



# **WORKING ON THE EDGE**

WORKERS' ACTION CENTRE



## **Working on the Edge**

### **Workers' Action Centre**

2007

Workers' Action Centre

720 Spadina Avenue, Suite 223

Toronto, Ontario M5S 2T9

tel 416-531-0778 fax 416-533-0107

email [info@workersactioncentre.org](mailto:info@workersactioncentre.org)

web [www.workersactioncentre.org](http://www.workersactioncentre.org)

### **Acknowledgements**

This report is the collective effort of people in precarious work, members, staff and volunteers of the Workers' Action Centre, a research team, and supporters. Everyone contributed their knowledge, skills and insights. The report would not have been possible without the workers who participated in the interviews: Aiesha, Rani, Kalil, Simone, Jack, Sangita, Zahra, Andrew, Sharif, Shirley, Nalini, Raj, Jameela, Siva, Isabel, Manuel, Hassan, and Kevin. They gave their time and energy in the face of long hours of work and family responsibilities.

The report was prepared by Mary Gellatly with the invaluable support of the research team, Dr. Tania Das Gupta, Nicole Cohen and Lisa Kaida. A special thanks to Lynn Spink, Dr. Cynthia Cranford and Dr. Leah Vosko, Dr. Wayne Lewchuk, Jane Cullingworth, Employment Standards Work Group and Parkdale Community Legal Services. The project was supported by funding from Heritage Canada and the Law Foundation of Ontario.

design + illustrations: Tariq Sami • HISTRIONICS



# Table of Contents

## Summary

<b>1</b>	<b>Introduction</b>	<b>9</b>
<b>2</b>	<b>Work on the Edge: Precarious Work Today</b>	<b>13</b>
	Same Old Working Reality	16
	Working Beyond the Reach of Protection	16
	Increasing Inequality in the Rewards of Work	17
	<b>No Power, No Rights: Temp Agency Work on the Rise</b>	<b>17</b>
	Who's Responsible? The Regulation of Temp Work	19
	Paying to Work	21
	Trapped in Temp Work	22
	Second-class Workers	24
	Low Wages and Unstable Earnings	24
	<b>Employment Agency Fees and Other Job Scams</b>	<b>25</b>
	<b>Nominal Subcontracting: Shifting the Costs of Employment</b>	<b>27</b>
	<b>Misclassified Workers</b>	<b>30</b>
	<b>Self-employed Workers</b>	<b>33</b>
	<b>Expanding the Scope of Labour Laws</b>	<b>33</b>
<b>3</b>	<b>More Stress: The Health Impacts of Precarious Work</b>	<b>35</b>
<b>4</b>	<b>A Fair Day's Pay for a Fair Day's Work</b>	<b>39</b>
	Income Insecurity	42
	Less Access to Employment Benefits	43

<b>5</b>	<b>Enforcing Employment Standards in Ontario</b>	<b>45</b>
	No Protection on the Job	46
	Enforcement in a Deregulated Labour Market	49
	How are Employment Standards Enforced?	50
	How are Employers' Violations Detected?	51
	Extended Investigations	52
	Detection of ESA Violations Relies on Workers	54
	No Faith that the System will Work for Workers	54
	Barriers to Filing Individual Claims	55
	Bureaucratic and Legal Claims Process Excludes Many	55
	Claims Process has Become Dispute Resolution not Enforcement of Standards	56
	No Penalty for ESA Violations	58
	Conclusion	60
<b>6</b>	<b>Working on the Edge – Change is Needed Now</b>	<b>61</b>
<b>7</b>	<b>Recommendations</b>	<b>63</b>
	Precarious Work and New Employer Practices	64
	Equality	65
	Temp Agency Workers	66
	Minimum Wage	68
	Effective Enforcement of the Employment Standards Act	69
	Psychological Harassment / Workplace Bullying	75
	Updating Other Standards	75
	<b>Endnotes</b>	<b>79</b>

# Summary

## Aiesha

My story is the story of many new immigrants coming to this country. I came to Canada five years ago and got a job selling services for a cable company. We represented the cable company in our door-to-door sales. But we were hired through a subcontractor. I worked for about a month and only got 10 percent of what I was owed. When I saw that I was not going to be paid the rest of my wages I left along with the rest of the team. It took me more than two years to get the \$2000 in unpaid wages.

So why was it difficult to get my money? Everyone said “go talk to your boss.” But who exactly was my boss? Am I my own boss?

The cable company trained us, gave us company identification and promised us a commission on each subscription sold. But after a month, the cable company told us it wouldn't pay when a customer cancels. What do you do when you have two bosses: one that is making all the decisions about how I work and what I am paid and the other boss that only directs my work day-to-day? They both claimed that I was self-employed.

I found this all out when I decided to do something about getting my wages. The cable company is a huge multi-billion dollar company that contracts out to many small subcontracting agents to sell services. Subcontractors in turn misclassify us as self-employed to avoid paying benefits..

The larger issue, I feel, is that the cable company is making its money by exploiting new immigrants including women who do not know their rights. Many of the other workers I worked with did not come forward – they were afraid or did not have the time to figure out what to do.

