Ontario Federation of Labour Guide

to the

Ontario Ministry of Labour's proposed changes to the *Employment Standards Act*

October, 2000

INTRODUCTION

The *Employment Standards Act* (*ESA*) is often given short shrift by those who either don't think legal entitlements are important or those who think such standards are of little importance to unionized workers who collectively bargain working conditions.

Historically, collective agreements helped shape employment standards that today, apply to about 2/3 of workers who are not organized. With these minimum standards for most workers, there is less incentive for employers to try to defeat or decertify a union. These laws also form the "floor" so unionized workers don't have to start from scratch when negotiating their collective agreement.

In addition, many union contract refer to the *Employment Standards Act* on matters such as maximum hours, severance pay and parental leave. In many contracts the ESA remains our only guarantee.

The Harris Conservatives are trying to sell their *Employment Standards* re-write as an attempt to "modernize" the law. Far from being modern this government's plans are a throwback to the days of the *Master and Servant Act*. One would have to go back to 1884 – 1944 to discover the last time a 60 hour work week was legal in Ontario.

On top of the buzz word "modern" comes another, "flexible." The government's vision of making standards more flexible is a one-way street – employers are free to do as they please, to "de-regulate" while the rest of us get the short end of the stick – poorer protection against employer abuse. It was in the name of "flexibility" and "an end to red tape" that Ontario got more deregulation and ended up with poisoned water in small towns like Walkerton.

This Guide sets out the current provisions of the *Act*, the proposed changes and highlights the implications. It does not claim to be exhaustive as there are numerous changes besides the main ones indicated here. For further details check the OFL web site at **www.ofl-fto.on.ca** and look for the OFL submission, "Time For Change: Ontario 's Employment Standards Legislation."

FLEXIBLE WORK ARRANGEMENTS:

A. Hours of Work and Overtime

CURRENT PROVISION

Current maximum hours of work are 8 in a day and 48 in a week.

Overtime must be paid at a rate of time and a half when hours of work exceed 44 hours a week.

The Director of Employment Standards can issues excess hours permits upon application from an employer.

PROPOSED CHANGE

Changes to standard work arrangements and new rules for flex-time arrangements:

- eliminate the permit system for excess hours;
- maximum hours 60 per week; hours in excess of 48 per week require employee agreement; ministry approval no longer required;
- overtime payable after 44 hours per week;
- employees may agree to take time off in lieu of overtime pay;
- employers and employees may agree to alternate work arrangements that allow the maximum 60 hours per week to be averaged over 3 weeks, subject to daily and weekly rest provisions;
- **overtime [both hours and payment] could be averaged over the same three-week period.**

Require only 48 consecutive hours rest in 2 weeks.

IMPLICATIONS

The 60 hour a week proposal is a real throwback – to World War 2. The legal limit was 60 hours for women and children from 1884 to 1944.

While workers would have to "agree" to these hours according to the Government's proposals, there will be enormous pressure to do so, even in unionized workplaces.

Excessive overtime is bad public policy. There is plenty of scientific evidence that fatigue is a health and safety risk. Other risks point to problems with family, social, union and civic life.

It is for these reasons as well as for purposes of job creation that the OFL has called for moving towards the 35 hour work week as European countries are doing.

Averaging overtime over 3 weeks means that overtime will only be paid after 132 hours (3 weeks at 44 hours weekly). Example: 60 hours one week, 40 hours each for the next 2 weeks = **no overtime** (time and one half).

Say good-bye to your weekend. The proposed change to require only 48 consecutive hours rest in 2 weeks could mean working as many as 12 straight days before getting 2 days off.

FLEXIBLE WORK ARRANGEMENTS:

B. Vacation with Pay

CURRENT PROVISION

ESA establishes a minimum standard of 2 weeks of vacation a year with 4% vacation pay after 12 full months of work with the same employer. *ESA* requires employers to schedule vacation in one or two week blocks.

PROPOSED CHANGE

At the written request of an employee, an employer and employee could agree to schedule **vacation in daily increments.**

IMPLICATIONS

The government claims "flexibility" in its proposals as workers would have to agree to them. But the notion that employees can disagree with their employer is naive at best. **Employee agreement assumes an equality of power in the workplace when, in fact, no such equality exists.**

Working people need sustained relief from work. **Unorganized workers in particular may well be pressured to take "slow" days off as vacation days**.

Ontarians [and virtually all Canadians] vacation standards' are already inadequate when compared to Europe. There, employees start with one month of vacation entitlement and this increases with years of service.

FLEXIBLE WORK ARRANGEMENTS:

C. Public Holidays

CURRENT PROVISION

The *ESA* currently provides for 8 statutory holidays per year. Employees are entitled to the day off with pay.

Note 1: There are qualifications that must be met for an employee to be eligible for a paid holiday.

Note 2: Special rules apply for employees in hospitals, restaurants, motels, taverns, tourist resorts and continuous operations.

PROPOSED CHANGE

A choice of ***either*** time and a half for the hours worked on the holiday plus a regular day's pay, *or* regular pay for the day and a substitute day off with pay; fewer qualifying conditions so more people have the right to a holiday. Regular day's pay would be pro-rated.

No increase in the number of public holidays is proposed.

IMPLICATIONS

The government claims that this change is necessary as many people now work on public holidays and that they like to work on public holidays for extra money.

A significant increase in the minimum wage would assist Ontarians to raise their standard of living such that they may not "like" to work on public holidays but rather enjoy more time off.

There is **no** proposal by the Government for an increase in the minimum wage.

When this provision on public holidays is added to the proposal for an increased work week and vacation at 1 day at a time, we see yet another way to chain workers to their workplace.

