



Maytree Policy in Focus

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Protecting workers in a recession is important for a stronger economy

- Today more than 37 percent of workers in Canada work part-time, on contract, work through temp agencies, or in self-employed situations.
- The uncertainty they face in their jobs is augmented by the lack of enforcement of employment standards.
- Surveys have found that 25 percent of employers are in widespread violation of labour laws and that 50 percent are in partial violation.
- In most cases, the provinces are responsible for creating and enforcing labour laws that protect workers.
- In Ontario, it is up to an individual worker to file a complaint with the Ministry of Labour. There are few workplace inspections even when more than one individual has filed a complaint against an employer.
- Few employers are charged or fined.
- It is important during the current economic crisis that labour laws are enforced. This will ensure that the brunt of the recession is not disproportionately carried by our poorest citizens.
- Enforcing standards will also ensure that we recover from this crisis more quickly because high labour standards are associated with high performance economies.

This paper tells the stories of workers who are forced by their economic circumstances into work that violates their basic labour market rights. This *Maytree Policy in Focus* highlights those recommendations related to the enforcement of the Employment Standards Act. The report recommends that the Ministry of Labour:

1. Educate workers, employers and the general public on their rights;
2. Target 10 percent of employers for proactive inspections (as is currently done the by Ontario Health and Safety Branch);
3. Investigate employers when they have been found to violate the rights of one employee;
4. Penalize employers who break the law and increase the fines; and
5. Ensure that unpaid wages get paid.

Too many Canadian workers are not protected by employment legislation

Many of today's low-wage workers work part-time, on contract, work through temp agencies, or in self-employed situations – not by choice, but by necessity. This leaves their working conditions unprotected or unenforced by provincial labour laws.

It is important during the current economic crisis that the labour rights of the most vulnerable in society are protected. This will ensure that the brunt of the recession is not disproportionately carried by our poorest citizens, and will also ensure that we recover from this crisis more quickly because high labour standards are associated with high performance economies.

What laws protect workers in Canada?

With the exception of federal government employees and federally regulated industries, the provinces are responsible for creating and enforcing labour and employment laws that protect worker's rights.

In Ontario, the *Employment Standards Act* sets out the minimum standards that employers and employees must follow. This includes the minimum wage, hours of work, daily rest periods, overtime pay, vacations and parental leaves.

How are employment standards enforced?

In Ontario, it is up to an individual worker to file a complaint with the Ministry of Labour if his or her rights are violated. The most common complaints relate to unpaid wages or benefits.

Once a complaint is filed, the Ministry will investigate. If a violation of the Act is found, the Ministry of Labour can order the employer to pay the worker for any unpaid wages or entitlements and can order the employer to comply with the Act. An Employment Standards Officer has the authority to fine an employer from \$250 to \$1,000 per violation and a 10 percent administration fee.

Most complaints filed by workers with the Ministry of Labour are settled voluntarily. This means that employers are not fined, and there will be no public record of the violation.

In the late 1960s, the Employment Standards Branch enforced the Act primarily through proactive inspections of problem industries or geographic areas. The number of employees receiving payments because of a Branch Intervention in 1971 was 52,263. Today, there are very few proactive inspections – in 2005/2006 only 11,258 workers received unpaid wages and entitlements from Branch interventions.

Even when employers are found guilty, the Ministry does not do an adequate job of collecting money on behalf of workers. Over \$100 million in wages that the Ministry ordered employers to pay went uncollected between 2001/02 and 2005/06.

The lack of proactive enforcement has meant that many of Ontario's most vulnerable workers are not protected. Unfamiliarity with their rights or language difficulties keep people from filing complaints, as does the necessity of finding a new job quickly to support themselves and their families.

A survey of federally-regulated employers found that 25 percent of employers were in widespread violation and that 50 percent were in partial violation of labour laws. The 2005 Statistics Canada Federal Jurisdiction Workplace survey of employment practices confirmed these findings.

“Kalil quickly found a new job, this time driving a truck for a small company. Told he was an independent contractor making a flat rate of \$600 a week, Kalil got no benefits or overtime, vacation and public holiday pay, even though he was an employee. His work time quickly crept up to 50-55 hours a week. While his pay never went up, it did go down – pay was deducted when the truck was in the repair shop and over Christmas holiday when the plant shut down.”

Who is not protected by the Act?

The practice of contracting work out by employers has meant that many workers are now outside the provision of the Act. There are several ways that employers contract out: using temp agencies, operating as contractors or using intermediaries to do work that was previously done in-house, and classifying their workers as self-employed despite the fact that these individuals have no power to negotiate their rates, their schedules, advertise their services or evaluate their own job performance.

Employers who contract out work say they must do this to remain competitive in a global market place. Yet many industries that engage in this practice have distinctly local markets: restaurants, janitorial services, construction, trucking, and home health care.

Today more than 37 percent of workers in Canada are working part-time, on contract, working through temp agencies, or in self-employed situations. Thirty percent of self-employed workers earn less than \$20,000 and have no benefits. About 72 percent of temp agency workers earn less than \$30,000 a year and they earn 40 percent less than their permanent coworkers.