I contacted the Workers' Action Centre to find out what my rights were and what I could do to get my wages. It took us two years to get our wages!

I saw a picture of an iceberg recently. My experience is like the tip of the iceberg. At the bottom are the many workers that are owed wages and the government policies that do not help them. We need to make sure that what happened to me and all the other workers who did not get their wages does not continue.

What Aiesha experienced is all too common for people working for low wages in temporary and contract work with poor working conditions, no benefits and little protection when wages are not paid. That is why Aiesha and other members of the Workers' Action Centre<sup>1</sup> (WAC) decided that it was time to expose the reality of precarious work today. This report attempts to do that.

By speaking out about the reality of our workplaces, the labour market, social programs and the barriers faced when rights are violated, WAC members and workers want to increase awareness and open up space for workers to be involved in a dialogue to address these critical issues.

Over the past seven years, the Workers' Action Centre has been responding to the dramatic growth of low-waged precarious work. Workers are earning less, have fewer benefits, face widespread violations in their workplaces and have little job and income security. These workers are predominantly newcomers, immigrants, women, youth, and from racialized communities. Many are members of the Workers' Action Centre.

This report, **Working on the Edge**, was conceived by WAC members to examine precarious work from workers' point of view. It is based on a review of the issues raised by the people who phone the WAC hotline and in-depth interviews with workers.

## Precarious Work

The way work is organized has changed drastically over the past 30 years. More people are working part-time, are in temporary or contract jobs, and are juggling two or three jobs, without employment benefits or workplace protection. Yet labour laws and employment benefits are still based on a standard employment relationship developed after World War II.

Workers' experiences highlight the gaps in our labour laws (such as no protection for independent contractors) that have created incentives for employers to move work beyond the reach of regulation. As Aiesha experienced, work that used to be done in-house and that is considered "low-skilled" or labour intensive is now outsourced by companies. Employers seek to hire people indirectly through intermediaries such as nominal subcontractors and temporary employment agencies. Workers like Aiesha are misclassified as "independent contractors" because employers wish to bypass labour laws. Workers' experiences also highlight the way in which some employers are shifting more business costs onto workers who have little power to refuse.

Employers rationalize these practices as necessities to improve flexibility in an increasingly globalized world. But workers' experiences show that outsourcing, indirect hiring, and misclassifying workers takes place in sectors with distinctly local markets: restaurants, business services, construction, retail, warehousing, trucking, janitorial, home healthcare and manufacture of goods consumed locally.

These practices are not particularly new. They recall the experiences of the "sweating system" of outsourcing in the garment industry and the recruitment through employment agencies and immigration practices during the nation-building periods of the late 1800s.<sup>2</sup> Also similar is that immigrants and racialized workers are over-represented in this work. Marked by low wages and unprotected by labour laws and barriers out of this work, precarious work is increasingly racialized work.

## Deregulated Labour Market

The workers' experiences highlighted in this report show a labour market that is without regulation and protection. Violations of basic standards, such as overtime pay and the right to take a day off when sick, have become the norm rather than the exception in many workplaces. This daily reality of employment standards' violations is making them seem ordinary and almost expected in sectors where there are a large number of new immigrants, racialized, women and low-waged workers.

Deregulation has taken place as the *Employment Standards Act* (ESA) becomes increasingly unable to address substandard conditions in the “new economy.” The failure of governments over the past 30 years to adequately fund and staff employment standards’ regulation, and the shift from enforcement in workplaces to individual claims resolution by former employees has essentially shifted the onus for enforcement onto workers.

Workers’ experiences challenge the view that the problem is just from a few “bad apples;” that is, only a few employers violate the law in an otherwise law-abiding province. That view would have us only look at Aiesha’s subcontractor and ignore the role of the cable company in her unpaid wages. It would remove from scrutiny the role of employers who have the real capacity, and workers would argue, responsibility, to comply with minimum labour standards. Similarly, workers reject the view that violations take place because workers are “vulnerable”. Viewing Aiesha as a “vulnerable worker” would focus on her gender or recent immigration status, rather than on the structural barriers she faces to enforcing her rights or on the social, economic and political forces that push her into this work in the first place.

## Impacts on workers

Low wages, outdated labour laws and lack of enforcement of minimum labour standards are trapping people in poverty. Low wages are a key feature of precarious work. One out of four workers earns below the poverty line, or less than \$10 an hour. As workers demonstrate in this report, trying to survive in such a low-wage economy is taking its toll. People work longer hours, take on a second job and become vulnerable to job scams.

Already in low-wage jobs, people in precarious work must also bear the costs of unpaid hours of work, earning less than minimum wage and no overtime pay when basic labour standards are not enforced. Workers bear the costs of job loss when they are pushed out of work by substandard conditions or are fired when trying to enforce basic rights. A deteriorating social safety net and privatization of labour market adjustment means that workers bear the costs of moving from one job to the next. Workers must turn to family and friends when wages go unpaid and the system fails them.

