismissal***

Without strong anti-reprisal measures and a prohibition on unjust dismissal, employees without the protection of collective agreements will never be able to genuinely exercise the rights granted to them in the *Employment Standards Act* or other employment legislation. We have pointed out over and over again that more than 90% of employees who make claims under the ESA are no longer employed by the employer alleged to have violated their rights. This is not because they file ESA claims as revenge for having lost their employment. It is because they know that they will lose their jobs, and therefore their livelihood, if they make a claim against their employer. Generally, when employees have to choose between a continued violation of their minimum standards, or unemployment, they choose the former. In periods of high unemployment and

increasing instability of employment such as we have experienced this decade, that choice is even more likely.

Recent amendments to the ESA require unorganized employees to choose between the Employment Standards Branch and the courts for redress when they have been terminated without just cause. The courts have recognized rights related to termination that are greater than those granted in the ESA. But litigation through the courts is generally too costly and lengthy for most employees to access. The ESA should therefore be amended to include a prohibition against unjust dismissal.

We address the question related to the accommodation of employees with family responsibilities below in our section on hours of work.

3 What do you think is the purpose of workplace standards?

The International Labour Organization has stated that minimum employment standards promote “social cohesion, higher productivity and efficiency”. We concur with this view.

Workplace standards are also needed in order to protect employees from their employers. There is a power imbalance in the labour market. Vulnerability is not a personal trait of some or all workers. It is an objective situation in the labour market, wherein the employer has the power to unilaterally deprive an employee of her/his livelihood. The employee on the other hand has little countervailing power. Minimum labour or employment standards put a small hurdle in the way of the employer’s unilateral exercise of this power where it harms employees. When there is high unemployment, as there is now and has been for all of this decade, employer’s power is magnified as the employee’s power to stay with or leave an employer is often only the power to choose between unjust employment or unemployment and poverty.

Workplace standards are a barrier to unscrupulous employers from exploiting vulnerable workers in the labour market and prevent them from gaining an unfair market advantage against competitors. They set out some socially-defined minimum standards of fairness and compensation in the employee-employer relationship. Ideally, minimum standards would ensure that those who had regular employment earned a living wage and would not need to rely on the social safety net to supplement their income. That is not the case now as we noted in section 1. The minimum wage has fallen too far below increases in the cost of living, and too few people are able to even find full time employment at minimum wage.

In recent years, the Ministry of Labour has referred more and more often to a concept of “*self-reliance*” in the workplace, implying that it is the responsibility of employers and employees to *jointly* ensure compliance with employment legislation. This further implies that it is the government’s responsibility only to make the laws and not to enforce them. It is our view that the Ministry of Labour should be responsible for the enforcement and collection of its orders. The labour movement opposes the privatization of these functions. Organized workers should not be denied access to publically funded complaint procedures under the *Act*. Furthermore, in a non-unionized workplace the employer has all of the power and the employees have none because the employer has the authority to terminate anyone’s employment arbitrarily at a very low cost. If the Ministry of Labour does not enforce its own laws, employers will simply be in the position to flaunt them without fear of reprisal. Laws are not enacted to govern the behavior of parties who would behave in a manner beyond reproach in all situations. Minimum standards need to be in place and enforced precisely to regulate the behavior of unscrupulous employers.

So, referring back to the question of the purpose of minimum employment standards, we want to be very clear – **they serve no purpose if they are not enforced.**

It isn't only those who work for minimum wages and other standards who benefit and rely on them. Employment standards set the floor for everyone else working in Ontario. Take away the basic floor of standards, and everybody falls through, not just those at the bottom, not just the 7% who earn minimum wage.⁶

What benefit are minimum employment standards to employers? The social benefits accrue to all members of society. Minimum standards provide a level playing field for labour costs and benefits. If they are high enough, they contribute to a healthy economy which enables almost everyone to support themselves and their families without additional social assistance.

4 What can the government do to ensure the employees and their employers work together to promote compliance with workplace standards? How can we better communicate what the law is about?

As we said above, the Ministry needs to actively and vigorously enforce the *Act* to ensure compliance with it. In order to effectively enforce the *Act*, it needs to be amended to include a prohibition on unjust dismissal and strong, immediate measures to deal with reprisals.

