

5. Employment Standards

The Conservative government amended the *Employment Standards Act (ESA)* in 2001 to enable a 60-hour work week. For some, the work week keeps getting longer, leaving less time for family, friends and community activities. For many others working part-time or on contracts, it gets shorter.

Ontario should take the initiative similar to France and other European countries and legislate a 35-hour work week with no loss in pay. This would mean less time in the workplace for some and create new employment or additional hours for those who are currently underemployed or unemployed.

For decades, overtime has been mandated after 44 hours worked in a week. The recent amendments to the *Employment Standards Act (ESA)* allow it to be averaged over four weeks or 176 hours. This promotes long hours at less pay and erratic shifts.

At a minimum, Ontario should follow the lead of other provinces and legislate time and a half after 40 hours in one week. Limits on overtime hours in one year should also be established as a way of distributing work hours to others.

The minimum wage in Ontario has been frozen at \$6.85 for over six years! In this time, average rents have gone up over 11 percent. The cost of food and clothing has gone up over nine percent.

Statistics Canada calculates that a single person living in a big city needs to gross at least \$18,371 to live in reasonable standards. This means Ontario's minimum wage is about \$5,900 below the poverty level. To get to this line, a person would have to earn at least \$10 an hour for a regular 35-hour work week. Minimum wage laws should guarantee earnings above the poverty line.

In December 2001, Statistics Canada reported the average weekly earnings across the country were \$671.43. In Ontario, average earnings were slightly higher at \$717.07 or about \$18 per hour. The traditional position of the Ontario Federation of Labour is that the minimum wage should be set at 70 percent of the average. The minimum wage should be indexed to this level, or \$12.60 an hour based on current averages.

Vacation time in Ontario is extremely limited. The *Employment Standards Act* provides for the minimum of two weeks per year for unorganized workers who do not have a union collective agreement providing for longer vacations. Most European countries have legislated five weeks per year. The United Kingdom recently increased vacation time to four weeks per year.

Rather than keep pace with these changes, Ontario is falling further behind. The amendments to the *Employment Standards Act* keep vacations at two weeks, but allow employers to ask you to agree to take these two weeks one day at a time rather than in weekly blocks.

At minimum, workers should be entitled to three weeks paid vacation after five years. At least two weeks of vacation should continue to be scheduled in blocks of at least one-week duration. Personal leave should be treated separately from paid vacations.

Workers have some rights under the *Employment Standards Act*. But they are rarely enforced. Nine out of ten workers filed claims for monies owing after they left their place of employment because they knew they could not enforce their rights while at work. They were afraid that they would be fired. But even when workers file successful claims for back payment, the orders issued for payment by the Ministry are rarely enforced.

There are new anti-reprisal protections in the *Employment Standards Act* that make it illegal for an employer to penalize or dismiss workers for trying to enforce their rights under the law. But this means nothing if it is not enforced. The government must educate workers about the new protection and actively pursue employers who penalize and fire workers for seeking their basic rights.

Recommendations for A People's Charter:

The provincial government should:

- ***Legislate a 35-hour work week with no loss in pay.***
- ***Legislate overtime pay after 40 hours in one week.***
- ***Set the minimum wage at \$12.60 an hour and index it to 70 percent of the provincial average.***
- ***Set minimum paid vacation allowances at three weeks after five years, with a guarantee that at least two of these could be taken in weekly blocks.***
- ***Educate workers about the anti-reprisals protection included in the Employment Standards Act.***

The Issue of Contingent Work

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Preamble

In the past two decades, there has been a dramatic shift in the nature of work in our society. The permanent 40-hour a week job is rapidly giving way to other types of employment relationships. Increasingly, temporary, contract and part-time jobs, along with self-employment, are becoming the norm. Close to half of all jobs in Canada don't fit the traditional "9 to 5, Monday to Friday" mould.

This shift has brought with it an alarming rise in the precariousness of our jobs. These "contingent" work arrangements typically mean lower wages, few or no benefits, and little if any job security. They are part of the race to the bottom, the growth of a province of haves and have-nots. Women, people of colour, and youth are all more likely to be caught in this marginalized work, and to suffer because of it.

The growth of contingent work has created major challenges for the trade union movement and other progressive forces, not only in Ontario, but also around the world. Fortunately, through collective action – including pressing for legislative change – we can meet these challenges, and provide secure, safe and well-compensated employment opportunities for all workers.

Topics:

- Fairness and Enforcement – *The Employment Standards Act*
- Hours of Work and the Minimum Wage
- Corporate Responsibility to All Workers
- Temporary Workers Need Permanent Help

Fairness and Enforcement – The *Employment Standards Act*

Over the past few years, more and more sectors of workers are being exempt from parts of the *Employment Standards Act*. This erosion of general standards makes all workers increasingly vulnerable. Workers in sectors where employment is already more precarious, such as home care givers, residential care workers and farmworkers, are particularly affected.

Farmworkers in Ontario are not covered under whole sections of the *Employment Standards Act*, such as minimum wage, hours of work, daily rest periods, overtime, public holidays and vacation with pay. Information technology workers are also exempt from many basic standards. If you work as an IT professional, you can forget about protection around hours of work, daily rest periods, weekly rest periods and overtime.

We need minimum standards in all sectors and a basic floor of working conditions set out and monitored by the government. Otherwise we will see more workers being used as a cheaper and more flexible source of labour by employers who want to avoid basic standards.