Low-wage workers, especially women, immigrant and racialized workers are increasingly working in temporary, contract and part-time work that is beyond the reach of protection. Hired indirectly through temp agencies and nominal subcontractors, workers have little income and job security. Low wages, sexism and racism in the labour market not only push people into these sectors of work, but also create barriers to moving out of this work.

The conditions that workers in precarious employment face – low wages, long hours of work, or not enough hours of work, juggling multiple jobs, income insecurity, feeling like you have to work harder than permanent staff, denial of basic rights – all contribute to higher levels of stress that are related to poorer health. These same workers are less likely to have supplemental health benefits than permanent workers are. They are also less able to take time off if sick because there is no paid sick time. Not only does this diminish the capacity of Ontario's workforce, but also it contributes to higher healthcare costs.

## Rani

Rani came to Canada in 2000 from Sri Lanka. But she feels that she is not able to live the life that she came to Canada for. It is a life that does not recognize her abilities, a life that is filled with barriers to realizing her ambitions. She and her husband have been pushed into minimum wage jobs. "We came to Canada for a happy life, but we don't have that. We can't live on \$8 an hour; even \$10 is too little. That is why I have decided to struggle for my rights and that of others to make a simple living for our hard work. I will join other workers who are struggling [to improve conditions] and will make our politicians hear our voices."

## Workers' Action Centre Recommendations

We set out our recommendations at the end of the report. Key recommendations include the following.

### Minimum Wage

Ontario's minimum wage should be based on the principle that a person working full-time, all year, should earn at least enough to be at or above the poverty line.

Increase the minimum wage immediately to \$10 and move to benchmark the minimum wage to the low-income cut-off (LICO) index or some similar standard and adjust annually by the cost of living increase. The formula for fixing and adjusting the minimum wage should be set out in the ESA rather than in regulation.



## Update outdated labour laws that trap people in poverty and deny workers fair standards

Many workers are deprived of employment rights, benefits and protection because their work arrangements do not conform to the standard employment model underlying labour standards, policies and practices.

- The ESA must be expanded to cover precarious forms of work. This is necessary to improve regulatory effectiveness of the ever-changing labour market. The starting point should be that all workers are entitled to minimum labour standards.
- Companies that make decisions and control the work process must be jointly liable with any intermediaries for all statutory obligations for workers.
- The ESA should mandate equality for workers among all forms of employment. The government should not enable employers to impose inferior conditions on workers, who are primarily women, immigrant and racialized workers, simply because of the form of employment (for example temporary or contract work).
- Equality of treatment in pay and employment benefits should be protected regardless of form of employment.
- Working for a temp agency means a worker has two employers – the agency and client company. Workers need a new section of the ESA to protect temp agency workers. This would include protections such as barring direct or indirect fees, stopping monetary or other barriers to temp workers being hired by client companies, ensuring access to public holiday and other statutory entitlements, and making the fee structure between the client company and temp agency transparent.

## We need effective enforcement of employment standards in Ontario workplaces – fairness!

- Employers who break the law must be caught. To do this increase resources to bring enforcement into workplaces through more proactive inspections and extended investigations that are effective in detecting employer violations.
- There must be a cost to breaking the law. Fine all employers who violate the ESA regardless of whether a settlement has been achieved. Prosecute all repeat offenders and employers that do not comply with orders to pay unpaid wages.
- Workers should get their unpaid wages and entitlements. Improve collections of unpaid wages. Establish an employer-paid wage protection plan to ensure workers' wages are paid.



# 1

## Introduction



# 1 Introduction

The world of work is changing at a rapid pace. Researchers are exploring the rise of temporary, contract and other forms of work that fall outside the standard employment relationship,<sup>3</sup> an outdated standard upon which most of our employment-related rights, benefits and protections are still based.<sup>4</sup> Researchers are documenting the growing gap in income, with more and more workers trapped in low-wage jobs.<sup>5</sup> Others document the over-representation of immigrant and racialized communities in low-paid precarious work.<sup>6</sup> Policy analysts are making the links between outdated and un-enforced labour laws and rising poverty among workers.<sup>7</sup> The mainstream media has begun reporting on these important issues.<sup>8</sup>

What is commonly missing from this critical debate are the voices of workers who live with the reality of low wages, income instability and few employment benefits and protections. Workers are often portrayed as faceless victims, accepting whatever comes their way and in need of rescue by individual acts of charity. But that is not the reality for the people with whom the Workers' Action Centre (WAC) works. We work directly with people in low-wage and precarious work to address workplace problems. Workers contact us through our phone hotline, weekly drop in sessions, and educational workshops. We work with people to understand how their rights have been violated. Together we develop strategies to address individual workplace problems while connecting individual problems to broader strategies to address the causes of low wages, discrimination and precarious employment. Through this work, people join and become members of the Centre.

In the spring of 2006, members of the WAC decided that the broader public and the government needed to hear about the deteriorating conditions in low-paid, precarious work and the barriers that workers face when they try to address violations of basic minimum standards.