The Ontario Federation of Labour supports the Employment Standards Work Group (ESWG) recommendations concerning ways in which the Ministry can better communicate the law:

- ◆ Make it mandatory for employers to post a brief, plain-language summary of the *Act* in the workplace, as with the *Ontario Health and Safety Act*. Such a summary should also be available in languages other than English and posted in the major languages of the workforce in any workplace.
- ◆ Require employers to distribute plain language summaries of the ESA to each new employee, as they are required to have each new employee complete a TD1 for Revenue Canada.
- ◆ Require employers to post Ministry Orders in the workplace, informing employees other than those who filed claims that the employer may be violating their rights in certain ways.
- ◆ Vigorously prosecute repeat violators of the ESA and publicize such prosecutions as a deterrent.
- ◆ Carry out public education campaigns advertising and promoting the *Act* and the Branch in all large circulation newspapers (in many languages) in the province, in a similar way to that being done by the equivalent Ministry in Quebec.
- ◆ If the government continues to have the resources for periodic mass mailings to every resident in the province, we suggest that one of them each year advise people of their rights in employment.
- ◆ Ensure that plain-English summaries of the ESA be available in all government offices.
- ◆ Have the Ministry of Corporate and Consumer Affairs distribute the *Employer's Guide to the Employment Standards Act* to all new corporations as they register

and impress on them that understanding employment law is as important as understanding tax law.

- ◆ Translate the *Employers' Guide* and make it available in languages other than English and French.
- ◆ Don't rely on Internet access to information. Less than one third of the population of Ontario has a computer at home, even fewer have Internet access, and we know that a huge proportion of the most vulnerable groups in the labour force do not know how to use computers.

The OFL also supports the Employment Standards Work Group's past recommendations to the Ministry of Labour concerning ways in which enforcement of the *Act* can be enhanced. These include:

- conducting "spot" inspections and audits, particularly in industries which have low wages and high staff turnover; and
- accept 3rd party complaints made to protect the anonymity of employed workers in workplaces in which there is evidence of widespread violations of the *Act*.

5 How should issues regarding hours of work be addressed? Can hours of work flexibility help to address needs of working parents?

The Ministry of Labour's *Future of Work* paper recognizes that some people are working much longer hours while other workers don't have enough hours. This trend underlies, in part, the increasing inequality of earnings in Canada. Statistics Canada analyzed data from 1969 to 1991 and found that the increase in inequality is mainly driven by changes in the distribution of annual hours worked. As the percentage of people working 35 to 40 hours per week in their main job fell, the proportion of people working 50 hours or more rose.

Ontario's employment law governing hours of work has failed to keep pace with changes in the labour market. The standard work week under the legislation – the hours worked per week before overtime must be paid – has stayed at 44 hours for the past 50 years.

We believe that the amendments to the ESA proposed in this section are the best ways in which reform of the *Act* can contribute to family life and assist parents in combining their work and family responsibilities.

◆ ***The 8 hour day, 40 hour week***

A modern *Employment Standards Act* would provide for more paid leave time and a substantial reduction in the work week itself. Despite employers' insistence that they require even greater flexibility in establishing hours of work and overtime, the 37.5 or 40 hour work week is common in almost 80% of collective agreements in Ontario. Within Canada, the federal government has legislation enshrining a 40 hour-week standard as does British Columbia, Saskatchewan, and Manitoba. Now Quebec has moved to lower its work week. The *Fair Labor Standards Act* in the U.S. has maintained a 40 hour week for the past 60 years. Increasingly European countries are looking at reducing the standard work week to encourage employment growth. France recently adopted a 35-hour week and Italy declared a 35-hour week by 2001.

◆ ***Overtime pay after 40 hours***

The overtime premium is now levied after 44 hours. Instead, overtime should be standardized under the law to apply time and a half payments after 40 hours per week and/or 8 hours per day.

All overtime hours after 40 hours in a week and 8 hours in a day should be voluntary.

◆ ***Limit Weekly Overtime***

The maximum work week in Ontario is currently 48 hours. But a largely unenforced permit system allows employers to easily obtain annual and special permits to supplement the 48-hour weekly maximum. With no enforcement many employers do not bother getting the permits. Employers say that they find the process of obtaining permits confusing, cumbersome and time-consuming. The recent Red Tape Review Commission argues that employers need flexibility to adjust work schedules based on market fluctuations. It therefore recommended increasing the maximum work week from 48 to 50 hours per week or averaging work time to a maximum of 200 hours over four weeks.

It is the position of the OFL that such a recommendation takes us in totally the wrong direction. Increasing the allowable overtime to 50 hours per week would only exacerbate the existing labour market problems of poorly distributed working time and income inequality. Put simply, opening the door to even more employer discretion in setting hours and overtime means increasing the precariousness of many workers' lives.

Any consideration of averaging overtime hours beyond 8 hours a day or 40 hours a week would have extremely negative affects on workers, their families and the labour market. For non-unionized workers who have little bargaining power with employers, workers could face unsocial hours, increased stress trying to negotiate childcare and other family demands, and health and safety risks associated with extensive or periodic overtime.

Instead legislative mechanisms should be explored with the goal of more equally distributing work. Legislative provisions in the *Employment Standards Act* and beyond should be initiated to facilitate the hiring of additional employees rather than working current employees overtime.

