



FAIR WAGE AND LABOUR STANDARDS POLICY

What Ontario Workers Need to Make It Fair

Initial Comments by the Ontario Federation of Labour
June 2017

INTRODUCTION

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. The OFL represents 54 unions and speaks for more than a million workers from all regions of the province in the struggle for better working and living conditions.

With most unions in Ontario affiliated, membership includes nearly every job category and occupation. The OFL is Canada's largest provincial labour federation. The strength of the labour movement is built on solidarity and respect among workers.

We commit ourselves to the goals of worker democracy, social justice, equality, and peace. We are dedicated to making the lives of all workers and their families safe, secure, and healthy. We believe that every worker is entitled, without discrimination, to a job with decent wages and working conditions, union representation, free collective bargaining, a safe and healthy workplace, and the right to strike.

Organized labour, as the voice of working women and men, promotes their interests in the community and at national and international forums. We speak out forcefully for our affiliates and their members to employers, governments, and the public to ensure the rights of all workers are protected and expanded.

The OFL is pleased to offer our initial comments as the Ontario government considers updating Ontario's Fair Wage Policy.

BACKGROUND

The original fair wage policy for Ontario was created by legislation and covered any entity receiving a government grant, loan, or subsidy.¹ Wage schedules were dealt with through regulations. In more recent times the Fair Wage Policy was addressed by the government's regulatory authority through an Order-in-Council (OIC).²

The most recent update to the OIC was in the spring of 1995.³ It covered several sub-sectors of the construction industry, some types of building services and printing contracts. It also required the MOL to update the wage rates in Fair Wage Schedules on an annual basis.

In the fall of 1995 the new conservative government amended the OIC deleting the annual updates and removed printing contracts from the policy⁴.

¹ John O'Grady with the collaboration of Tim Armstrong & Richard P Chaykowski, *Impact of Fair Wage Policies on the Construction Industry*, (Ontario Construction Secretariat June 2006) at 24

² Ibid

³ Order-in-Council 773/95

⁴ Tim Armstrong and Arthur Donner, *Updating Ontario's Fair Wage Policy*, (Provincial Building & Construction Trades Council of Ontario 2015) at 13

In 2007, the Ontario Government commissioned an independent review of Ontario's Fair Wage Policy. The report was submitted to the government in 2008 but was not released to the public and no action was taken on the Fair Wage Policy.⁵

Current Day

On February 21, 2017, the Ministry of Labour (MOL) issued a press release announcing that they would seek public input into updating Ontario's Fair Wage Policy.⁶

The press release states,

“The review of the Fair Wage Policy is consistent with work being done by the Changing Workplace Review, especially in the building services sector, where workplace issues around precarious employment are prominent.

Ensuring workers receive fair wages is part of our plan to create jobs, grow our economy and help people in their everyday lives.”

The MOL is holding consultation meetings in June, 2017. These comments have been prepared for presentation to the MOL ahead of the consultations.

OFL Comments

Precarious employment is not limited to the building services sector. It is prominent in virtually all sectors of the Ontario economy.

Recent gains in job creation in Ontario have been largely in the service-producing sector, spread among a number of industries, including professional, scientific, and technical services, business, building and other supports and accommodation, and food services. Since 2000, part-time work has increased by 25% while full-time work has grown by just 16%. Much of the part-time work is involuntary: in 2013, 32% of all part-time workers in Ontario reported that they would rather be working full-time – an increase of 43% since 2000. The rate of growth in temporary jobs has out paced full-time jobs over the same period.⁷

The current policy has limited coverage and applies only to government ministries and to direct agencies of the government.

The OFL is calling for the Fair Wage Policy to be expanded to cover contracts signed by all public sector organizations. A “public sector organization” should be defined for the

⁵ Josh Mandryk, The Case for a Stronger Fair Wage Policy in Ontario (Canadian Centre for Policy Alternatives Ontario Office 2014) at 15

⁶ Ontario Seeking Public Input to Update Fair Wage Policy, February 21, 2017 <https://news.ontario.ca/mol/en/2017/02/ontario-seeking-public-input-to-update-fair-wage-policy.html>

⁷ Kaylie Tiessen, Seismic Shift Ontario's Changing Labour Market, (Canadian Centre for Policy Alternatives, 2014) <https://www.policyalternatives.ca/publications/reports/seismic-shift>

sake of consistency as it is currently defined in Bill 114, The Anti-Racism Act⁸. A copy of the definition is provided in the appendix.

This would cover the broader public sector (BPS) including municipalities, universities, schools, and hospitals, also known as the MUSH sector. It would also cover organizations receiving more than a million dollars in public funds.