This research documents workers' experiences. This is about the working conditions, struggles, aspirations and demands of workers who have contacted the Workers' Action Centre. They talk about the effects of precarious work on their relationships, their family lives, communities and ability to participate in the Canadian mainstream. In documenting workers' stories, we have tried to connect individual experiences to some of the social, economic and political forces shaping our lives. Low wages and poor working conditions are systemic and part of an economic strategy that thrives on driving costs down to the bottom. Those who support such a strategy fail to point out that the result is poverty and breakdown of health, families and communities.

Feminist scholars talk about the "feminization" of the labour market, where certain sectors of the labour market are marked as "women's work," such as caring, serving, cleaning and assisting male workers and customers. This is because these tasks have been historically associated with the unpaid work of women. Similarly, we argue that there is a "racialization" of the labour market. Statistical analysis<sup>9</sup> shows a large percentage of racialized workers in precarious work. Sectors of the labour market marked by precarious working conditions, some of which overlap with those that are associated with women, are clearly associated with the work done historically by

racialized peoples. Today's precarious working conditions can be compared with the working conditions of immigrants at the turn of the last century. As we will see, this work is not only marked by unacceptable working conditions but is also unprotected by labour laws and minimum labour standards. White workers who work in these sectors are compelled to work under similar conditions and become marked by feminization and racialization.

This report focuses on wages and working conditions of people in low-waged and precarious work because the ability to earn an income and support our families and ourselves is the dominant issue workers raise at the Workers' Action Centre. Over 70 percent of hotline callers report employment standards violations resulting in loss of wages. Given the dominance of this issue being brought forward by workers, this report focuses on employment standards. This is not to disregard the importance and relatedness of issues such as human rights, workers compensation, health and safety and employment insurance, but rather to focus in-depth on one of the major issues concerning workers and WAC members.

Among precarious workers, our focus is on racialized<sup>10</sup> workers, immigrant, women and low-wage workers; in other words, workers who are in the most precarious work situations. These are the workers that make up the majority of workers contacting the Workers' Action Centre and workers who are members of the Centre.

## Methods

This research was conducted using a number of methods flowing from our goal to maximize workers' voices. This meant that the research involved the active participation of workers. Members identified key issues to be explored through this research during meetings in the spring of 2006. Members and workers interviewed for this report reviewed the report in draft, provided feedback and verified key findings and recommendations.

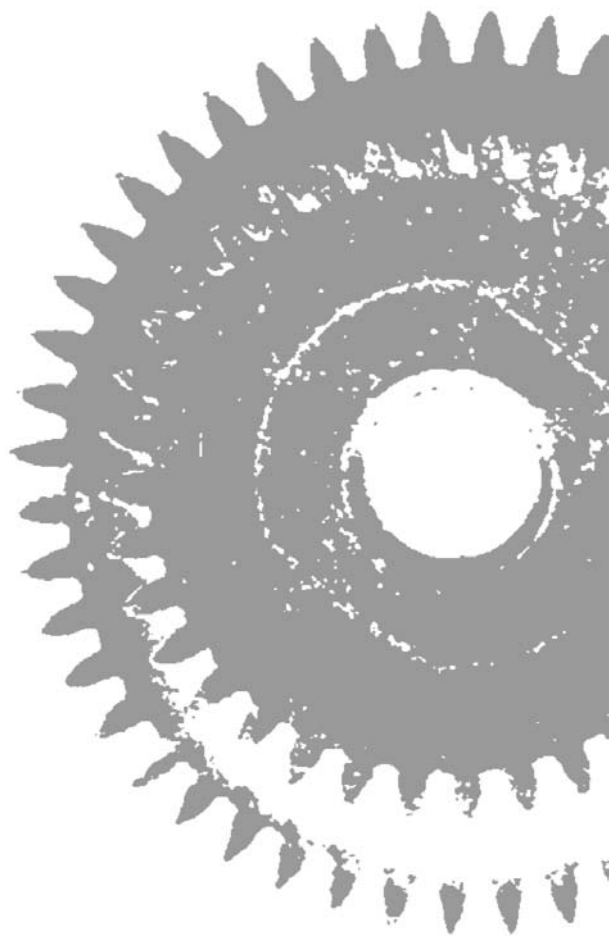
The experiences presented in this report are drawn from a number of sources. We reviewed workers' experiences from the Workers' Action Centre database. The Centre operates a phone hotline for workers facing problems at work. We receive approximately 1,000 callers to the hotline per year. Information from the calls are recorded and added to the WAC database. We also analyzed McMaster University's Work and Health survey data, which provided information on the labour market experience of Toronto workers in temporary agency work, short-term and fixed contract work, part-time work, self-employment and permanent work.<sup>11</sup>

We asked 18 men and women who experience various forms of precarious work and represent different racialized groups to take part in this research through in-depth interviews. Staff and volunteers of the WAC conducted interviews in the spring 2007. Translators helped when necessary.

Despite long hours of work, frequent work-related illnesses and family responsibilities, workers gave their time generously. They wanted their stories heard so that change could happen. They took part not only for themselves but also for their children's future and for other workers.