WORKING ON THE EDGE

WORKERS ACTION CENTRE, 2007.

www.workersactioncentre.org

This paper tells the stories of low-wage Canadian-born, visible minority workers, immigrants and women who are forced by their economic circumstances – and coerced by their employers – into work that violates their basic labour market rights. Their stories are supplemented by data collected through a hotline run by the Workers Action Centre and data collected by the McMaster University Work and Health survey. It paints a picture of a labour market that systematically exploits workers. The report emphasizes that this exploitation is not just a matter of a few bad employers who engage in unlawful practices. Instead it is a structural problem in our labour market and a failure of the content and enforcement of the Ontario Employment Standards Act.

While the report makes a number of recommendations, relating to minimum wage, temp agency workers, workplace bullying and the contracting out of work, this *Maytree Policy in Focus* highlights those recommendations related to the enforcement of the Employment Standards Act.

1. Educate workers, employers and the general public

The report recommends that the Ontario Ministry of Labour educate workers and employers by providing them with materials in a variety of languages which summarize employment standards, common violations and the complaints' process. This information should emphasize that workers will be protected if their employer tries to fire them or otherwise penalize them for asserting their rights. The report notes that the Ministry already produces educational materials in 24 languages but suggests that the Ministry's call centre, that handles half a million calls annually, be expanded to provide service in languages besides English and French.

These materials could be distributed in the workplaces to both workers and employers. The government could focus on those sectors that research shows to be high risk of violation, as well as those employers which have had previous complaints against them.

They also recommend that the government launch a public campaign promoting employees' rights and employers' responsibilities similar to the Ministry of Labour's public health and safety campaign.

2. Target 10 percent of employers for proactive inspection

Rather than rely solely on complaints from workers, the report recommends that the Ministry of Labour engage in proactive inspections. They should target particular sectors with high rates of violations such as cleaning and janitorial and map existing violations in order to determine inspection priority. They should have a target of 10 percent of employers which would bring them in line with the inspections currently done by the Ontario Health and Safety Branch. These proactive inspections could also be used to follow up on anonymous complaints – again, like it is done by the Minister of Labour in the Health and Safety regime.

To ensure transparency in the system, the report recommends that results arising out of the inspections be posted in workplaces and that information on the prosecution of employers continue to be posted on the Ministry of Labour's website.

3. Investigate employers when they have been found to violate the rights of one employee

When a complaint is filed, rather than ending the process with the individual claim, the Ministry should extend the investigation to other employees. This was also recommended by the Provincial Auditor in 2004 when a review was conducted of Ministry of Labour activities.

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5. Ensure that unpaid wages get paid

The government should develop clear steps and timelines for officers to collect moneys owed to workers. When collection fails, prosecution should be mandatory.

The Workers' Action Centre is a worker-based organization committed to improving the lives and working conditions of people in low-wage and unstable employment.

Conclusions and Additional Information

Since the Workers Action Centre report was written, there have been a number of developments which will improve the labour market conditions for workers.

In 2008 the federal government has developed a Wage Earner Protection Program which protects workers when employers become bankrupt. The program will cover unpaid wages and vacation pay up to a maximum of \$3,000.

The Ontario Ministry of Labour introduced an amendment to the Employment Standards Act (Bill 139) in December 2008 to improve protection for temp agency workers. If this bill is passed, temp agency workers will have access to holiday pay, severance pay and better information about their rights. It would also prohibit agencies from charging fees to workers and reduce barriers to permanent jobs.

In addition, as part of its poverty strategy, the government of Ontario introduced its intention to provide an additional \$10 million for labour market enforcement. Details of this funding is expected in the March 2009 Ontario budget.

The Ontario government should be firm in its commitment to provide additional resources to enforcement. An investment of \$10 million on enforcement will pay big dividends by ensuring \$17.4 million unpaid wages get into the hands of the province's most vulnerable workers. It will also ensure a level playing field for employers who follow the rules.

Through workers' eyes

Shirley and her husband saw an ad in a newspaper for a janitorial company that said it could provide work immediately. Needing work, they attended a group meeting with nine other people. They were all asked to pay the company \$739. For this money, Shirley understood she was going to be trained, provided with supplies and given cleaning work. "They promised us the world," she says. "Before we left he said we could get a job in janitorial, it only pays \$10 an hour. So, I said put my name down I will work for \$10 to learn the business." Shirley was worried that this job was a scam. But she needed to work so she handed over her credit card to make the payment. This was in November. By March, Shirley and her husband had not received one phone call from the company to work.

While working at the steel company for close to three years, Jack had to fight twice for this public holiday pay. Jack filed an employment standards claim at the Ministry of Labour for his unpaid wages. He won. None of the other temp agency workers at the steel company received public holiday pay.

Raj works 55 hours a week at two pizza delivery jobs making \$7 an hour, less than minimum wage. His paper delivery job added another 20 hours to his work-week. The stress of this work has already contributed to diabetes and major heart problems resulting in a heart by-pass operation. "Only one month, I didn't work at the paper delivery job after the operation... I would like to have taken time off, but financially I couldn't afford it." Because Raj's job delivering pizzas is misclassified as an independent contractor position, he was not able to get Employment Insurance sick benefits after the open-heart surgery. Even now, "Income is still unstable, if anyone is sick, income is lost because there is no paid sick leave."



About Maytree Policy in Focus

Maytree Policy in Focus, a publication of Maytree, identifies and shares practical research to help inform policy- and decision-making.

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