The BPS is made up of anchor institutions. These institutions should be playing a vital role in setting fair employment and decent work standards.

Greater efforts to bridge those in low-income and historically disadvantaged communities to jobs at anchor institutions could move many people into more secure work and help stabilize households.⁹

The policy should also include fair labour standards such as hours of work, being paid on a timely and consistent basis, advance notice of shift scheduling, etc. For more information reference should be made to the OFL submission to the Changing Workplaces Review¹⁰.

There should be limits on the use of temp agencies and temporary foreign workers.

The coverage in the construction sector should include shop and office workers of the contractor as well as those working on the job site.

The coverage of building services is limited and should be expanded.

This policy should be the floor for contracts with government and public sector organizations. Exemptions could be made for those municipalities, universities, etc., which already have a fair wage and labour standards policy that meets or exceeds the provincial policy.

It is the opinion of the Ontario Federation of Labour, that our public institutions should not be a party to the exploitation of vulnerable low wage workers. The unfortunate reality is that sometimes they are.

Recent examples include the food service workers at the York University and University of Toronto campuses. Some of the food service work was contracted out to an employer

ANCHOR INSTITUTIONS AND ANCHOR MISSIONS: A DEFINITION

Anchor institutions are large public or non-profit organizations – such as hospitals, universities, or municipal governments – that are rooted in community.

An anchor mission is the process of deliberately deploying the institution's long-term, place-based economic power to strengthen a local community, especially neighbourhoods where people facing historic and other barriers to economic opportunity live. (DRAGICEVIC, 2015)

⁸ Introduced in the Ontario Legislature March 29th 2017 by Hon. Michael Coteau, Minister Responsible for Anti Racism, http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4694

⁹ Nevena Dragicevic, Anchor Institutions (Mowat Research #109 August 2015) at 11 https://mowatcentre.ca/wp-content/uploads/publications/109_anchor_institutions.pdf

¹⁰ http://ofl.ca/wp-content/uploads/OFL_Changing-Workplaces-Submission-1.pdf

who tried to lock these workers into poverty wage jobs. It was only after these workers joined a union and went on strike that they were able to make wage gains.

Food services should be covered by the fair wage policy.

Recent media reports have also highlighted the shift to using workers as “independent contractors” and the trouble these workers have receiving the wages owed.¹¹ The Employment Standards Act (ESA) does not apply to contract workers. The only option for enforcing the contract is by taking the employer to court. When these workers are employed through a contractor to one of our public institutions there is little the management at the institution is prepared to do to protect these workers.

In another media report, a company contracted by the University Health Network and the Workplace Safety and Insurance Board to provide translation services is accused of not paying their contract workers¹². More than 40 cases have been filed in court by workers who claim they have not been paid for their services. This company has a long track record of not paying wages and has still been able to secure contracts including from several government ministries¹³.

Translation services should be covered by the fair wage policy.

The policy should apply to sub-contractors and contracts that are flipped. So called “independent contractors” must be protected by making the policy cover the work performed.

Jobs should be a pathway out of poverty. Unfortunately, this is not the case for Ontario’s working poor¹⁴. The policy should set a bottom wage rate of fifteen dollars per hour plus an amount for benefits. Clearly there will be higher prevailing rates and other rates for skilled trades, etc., which would be higher. Protections for workers in printing companies should be reintroduced. Annual updates for the wage rates and benefits should be reintroduced. These updates should be tied to inflation.

Allowing these employers to continue to exploit and abuse these workers is not consistent with the government’s stated priorities of protecting vulnerable workers and reducing poverty. Including the commitment to move towards employment and income security for vulnerable groups¹⁵.

Justice Bellamy recognized the important role government procurement can play in social benefits for the community and putting government’s priorities into action.

¹¹<http://www.cbc.ca/news/canada/toronto/sandra-starr-hard-at-work-1.4042767>

¹² <https://www.thestar.com/news/gta/2017/03/07/why-did-it-take-this-woman-an-entire-year-to-get-paid.html>

¹³<https://www.thestar.com/news/gta/2015/10/29/translators-say-getting-paid-an-uphill-battle.html>

¹⁴ http://ofi.ca/wp-content/uploads/17-02-23-SM-Basic-Income_FINAL.pdf

¹⁵ <https://www.ontario.ca/page/realizing-our-potential-ontarios-poverty-reduction-strategy-2014-2019>

“For government, effective procurement should also be measured by social, environmental, and other benefits to the community. Balancing price with these qualitative dimensions is at the head of effective best-value procurement in the public sector. In other words, procurement practices are an important way of putting a government’s policies and priorities in actions.”¹⁶

Purpose and Intent

The policy should have a purpose clause which would explain the reason for the policy. Our suggested language for discussion is,

To ensure that the government of Ontario and public sector organizations are not entering into contracts with business, contractors, sub-contractors, and suppliers who discriminate against their workers.