At the same time, when workers are successful in their claims against employers for such things as unpaid wages and overtime, they are all too often left in limbo waiting for their awards. A staggering 70% of the monies ordered to be paid to workers by the Ministry of Labour went unpaid in 2001. That's almost \$22.5 million staying in employers' pockets instead of going where it belongs - to workers.

The new *ESA* brought in many new enforcement provisions. The government has the power to penalize employers who do not follow the *Act*. It can force Directors on corporate boards to pay up. It can fine or jail employers for breaking the law. But the Ministry continues to fail to use these powers to enforce outstanding orders.

Hours of Work and the Minimum Wage

From 1944 through 2000, the law in Ontario provided that an employee could not be required to work more than eight hours a day or 48 hours a week unless the employee agreed to work extra hours and a permit was issued by the government. Employees were also paid for overtime worked over 44 hours in one week. Bill 147, s.17, now repeals the eight-hour workday and allows for a 60-hour work week, with devastating implications for workers in precarious employment situations.

Where the old *ESA* provided a basic floor of rights to protect the most vulnerable workers, the new *ESA* removes that floor. Workers must now negotiate directly with their employers to set maximum work weeks, overtime and other conditions of work. It is hard enough for a full-time permanent worker to negotiate on an equal footing with an employer. For those who are temporary, part-time or contract workers, it is even harder.

Like permanent workers, temporary and contract workers are now 'agreeing' to work longer hours because they cannot make ends meet with what they earn in a regular work week. This is happening at a time when a large percentage of newly-created jobs are part-time. Surveys of part-time workers show that most would work full-time if they could. We find ourselves in an ironic situation where some are working too many hours, and others too few, with no apparent will by governments or employers to balance these two extremes.

While the work week increases for some, and decreases for others, Ontario's minimum wage has been frozen at \$6.85 an hour since 1995. This is a poverty wage, especially for those with temporary and part-time jobs.

In 2000, Statistics Canada set the poverty line or Low Income Cut-Off (LICO) at \$18,371 for a single person living in a big city. That means someone earning the minimum wage working 35-hours per week for a full year would make \$5,904 below the poverty line. To reach the poverty line, a person working full time all year long would need an hourly rate of at least \$10 an hour.

In 2001 in Ontario, those employed part-time worked on average 17 hours a week. This average part-time worker would be \$12,316 below the poverty level if earning the minimum wage. According to a survey by the Daily Bread Food Bank, the largest growth in food bank use is among those with jobs – particularly part-time and temporary jobs.

Corporate Responsibility to All Workers

Whether they're called outsourcing, downsizing, or "just-in-time" practices, it's clear that companies are increasingly shedding what were once core components of their businesses. Often, they turn to sub-contractors who then hire their own employees to carry out these offloaded assignments.

Unfortunately, as the layers between worker and the employer at the top of the corporate pyramid increase, responsibility for the fair treatment of workers seems to decrease. Traditional notions of "who is liable for what" start to break down. This creates an opportunity for employers to shrug their responsibilities off onto other parties, and leave workers in the lurch. Workers at the bottom of this subcontracting chain are more vulnerable to employment standards violations and receive much lower wages and few benefits.

A good example of this is the case of workers who sold Rogers Cable Internet and Cable TV subscriptions door-to-door in the Toronto area. Although they were trained by Rogers' staff in a Rogers' facility, and carried Rogers ID badges, they were hired by an "independent" subcontractor. After working for several weeks, these workers were paid only a small fraction of what they had earned, or nothing at all. The subcontractor has gone out of business, and Rogers is denying any responsibility for these lost wages.

Stop Sweatshops campaigns have forced brand-name retailers like Nike to take responsibility for labour rights violations in its sub-contracted factories around the world.

Workers whose rights have been violated need to be able to hold companies higher up the 'employment chain' liable for those violations.

Temporary Workers Need Permanent Protection

There has been a huge growth in the numbers of people working for temporary service agencies. Temp agency workers are particularly vulnerable to employment standards violations, partly because they have two, rather than one, employers. Many workers are recent immigrants who find that the only way to overcome the barrier of no Canadian experience is to work for a temporary agency.

In the midst of this growth, the provincial government chose to de-regulate the employment services industry. Temp employees and the public are now expected to rely on temp agencies to voluntarily regulate themselves. But only a small proportion of agencies belong to Association of Canadian Search, Employment and Staffing Services (ACSESS). It has not managed to set industry-wide standards, complaints or licensing processes.

For most workers temporary agency jobs are not good jobs:

- Their pay is usually lower than permanent workers, they receive no benefits and almost no sick days, and they can be laid off with no notice.
- Temp industrial workers have one of the highest injury rates of all WSIB categories.
- Workers are increasingly being asked to pay fees to get a job.
- Temporary workers face different working conditions and standards of treatment by each agency.
- Some temp agencies are excluding workers from basic employment standards protection.
- And when employers violate workers' rights – if they don't pay wages owing, don't pay minimum wage, take illegal deductions, don't pay for holidays, require fees, and/or discriminate against workers – there are no grievance procedures.

The growth in temp work also has implications for the public. The confusion that often arises from a temporary employment relationship can allow unscrupulous agencies to avoid employment-related payments to the government, such as Employment Insurance and workers' compensation premiums. In a recent case, a temp agency was ordered to pay \$5 million in fines and restitution arising from an investigation into an accident in which 5 temporary workers were killed. The agency was found to have misrepresented these employees as "independent contractors", in an effort to avoid paying WSIB remittances.

We need transparent accountability in the temporary services industry. Workers need it for the protection of their employment rights. We all need it to ensure that this industry is not off-loading legitimate employer responsibilities and costs onto the public purse and to vulnerable workers.