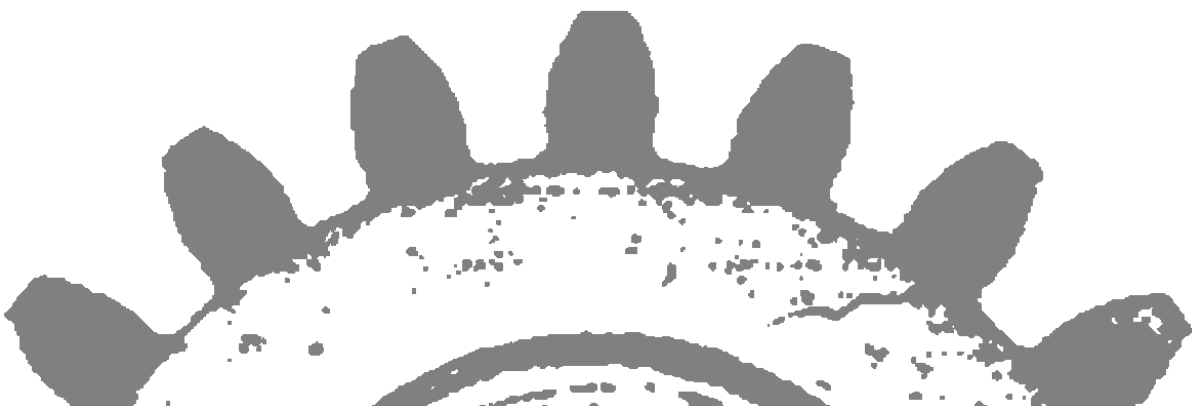
While some workers said we could use their real names in this report, other workers wanted to remain anonymous. We have used pseudonyms for all of the workers whose experiences are presented in this report.

We presented a draft of the report to the WAC members and some of the workers interviewed for this report and asked for their feedback. This process confirmed the key findings of the report.



# 2

## Work on the Edge: Precarious Work Today



## 2 Work on the Edge: Precarious Work Today

### Kalil

Since immigrating to Canada in 1981, Kalil worked for years in computer services, doing repairs and technical support. As changes in the industry reduced wages and demand for services, he has found it harder to get stable work at fair wages. Over the past two years, he has tried to adapt to changes in the labour market.

Last year Kalil was hired by a company to service office equipment. He was paid piece rate - \$25 to service and repair equipment at the customer's site or \$15 if the equipment was brought to the shop. It often took him three hours of travel to get to and from a client, plus an hour or more to service and yet he still only received \$25. Many days he would make less than minimum wage. Then his employer started deducting money from his pay on the grounds that a customer had complained. The employer refused to prove that there really had been a complaint. Kalil told his employer these practices were not right.

It was hard to make ends meet. "At home, I was buying two bags of milk every week because that is how much my kids needed. I started buying one bag a week. Half a cup a day for each one. Like orange juice, these are necessities. I don't have them at home for a long time."

Kalil started night classes to become a truck driver. At the same time, his boss asked him to train a new technician. "They only hire newcomers to the country... I am the only one who was not a newcomer. They get low pay, the newcomers. They don't ask for health and safety matters and employment standards. .. So they hired this woman, they asked me to train her, and then they said "we don't have much work for you. You are laid off." The company refused to give Kalil a Record of Employment and termination pay, saying he was an independent contractor, even though tax, CPP and employment insurance were regularly deducted from his pay.

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. Out of his \$11 to \$12 an hour, he had to pay his own taxes and CPP, leaving little left over to cover his costs as a parent with four children. Feeling there was little he could do, he moved to the next job.

Kalil began driving and packing at a small factory. Though he receives what is required by the law, Kalil is faces bullying and harassment by his supervisor. "Not one hour a day passes that [the supervisor] doesn't bother me or doesn't pick on me. ... Two weeks ago, I wrote [the employer] a letter. I said the supervisor is misbehaving towards me and she is singling me out, but I am a target basically because I am speaking up." The others don't speak up "because they are worried about losing their jobs. Almost all the other workers are recent immigrants."

"If you are troubled at work, ... we are human and we transport problems home... My son says 'Dad, how is it going?' But how much can I talk to him. I don't want him to feel guilty that I am getting humiliated and troubled just to bring food on the table.... So, we do transfer our troubles home and to the community. To make a living I have to cut the time from somewhere... So, my kids call and say Daddy we are waiting for dinner, when are you coming?" Kalil concludes that the changes in our work are contributing to the disintegration of the family.

Kalil's experience highlights many of the dimensions of precarious work today. In two out of his three jobs, employers were violating basic employment standards. He was receiving less than minimum wage, misclassified as an independent contractor, fired for speaking up about his rights. There is no protection for the workplace bullying he faces in his third job.

With declining unionization in private sector workplaces,<sup>12</sup> workers like Kalil have no real voice in their workplaces to try to enforce their rights. When violations of minimum standards occur, workers must absorb the lost earnings until they can find a new job, as Kalil did for many months, or be fired, as Kalil was when he tried to enforce his rights. Labour market adjustment has effectively become privatized, paid for by workers who least can afford it. With barriers to employment insurance,<sup>13</sup> people are continually pushed into the next low-wage job. It is up to workers like Kalil to pay for their own job training.