FAMILY LEAVE

CURRENT PROVISION

The only leave entitlements currently in the *ESA* relate to pregnancy and parental leave.

Pregnancy leave - 17 weeks unpaid.

Parental leave, available to both new parents, allows each parent 18 weeks unpaid.

PROPOSED CHANGE

The new family leave entitlement would give employees, in workplaces with 50 or more employees, up to **10 days of unpaid, job-protected leave per year** to deal with a family crisis, personal or family illness or death. The leave would apply to a personal illness and to a family crisis, illness or death of: employee's spouse or same-sex partner, parent, step-parent, child, step-child, brother, sister, grandparent, step-grandparent, grandchild, step-grandchild, child's spouse or same-sex partner, and any relative dependent on the employee for care or assistance.

IMPLICATIONS

This is the only proposal in the government's document *Time For Change* that will actually benefit employees. But **it is restricted to workplaces of at least 50 employees**. This is hardly "modern" given that small businesses have become key contributors to employment growth.

As proposed this provision is unpaid and does not recognize separate leave entitlements for parenting, elder care, sickness or bereavement.

The proposal also lacks any commitment to extend job protection to women and men who want to access the new federal *Employment Insurance Act* parental benefits, beginning December 31, 2000. The federal amendments would enable employees to collect up to 1 year of benefits to care for infants.

MODERNIZING AND CLARIFYING THE *ESA*

Exemptions and Definitions

CURRENT PROVISION

While the *ESA* is supposed to cover all employees and employers, over 20% are excluded in whole or in part.

PROPOSED CHANGE

New definitions to modernize the *Act* regarding coverage and exemptions are said to be forthcoming, but **no specific proposals are presented.**

Disturbing is their suggestion that consideration for creating new exemptions would be compelling economic or cost arguments that indicate a particular industry is placed in a competitive disadvantage.

IMPLICATIONS

The lack of clear direction on the part of the government may well mean that major exemptions to the *Act* will continue.

What industry wouldn't claim that one standard or another placed them at a cost disadvantage?

The OFL position is **no exemptions from minimum standards**. Right now, the more a particular job deviates from the standard full time, full year, single employer, the less likely a worker will be entitled to basic employment rights.

We need full protection for home-workers, teleworkers and all contingent workers.

CURRENT PROVISION	PROPOSED CHANGE	IMPLICATIONS
I. Payment of Wages Current *ESA* requires wages to be paid by cash or cheque.	Direct deposit without requiring employee consent. .	In the modern workplace direct deposit is the norm. Yet this proposal removes any choice on the part of the employee. In cases where English is the second language or where literacy is limited, workers may well prefer to talk to a bank teller with their cheque in hand, rather than to a machine.
II. Termination & Severance	**No change is proposed**, but proposals are invited.	We suggest that the government remove the arbitrary barriers that limit access to the existing entitlements. **The requirement that 50 employees be permanently laid off or that the employer have a $2.5 million payroll before an employee is entitled to severance benefits should be repealed.** The Employee Wage Protection Program, which financially assisted workers faced with employer bankruptcy, was canceled by the Harris government. It needs to be reinstated so that workers still owed money won't be left short.

STRUCTURAL, ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

Enforcement

CURRENT PROVISION

The enforcement of the *ESA* [where it is enforced] is through a complaints-based process. Individuals must make a claim through the Ministry of Labour.

PROPOSED CHANGE

Introduces **escalating monetary penalties** for violations of the **Act**.

Strengthen **anti-reprisal provisions** so that employees who are terminated, disciplined or otherwise penalized for exercising their rights under the **Act** may be compensated and/or reinstated without prosecuting in court.

IMPLICATIONS

Given that the government's proposals say they will encourage "self-reliance," it is doubtful whether the escalating penalties they advocate will bring more compliance.

Anti-reprisal provisions are to be welcomed, but again they need to be enforced to be meaningful.

As it stands today 9 out of 10 workers only file claims when they have left their jobs because they have no real protection.

For non-union employees a "self-reliant" reactive system is totally inadequate.

The notion of "self-reliance" also showed its true colours when upon its election the Harris government dumped unions with the responsibility and the cost of processing *ESA* complaints.

The most powerful deterrent to employment standards violations is **not the severity of the penalty, but the likelihood of the perpetrator being apprehended and convicted.**

OTHER LAWS

CURRENT PROVISION	PROPOSED CHANGE	IMPLICATIONS
***Industrial Standards Act* -[*ISA*]** [Applies to women's coat and suit industry].	Government proposes total repeal.	The government's proposals come without warning, without consultation and without rationale. Enacted in 1935 the *ISA* discourages the undercutting of wages and working conditions of garment workers. Through a bi-partite body this *Act* provides a mechanism for establishing wages and working conditions which are binding on all employers and employees in a given sector and geographic zone. These provisions are generally superior to those of the *ESA.* We therefore **oppose repeal** preferring that this Act be maintained and strengthened.
***Employment Agencies Act*- [*EAA*]** [Applies to permanent (not temporary) employment placement].	Government proposes total repeal.	The *EAA* should be retained and expanded to cover temporary employment and staffing agencies so as to protect workers from unfair practices.
One Day's Rest in Seven Act (Hospitality employees must have 24 consecutive hours of rest every 7 days).	Government proposes repeal. Provisions to be incorporated into new *ESA.* (see hours of work Page 3)	
Government Contracts, Hours and Wages Act - (GCHWA) (Concerns fair wages for employees of contractors bidding on government contracts).	Government proposes total repeal.	Given that there exists other legislation concerning "fair wages" besides the *GCHWA* it is unclear what the effect of this Act's repeal will be. The government has yet to make a strong case.