



## EMPLOYMENT STANDARDS EXEMPTIONS

Ontario Federation of Labour (OFL) response to the *Employment Standards Act, 2000* (Bill 147) and the issue of regulatory exemptions.

The Ontario Federation of Labour favours a re-evaluation of the current regulatory exemptions and special provisions for particular sectors and occupational groups. In our view, there are currently far too many exemptions to the Act. The Ministry has stated, "The basic premise behind the new ESA is that all employees and employers, with limited exceptions, should be covered by the Act." But there are a full six pages of exemptions.

The OFL has long held the position that exemptions from minimum standards are both unnecessary and harmful. Our view has been, and continues to be, that the purpose of the ESA is to provide legally enforceable standards for all workers. Such standards help to mitigate the adverse effects of the market protecting the most vulnerable workers, mainly unorganized, from otherwise unregulated exploitation by employers.

A number of OFL submissions to the Ministry of Labour have held this position. Back in June 27, 1990 for example, our submission Proposed Changes to the Employment Standards Act, we held that:

The OFL is opposed to all exceptions to the *Employment Standards Act (ESA)*. Exception undermine the integrity of a statute whose purpose is to establish universal minimum standards.

In March 1999, we responded to The Future of Work in Ontario: Discussion Paper. The following year this was appended to the submission of the OFL on the Consultation paper Time for Change: Ontario's Employment Standards Legislation in August 23, 2000. Again our view was:

The *Employment Standards Act* has long, long lists

of people who are not covered by some or all sections of the Act - from babysitters, to cab drivers, to farm workers, to hotel workers, to camp counsellors, to many professions, to group home workers and so on. The ESA should be simplified - by ensuring that one law applies to everyone.

Our view has been consistent on this issue and it is long held. Nonetheless, we are open to discussion on this issue as on other matters, but we have yet to be convinced otherwise. Why is this the case? First, because the ESA contains such minimal standards that virtually everyone can meet them. Even the people who are usually well above the norm, i.e., professional occupations and who may rarely need to fall back on employment standards should be covered in case the need arises. Many others with lower incomes and working conditions are in more obvious need and should be covered.

With Bill 147 the ESA has, with the exception of the emergency leave provision and the enabling of Employment Insurance Benefits, undergone regressive changes. Employment standards have in effect been deregulated. Witness the 60-hour work week with no justification or permit needed after 48 hours. The cheapening of labour costs, that is people's income levels, through the averaging of overtime over four weeks. The reality that rather than extending vacations, the government moved to enable them to be taken one day at a time.

There was no raise in the minimum wage which remains far beneath the poverty line at \$6.85 per hour. There is no limiting of overtime for those with a high income and full time employment within a framework of creating employment for those without work or on very short hours and therefore limited income. There was no initiative to extend vacations towards Continental European norms (four to five weeks) which could also contribute to a labour market policy that favoured full employment.

A government which focused not just on the "bottom line" of profit, but also on improving the standard of living and quality of life of its citizens, would have moved to eliminate the working poor by raising the minimum wage, improving people's working conditions and the promotion of full employment policies. In short, our view is that the ESA changes went in precisely the wrong direction.

In addition, the proposed new criteria for exemptions will take us in the opposite direction to what we think would benefit the majority of Ontarians. We note two new criteria:

- Compelling economic agreements indicating an industry is placed in a serious competitive disadvantage by the application of a provision or provisions, and
- Emergency situations requiring special treatment or temporary exemption from one or more standards.

These two criteria in particular give cause for concern by the OFL and many others should they be aware of them. These criteria could well be seen as opening the door to further exemptions. For example, won't an increased number of employers try to argue that they should be exempt from already minimal standards because they have a "serious competitive disadvantage" compared to some other jurisdiction? Instead of the government streamlining the Act and eliminating regulatory exemptions, workers could be faced with employers lobbying for the opposite and claiming, and being able to document, cheaper labour costs offshore which places them at a competitive disadvantage.

For example, the minimum wage in several countries, in common US dollars and shown on an annual basis is:

Mexico	\$ 768
Guatemala	\$ 459
United States	\$ 8,056
Canada	\$ 7,897

The above figures are 1995-1999 averages from *2000 Development Indicators, World Bank*.

The point is that our reading of "competitive disadvantage," particularly in the context of international trade and trade agreements, would include such comparisons. Is this actually the case, and if it is, unless there are criteria we don't know about, how does the Ministry of Labour intend to stop downward "harmonization"?

The emergency situation criteria also raises concerns. What would constitute an "emergency situation?" Emergency situations in the normal sense of the term would by their very nature be unpredictable and dependent upon both a definition and interpretation. Surely this would introduce further uncertainty into the Act and could find the most vulnerable workers without employment standard protection given

an “emergency” exemption.

We, therefore, oppose such exemptions and request that the government rethink its position. To our knowledge such exemptions are unprecedented. No other province has such dangerous criteria in their legislation, nor does the federal government.

Thus, instead of improvements and less exemptions it seems to us that the government is posed to unleash a dangerous race to the bottom in terms of what an employer views as labour costs and other “rigidities” and what we view as people’s standard of living, quality of life and needed protections.

We believe the government should be protecting people against the inequities of the market and we therefore call for an end to exemptions.

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