People are facing a labour market where 37 percent of work is outside the standard full-time, permanent employment contract with a single employer.<sup>14</sup> Work is increasingly obtained through temporary employment agencies, or indirectly through nominal subcontractors.<sup>15</sup> More people are working part-time or on contract, often working two or three jobs. Yet our labour laws, regulatory regimes and employment benefits are still based almost exclusively on a standard employment relationship developed after World War II, which linked decent wages, benefits, working conditions and job security to the full-time permanent job with one employer, a form of employment in which white men were over-represented.<sup>16</sup>

Historic exclusion of certain types of work organization from regulatory protection (for example, independent contractors) has created incentives for employers to move workers into new forms of work. Employers may call it "externalizing" the costs and risks of front-line jobs. But this time-worn practice of contracting out work that can be done in-house is hardly new. This was a common practice in garment and manufacturing in the beginning of the last century. Found in most industries today, employer strategies include:

- using temp<sup>17</sup> agencies to indirectly hire workers for short and long-term employment;
- outsourcing work that is considered low-skilled and labour intensive to intermediaries operating as contractors (such as what large retailers have done with cleaning and janitorial services);
- nominal subcontracting, using intermediaries to "payroll" existing staff who overnight become employees of subcontractors (such as what major newspapers have done with newspaper carriers or communications companies have done with technicians or salespeople);
- misclassifying workers as independent contractors to treat them as exempt for labour laws; and
- shifting costs of doing business onto misclassified workers. For example, telling cleaners who have no control over their work that they have to be incorporated as a company and must pay a fee to get work and pay for their own cleaning supplies and equipment.



Employers argue that these strategies are necessary because of global economic integration. While it may be that some local manufacturers struggle to drive down their costs in order to compete against firms located elsewhere, globalization does not explain new employer practices in Ontario. Many employers and industries engaged in outsourcing, indirect hiring, and misclassifying workers that have been documented by the WAC are in sectors that have a distinctly local market – restaurants, janitorial services, business services, construction, trucking, and home health care, warehousing, packaging and manufacturing of locally consumed goods.

## Same Old Working Reality

While the way work is being organized is changing, some of the underlying reality of the employment relationship remains the same for workers. For workers, work is still work. Despite what the company may call it, workers know who is in control, who they are dependent on for wages, and who has the power. Driven by the desire for fair work and fair wages to support themselves and their families, people look for work regardless of what it is called. People seek work they can do that is safe, will pay them enough to live on and, hopefully, work that is rewarding. Poverty, racism, the need to establish themselves and their families in a new country and lack of employment choices and protection lead people do whatever employers ask in order to put food on the table. Therefore, workers sign contracts saying they are independent contractors in order to work in a factory through a temp agency. Workers set up a paper corporation to get their paycheques for the \$8 an hour job cleaning a retail store that they do after their day job. Still others sign a paper saying that their job delivering newspapers is a franchisee for which they pay a two percent monthly fee off their pay.<sup>18</sup>

## Working Beyond the Reach of Protection

Even though the underlying employment dynamic stays the same for workers, they have even less capacity to protect themselves from substandard conditions. The changing reality of work is leaving increasing numbers of people in low-wage and precarious work in increasingly grey areas of regulatory protection. Whether it is through misclassifying workers as independent contractors or self-employed, as Kalil experienced, or using other intermediaries, such as in the paper carriers discussed below (see Raj's story), employers are looking for ways to pass the costs and legal responsibility of employment on down the line, ultimately to workers themselves. Workers like Kalil have no real power to negotiate wages or control their work. They have no way to ensure access to standards such as overtime pay, vacation or holiday pay, no maternity leave or sick leave, or other statutory benefits such as employment insurance or pension contributions. Some companies pass direct business costs onto workers, such as in Kalil's case where wages were deducted when customers complained. Some workers are paid less than minimum wage as Kalil was with his piece-rate pay system.

## Increasing Inequality in the Rewards of Work

Increasingly unequal distribution of the rewards of work is leaving more workers like Kalil struggling to get by. Low wages have become a feature of our labour market. The median wage has stagnated at \$10 for the past 20 years. Now, one in four jobs pays \$10 or less. A person working in Toronto full-time at \$10 an hour would earn just under Statistics Canada's Low Income Cut-off (LICO). Recent immigrants are hit hard by low wages. Forty-one percent of people who came to Canada between 1990 and 1999 earn less than \$10 an hour. That is double the rate for people who immigrated in the 10 years prior (1980-89). Women are hit particularly hard by poverty wages – 38 percent of women of colour and 31 percent of all women earn below \$10 an hour.<sup>19</sup> This is well below the poverty line. These statistics mirror the United Way's report "Poverty by Postal Code" which found that since 1981, there has been a more than 100 percent increase of poor racialized families in the total "poor" family population in higher poverty neighbourhoods.<sup>20</sup>

When we talk about precarious work today, we are talking about work that has little or no protection under current labour laws. Precarious work has limited social and employment benefits and is low paid, with little job stability and higher health risks. Immigration policies, racism and sexism segment labour markets and condition workers' experiences.<sup>21</sup> These dimensions of precarious work are highlighted through workers' experiences discussed below.