There should also be a section on the intent or goal of the policy. Our suggested language for discussion,

To enhance the reputation of the province of Ontario and its’ public sector organizations for ethical and fair business dealings.

To protect the public and vulnerable workers.

To create a level playing field for those businesses wanting to enter into contracts with the government of Ontario and public sector organizations.

Definitions

There should be a section on definitions.

A definition can be used to help protect those doing the work rather than having a focus on who is an employee versus an independent contractor.

The coverage for building services is limited in the current policy. Building services should include cleaning, protection/security, food services, property management/maintenance, parking lot/garage, and concession stand.

Enforcement

There should be background checks on new bids to ensure that the government and public sector organizations are not awarding contracts to employers with a history of

¹⁶Toronto Computer Leasing Inquiry, Toronto External Contracts Inquiry, Report Vol. 2: Good Government, The Honourable Madam Justice Denise E. Bellamy, Commissioner 2005
http://www1.toronto.ca/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Good_Government.pdf

violating labour legislation¹⁷, the Ontario College of Trades and Apprenticeship Act, or the Access for Ontarians with Disabilities Act. These background checks should go back a minimum of three years. It should also be a requirement of the policy that successful bidders remain in compliance with the above legislation.

Employers who won the bid that do not comply with the policy should face financial penalties. The penalties should reflect the degree of the violation and increase for repeat violations. Repeat offenders with serious violations should also face disqualifications on bidding for future contracts.

The MOL employment standards officers should be responsible for determining if the policy is being adhered to with a report back loop to the government ministry or public sector organization.

The policy should require records to be kept for examination, that there be periodic reporting requirements with proactive inspections and audits to ensure compliance with the policy.

Many vulnerable workers fear losing their job if they are found by the employer to have made a complaint to the government. Workers need the ability to remain anonymous when making a complaint. Workers should be able to make complaints through a third party such as a legal aid clinic or worker organization. Reactive inspections should not be limited to investigating a single complaint but should be expanded to review the employer practices to ensure that other workers are not be subjected to the same treatment.

There should be reprisal protection for those workers who file complaints of non-compliance. Employers who are found to have violated this provision should also suffer financial penalties. Where workers have lost wages, punitive damages should be available to workers for the humiliation they have suffered.

Details of the policy should be posted in the workplace in English, French, and the majority language of the workplace with copies provided to the workers.

A report in 2011 commissioned by the Law Commission of Ontario, summarized the employment standards enforcement approaches taken in a number of jurisdictions outside of Ontario¹⁸. The OFL is prepared to discuss enforcement approaches in more detail.

The OFL is not calling for a return to the days when every entity receiving a grant, loan, or subsidy must adhere to the fair wage policy. Under the definition of “*public sector organization*” this would only apply to private entities receiving a million dollars or more in public funds. The government would do well to consider an entity’s compliance with labour

¹⁷ Labour legislation includes the Employment Standards Act; the Occupational Health and Safety Act and the Workplace Safety and Insurance Act

¹⁸ Leah F. Vosko, Eric Tucker, Mark P. Thomas, Mary Gellatly, (New Approaches to Enforcement and Compliance with Labour Regulatory Standards: The Case of Ontario, Canada November 2011) at 60 - 81 <http://www.lco-cdo.org/wp-content/uploads/2012/01/vulnerable-workers-commissioned-papers-vosko-tucker-thomas-gellatly.pdf>

legislation before providing any public funds to a private entity. This would avoid situations similar to Fiera Foods where temp agency workers had been killed; the employer had been prosecuted by the MOL and yet the government provided funds to assist the company to expand¹⁹. In January of 2017 the OFL received a letter from the Minister of Labour Kevin Flynn committing to work to ensure that occupational health and safety is a consideration built into future grants and procurement.

Impacts of Precarious and Low Wage Work

The impacts on workers and families of workers stuck in low wage and precarious work has been studied and is well documented. The World Health Organization has identified the global dominance of precarious work as a significant contributor to “poor health and health inequities²⁰.”

There are financial costs to provincial and municipal government that can be tied directly to poverty. There are also costs to society that cannot be measured in dollars. Most importantly is the human toll on the workers, their families and their children. Many of these costs were contained in a 2008 report²¹ that the Ontario government cited as part of the economic rationale for developing their poverty reduction strategy²².

Workers in precarious employment in low income households are more likely to report anxiety about employment. This interferes with personal and family life as they are more likely to find it difficult to make ends meet or to run out of money to buy food²³.