Finally, where workers agree, the use of “flextime”, which varies arrival and departure times, can offer employers flexibility around peak or core times during the work day. A variety of alternative policies can be negotiated with workers that improve employees' family life and well-being, while ensuring productivity and employment opportunities. In a time of persistent high unemployment, we need a strategy of limiting overtime to encourage job creation.

◆ ***Scheduling of Hours***

Employment Standards should also be improved to ensure that work schedules are made available to workers well in advance. This is necessary for part-time workers or workers with irregular shifts. Similarly, many workers are forced to hold two or three part-time jobs to get by and advance scheduling is critical. We have seen recently that tens of thousands of parents try to work opposite shifts to enable them to provide all-day at-home care for their children. Advanced and consistent scheduling is necessary if shift work is to assist families.

◆ ***Minimum Shifts***

Similarly, the ESA compels employers to pay workers that are called in to work a minimum of three hours whether they work the whole time or not. The *Act* should be amended to specify a minimum of three hours for shifts, scheduled or on call-in. With increasing inequities of earnings being rooted in fewer hours of paid work, the ESA can set limitations on shifting the burden of flexibility onto workers. Workers bear additional commuting and other fixed costs when working scheduled shifts of one or two hours.

◆ ***15 Minute Breaks***

Most employers and employees have two rest breaks a day. Many think that this is provided for in the *Employment Standards Act*. But the *Act* is silent on the question of these breaks. Yet such breaks, initiated by the unionized workers, are today the norm in factories, offices, retail stores and most other workplaces. The ESA should be updated to reflect this reality and specify the longstanding practice of two 15-minute paid breaks during each 7 or 8 hour day, in addition to a lunch period.

◆ ***Three Weeks Vacation after 5 years***

The ESA provides exceptionally low standards for vacation entitlements. Currently, workers are allowed only two weeks vacation after completing one year of service. As it stands, a worker can, and many do, receive only two weeks of vacation each year until retirement. Vacations are not perks or benefits. Vacations historically recognize that people need a break for social, community, health and family reasons.

It is our view that we should join many other jurisdictions in Europe and increase basic entitlements in the *Act*. At the very least, the *Act* should be amended to not only allow 2 weeks paid vacation after one year, but should allow 3 weeks vacation with pay after 5 years employment. The *Task Force on Hours of Work and Overtime* recommended this change and argued that Statistics Canada figures show that 3 week vacations had become the norm with most companies with more than 20 workers.

◆ ***Sick Leave, Family Leave and Bereavement Leave***

The *Future of Work* document poses the question of how changes in hours of work flexibility can help working parents. Surely a critical issue for people and working parents is paid sick leave. The *Act* is silent on the issue. To bring the ESA into the 21st century, we must ensure that employees have full job protection and entitlements to paid sick leave. The standard should be set at one day per month accumulated sick leave.

Paid Family Leave is critical for working parents. Workers, particularly women, are vulnerable to job loss when family emergencies arise. Just as maternity and parental leave protections recognize the social need for such leaves, so to must society ensure workers are protected from job loss through temporary ill health of family members. At a time when working people must care for sick children or elders, workers should not be penalized through job loss. Full job protection and entitlement to paid family leave must be established as a basic standard under the ESA to a minimum of five days per year.

The *Employment Standards Act* is also silent on bereavement leave. While most work places with collective agreements have enshrined the rights of workers to take leave when a loved one and family member die, it is precarious workers who are vulnerable to job loss and wage loss when a family member dies. Again, basic bereavement leave must be enumerated in the ESA for all workers.

**6 Do workplace standards need to be changed to reflect new forms of work?
How?**

In the sections above, we have enumerated how workplace standards need to be changed to protect workers in new forms of work.

7 How can workplace law be made more accessible to the people of Ontario?

We have outlined several important recommendations for making workplace law more accessible to the people of Ontario in our answer to Question 4 concerning communications. In addition to those we would add:

◆ **Office Hours**

The lack of real protection for workers without a union means that nine out of ten of them must wait until they have left a job before filing a claim for unpaid wages, overtime, vacation pay and other violations of basic employment standards. Many of these workers have already moved on to new jobs. With the Ministry of Labour's office hours being restricted from 9:00 a.m. to 4:30 or 5:00 p.m., it is difficult for workers to get access to information and filing of claims. People must take time off from work to file claims and attend fact finding meetings. At best it means a loss of a day's wage which is a real hardship for low-wage workers. But for many workers there is a fear of being fired for requesting time off. This very real fear, in our view, acts as an additional pressure on workers to abandon their claims. The limited hours of operation and locations of operation of the Employment Standards Branch present insurmountable barriers which prevent workers from exercising their rights under the *Employment Standards Act*.