## No Power, No Rights: Temp Agency Work on the Rise

### Simone

During the past seven years, 51-year-old Simone has found that her age and sometimes her European accent make it difficult to get jobs. She is forced to go through temp agencies to find work in her area, administration and office work. She finds her status as a temp worker makes it difficult to find a full-time, permanent job. Although she has never been unemployed for long, once potential employers see temp agencies on her resume, Simone has to explain why she has been temping for years. She has to explain that it is not out of choice, but rather that companies are increasingly using temp agencies instead of hiring permanent workers.

Contracts can end on very short notice. "I've had a call at 7:30 at night saying you're not going back tomorrow," Simone says. The temp agency is not obligated to tell her why the client company ended her contract. "That really puts a damper on your integrity because I know what I stand for and I know my work is good."

She doesn't have paid sick days, or dental and health benefits. Her income is not enough to cover all of her costs, and Simone has to rely on savings from a previous, unionized, job. Twice she has had to take money out of an RRSP to pay her rent.

Not knowing where her next paycheck will come from is hard on Simone, and means she can only make short-term plans. "Your life is constantly on hold," she says. "I'm a lot more stressed out... Agencies make it sound like if you don't have a contract all the time then there must be something tremendously wrong with you."

Simone would like to see the temp industry regulated, and would like the government to cap the mark-up agencies charge companies. She has seen her invoices: she gets \$12 per hour, while the agency charges company about \$21. "There is a difference between making money in the business and gouging, and it's the gouging needs to be stopped," she says.

Many workers report that it feels like temp agencies are the main way to get work these days. "If you're not looking for work then you don't understand the reality... You hate them [temp agencies] because they do you wrong but, on the other hand, they have access to companies .... Perhaps three months of work, five months of work, six months of work," says Simone.

While many assignments last a few days or a few weeks, many temp workers get much longer assignments. As Simone explains, "it used to be that temp workers were just filling in the vacation or maternity leave." But that is not what is happening now.

## Jack

Born in Britain but raised in Canada, this 55-year old manufacturing worker had a job in a unionized factory where he was shop steward. But with closures and downsizing, work became harder to get. Since 2002, Jack has been getting work through temp agencies because "it seems to be one of the main ways of getting work these days."

Some of Jack's jobs have been quite long. He worked three years through a temp agency at a steel factory; this was followed by a year-and-a-half assignment at a major retail store's warehouse. At his current assignment at a plastics factory, "some of the temp workers have been there for years. At times they have had at least 100 temporary workers there, [that is] one-third or one-half of the work force at the company is temp workers. Some of them do get hired on as permanent workers."

"I would really like to see those agencies done away with," says Jack. "But it is such a major part of the market now."

Hiring workers indirectly through temporary staffing agencies has increasingly become a feature of today's labour market. In the early 1990s, there were approximately 1,300 temporary staffing and employment agencies in Canada generating \$1.5 billion in revenues.<sup>22</sup> The industry has grown rapidly. In 2004, there were over 4,200 staffing and employment agencies generating over \$6 billion in revenues. The temp industry is concentrated in Ontario with over 60% of the industry's revenue generated in this province.<sup>23</sup>

# Who's Responsible? The Regulation of Temp Work

The realities of temp work challenge our understanding of what an “employer” is. The temp agency is considered the “employer of record.” But the reality is that temp workers have two bosses, creating a triangular relationship. Two contracts shape their working experience: a worker will have a contract of employment with the agency, but their working relationship is also defined by the contract between the client company and the agency. For example, the agency-client company contract often penalizes the company for hiring workers directly. Further, temp workers receive direction on their work, supervision, hours of work, breaks, training, and termination from the client company. There is a failure of the current ESA to recognize the real employer role of client companies in temp workers’ employment.

When temp workers describe their daily working lives, their co-workers and supervisors are those in the client company. When they describe their work, it is the product they make or the service they provide for the client company, not the agency. Workers are often left struggling to assert their rights. Simone discusses the reality facing temp workers when the client company violates their rights or when other problems arise:

Workers are often left struggling to assert their rights. Simone discusses the reality facing temp workers when the client company violates their rights or when other problems arise:

## Simone

“There is no recourse. You cannot talk to your agency because ... you are supposed to go out there and not have any problems. ... I’ve tried. What they do is they pull you out of the contract and then they just don’t give you another one... They’re scared that their client is not going to call them ... and is going to go to the competition. ... They don’t give a shit about you ... because it is the client that is paying them.”

It is particularly hard for temp workers to prove that they have been fired or penalized for trying to enforce their rights. The client company will simply say that the assignment is over and bears no responsibility for termination the contract. This, as we will see shortly, is what happened in Sangita’s case. Temp workers report that agencies do not have to fire workers; agencies just do not provide any more work when problems arise. Other workers report difficulty obtaining a Record of Employment (ROE) that is needed to get unemployment insurance benefits. The agency considers the request for an ROE as “quitting” even though agency has not provided any work, which makes it difficult to get EI.