These households are more likely to have problems buying school supplies, paying for school trips, and financing their children’s activities outside of school²⁴. This is a barrier to children succeeding in school and living up to their potential in life.

Breaking the Cycle

We can break the cycle of poverty. That’s the conviction that sits at the heart of Ontario’s Poverty Reduction Strategy.

We all agree that the moral imperative for reducing poverty is clear: children should have the opportunity to succeed in life, and people facing challenges should be given the tools they need to get ahead.

We have another equally compelling rationale for reducing poverty: it’s the smart thing to do for our economy. An educated, healthy, and employable workforce is critical to the economic future of this province.

¹⁹ <http://ofl.ca/index.php/government-investment-business-health-safety-records/>

²⁰ Commission on Social Determinants of Health, Closing the gap in a generation: health equity through action on the social determinants of health: Final Report of the Commission on Social Determinants of Health (World Health Organization, 2008) at 80.

http://apps.who.int/iris/bitstream/10665/43943/1/9789241563703_eng.pdf

²¹ The Cost of Poverty, An Analysis of the Economic Cost of Poverty in Ontario (Ontario Associations of Food Banks, 2008) <https://www.oafb.ca/assets/pdfs/CostofPoverty.pdf>

²² Breaking the Cycle Ontario’s Poverty Reduction Strategy 2009 – 2013 (Ontario Government) <https://www.ontario.ca/document/breaking-cycle-ontarios-poverty-reduction-strategy-2009-2013>

²³ W. Lewchuk et al, It’s More than Poverty, Employment Precarity and Household Well-being (The Poverty and Employment Precarity in Southern Ontario (PEPSO) research group, 2013) <https://pepsouwt.files.wordpress.com/2013/02/its-more-than-poverty-feb-2013.pdf>

²⁴ ibid

Workers in precarious employment are more likely to report poorer general health and mental health, greater stress, and be more isolated²⁵.

Workers who need to work multiple jobs or long hours to make ends meet have less time for family and community relationships and may over time lose the support network of family and friends²⁶.

Conclusion

Acting on these recommendations will help the government meet its publicly stated priorities to reduce poverty and protect vulnerable workers. It will lift many workers out of the cycle of poverty by allowing them and their children opportunities to reach their potential.

Expanding the Fair Wage Policy and including fair employment and decent work standards will Make It Fair for many more Ontarians.

²⁵ W. Lewchuk et al, The Precarity Penalty: The impact of employment precarity on individuals, households and communities—and what to do about it being (The Poverty and Employment Precarity in Southern Ontario (PEPSO) research group, 2015),
https://pepsouwt.files.wordpress.com/2012/12/precariety-penalty-report_final-hires_trimmed.pdf

²⁶Law Commission of Ontario, Vulnerable Workers and Precarious Work (Toronto: December 2012)
<http://www.lco-cdo.org/wp-content/uploads/2013/03/vulnerable-workers-final-report.pdf>

Recommendations

Coverage

The Fair Wage Policy to be expanded to cover contracts signed by all public sector organizations.

The policy should also include fair labour standards such as hours of work, being paid on a timely and consistent basis, advance notice of shift scheduling, etc.

There should be limits on the use of temp agencies and temporary foreign workers.

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The Anti-Racism Act (Bill 114).

“public sector organization” means,

- (a) a ministry of the Government of Ontario,
- (b) a public body designated in regulations made under the Public Service of Ontario Act, 2006,
- (c) a municipality,
- (d) a local board as defined in subsection 1 (1) of the Municipal Act, 2001 or subsection 3 (1) of the City of Toronto Act, 2006,
- (e) a board as defined in subsection 1 (1) of the Education Act,
- (f) a university or college of applied arts and technology,
- (g) a local health integration network as defined in subsection 2 (1) of the Local Health System Integration Act, 2006,
- (h) a health service provider within the meaning of the Local Health System Integration Act, 2006 other than a person that operates a private hospital within the meaning of the Private Hospitals Act, unless the person received public funds for the operation of the hospital in the previous fiscal year of the Government of Ontario,
- (i) a person described in clause (b), (c) or (d) of the definition of “service provider” in subsection 3 (1) of the Child and Family Services Act,
- (j) a district social services administration board established under the District Social Services Administration Boards Act,
- (k) a person who operates or maintains a correctional institution within the meaning of the Ministry of Correctional Services Act, and
- (l) an organization that received \$1,000,000 or more in public funds in the previous fiscal year of the Government of Ontario, other than,
 - (i) the Office of the Lieutenant Governor, or
 - (ii) the Office of the Assembly or the office of an officer of the Assembly; (“organisation du secteur public”)