◆ **Staffing**

The provincial government has reduced employment standards officers staff positions by 25%. The negative impacts of these cuts are only now being felt. For workers attempting to access a fair and equitable process to recover lost wages or other earnings, the delay is unjust. The average length of time it took Employment Standards Officers to process workers' claims in 1996-97 was almost 5 months. For many workers, the wait was much longer. Adequate staffing is essential to ensure access to the *Employment Standards Act* and the remedies it provides.

Conclusion

Throughout this submission we have spoken to the main changes we see as necessary. Our thinking on these issues arises from our experience in the workplace and the specific problems that we have encountered. Our concerns also arise from the broader context of the ever changing world of work. The workplace is undergoing dramatic changes as we head into the 21st century. Re-structuring, downsizing, new technologies, the demand for new and different skills, the continued decline in employment in sectors such as resource extraction and manufacturing, the fiscal and ideological limits on public sector growth and the substantial rise in employment levels of the private service sector. Co-incident with this growth is that of the small workplace and non-standard work.

The extent and rapidity of such changes, together with the pressure of international competition, means that Ontario's working population could face continued pressure to compete on the basis of the lowest common denominator i.e., lower wages and lower standards. It is the view of the Ontario Federation of Labour that this is not the best path for working people or government in Ontario. Laws need to be adopted in the changing world of work with a vision of an Ontario that is a better – more just, more equal, more prosperous – place to work. This means higher standards and improved enforcement.

To provide you with a concrete example of how we think the *Employment Standards Act* should be modernized, the appendix provides a one page list of needed reforms to the *Act*.

Respectfully submitted.

ONTARIO FEDERATION OF LABOUR

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APPENDIX

ONTARIO'S EMPLOYMENT STANDARDS: WHAT **REAL** MODERNIZATION WOULD LOOK LIKE



TOUGH, PRO-ACTIVE POLICING OF EMPLOYMENT STANDARDS:

- Inspection and “spot checks” of corporate pay roll records
- Real protections from employer reprisals

② NEW IMPROVED WORKING STANDARDS

In the modern work world, we need stronger laws, not weaker ones.

- **NO EXEMPTIONS FROM EMPLOYMENT STANDARDS**
Regardless of age or where we work, the same employment rights must apply.
- **RAISE AND INDEX THE MINIMUM WAGE**
The minimum wage should be raised to 70% of the average industrial wage and indexed so that as inflation rises the minimum wage rises with it.
- **OVERTIME PAY AFTER AN 8 HOUR DAY, 40 HOUR WEEK**
The current law only provides overtime pay after 44 hours.
- **3 WEEKS VACATION AFTER 5 YEAR'S SERVICE**
Other provinces have this law. All we have is 2 weeks after 1 year's service.
- **MORE PAID HOLIDAYS**
In addition to the 9 under current Ontario law, we need more paid holidays (during the December 24-31 period, for example).
- **EQUAL PAY FOR PART-TIMERS**
“Part-timers” should get the same hourly rate as “full-timers” doing the same job.
- **PAID BREAKS**
We need a guarantee of a rest break in each half shift. Now there's only an unpaid 30 minute lunch break after 5 hours.
- **RIGHTS TO SICK LEAVE AND PERSONAL LEAVE**
Ontario offers no job protection if we're sick or caring for a sick family member.
- **PROTECTIONS FOR TELEWORKERS AND OTHER HOMEWORKERS**
No employer should be able to force us to turn our home into a workplace.
- **JUST CAUSE LEGISLATION**
Employers should have to justify the dismissal of employees. Currently we only have anti-discrimination laws under the Ontario Human Rights Code.
- **PROTECTION FOR “DEPENDENT” CONTRACTORS**
Some firms evade the law by declaring a worker an “independent” contractor.

ENDNOTES

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1. Sources for section 1: Labour market data is from Statistics Canada, *The Labour Force Information, and Employment, Hours and Earnings* as cited in Jim Stanford, CAW, *The Harris Governments and Jobs in Ontario: Another Look*. Figures 1-4 taken from this September 1998 study.
 2. Yalnizian, Armine. *The Growing Gap: A Report on Growing Inequality Between the Rich and Poor in Canada*. Centre for Social Justice, 1998.
 3. Ibid. p. 27.
 4. Ontario Federation of Labour, Proposed Changes to the *Employment Standards Act*, June 27, 1990.
 5. Submission by the Ontario Federation of Labour to the Ministry of Labour's Consultation Paper *The Employment Standards Act and The Protection of Homeworkers*, August 8, 1993.
 6. The Ontario Federation of Labour has written on the role of employment standards and their policy importance in earlier briefs to the government, see *Submission by the OFL to the Standing Committee on Resources Development: Bill 49 Employment Standards Improvement Act, 1996*, August 19, 1996.