The temp and employment agency industry lobby has argued for self-regulation rather than government regulation. It points to a code of ethics, which asks its members to follow labour laws. But in the six years since the *Employment Agencies Act* was repealed, industry efforts have not been successful in bringing agencies into compliance with labour laws, much less ethical practices not covered by current laws, as callers to the WAC hotline demonstrate.

Without clear regulation of this rapidly-growing sector of the labour market, the temp industry has become confident about developing practices that fall outside of the ESA. For example, non-compliance with public holiday pay and termination notice has become so common in the temp industry that it is now routine practice to deny temp workers these statutory rights. Rather than being a day to enjoy, public holidays bring economic loss to temp workers. The temp industry generally misclassifies all temp workers as “elect-to-work”<sup>24</sup> in order to deny paying public holiday pay. Being aware that this may give the industry a bad reputation, some of the larger firms adopt a policy, based on the pre-ESA 2000 public holiday pay provisions, that will pay some form of public holiday “benefit” only after an employee has worked 500 or more hours (about 3 months full-time).

## Jack

Jack has fought for public holiday pay three times. While working at the steel company for close to three years, Jack had to fight twice for this public holiday pay. With the help of the Workers’ Action Centre, we “asked the temp agency for the public holiday pay. [The agency] said they would go to the client company and ask the client company to pay for the public holiday pay.” They told him he might lose his benefits. But despite the threats, the temp agency paid for the public holiday pay that the Centre and Jack asked for.

However, the agency refused to pay Jack the next public holiday he worked at the steel company. With the help of the WAC and Parkdale Community Legal Services (PCLS), 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.

At his next job working for a year at a retail warehouse, Jack again had to fight for public holiday pay. Again, he filed a claim with the help of the WAC and PCLS. Again, he won his public holiday pay. Again, no other temp workers received their public holiday pay.

Jack’s case is unusual: he fought for his public holiday pay while still on the job. He says that he doesn’t get the same retaliation as some people because of his background. “They know that I speak proper English; that I am not an immigrant... if they thought they could get away with intimidation they might try.”

Denial of public holiday pay is not just Jack’s problem. None of the other temp workers interviewed for this project received public holiday pay. Contrary to the temp industry’s assertion that temp workers can “elect-to-work” without penalty, and therefore be exempt from public holiday pay, workers’ experiences demonstrate that temp workers have no real right to choose whether or not to take assignments and go to work without risk of penalty. As Jack says, “I don’t think these companies will pay you unless they have to..... It’s because of the way the Labour Ministry works on a case by case basis. So it’s just based on individual workers rather than changing the company’s whole policy.”

## Sangita

Sangita is a student who has had to juggle several years in low-paid jobs since coming from Sri Lanka, while trying to complete her high school and university and help her family make ends meet. Some of those jobs she got through temp agencies.

She worked at a factory from midnight to 7 a.m., packing cookies, and earning less than minimum wage. All of the workers on the night shift were there through the temp agency. "The factory would ask us to work overtime, but they never pay overtime pay. They never pay holiday pay. ... On Saturdays, they would always ask us to work 13 hours, midnight to 2 p.m... We can't sit, we have to stand, stand there for 13 hours. It is very hard.

"One of my friends, he cut his hand in the machine, and he didn't get anything. The factory people just told him don't come back, go to welfare.

"The temp agency says 'don't talk too much, just work. Whatever [the company] says, just do it.' But one time, "they asked me to clean because I am a woman... there were lots of men there doing nothing... so I said no. ... So the next day, after I came in they said 'there is no work for you, go home.' They let me go because of what I said."

On another job through a temp agency, Sangita would be picked up in a van from a subway stop and driven to a factory. She worked from 4 p.m. to midnight. "They would drop us and we would have to come back on our own. 12 o'clock and mostly those areas don't have busses, so we have to walk for a long while to get a bus." This company did not pay overtime, holiday or vacation pay.

Sangita says, "mostly I am tired and stressed out." She has to work to contribute to her family, but she also feels pressure from her family to study and go to university. The double duty is exhausting. "Sometimes I just want to sleep... If I miss the classes, I have to face the teachers next day and they will ask what happened? They don't understand nor do they try and accommodate students that must work."

Sangita's experience with temp agencies not paying public holiday pay, vacation pay or overtime pay is not unique. Many other workers who come to the WAC have similar experiences of violations of basic employment standards. One temp worker reported to that the policy for his temp agency, was that the four percent vacation pay required by the ESA only gets paid to those who ask for it.

## Paying to Work

### Jack

"There are some agencies that charge fees. I don't apply to those kind of agencies. Last summer one agency wanted me to pay a fee every week from my pay cheque, but I decided not to apply to that company... I very much resented the implication that doing your job wasn't enough. .. You shouldn't have to pay money... if they want my money, they should make me a shareholder."

Temporary agencies do not require a license to start up. Their overhead costs are low and they dispatch workers to client companies, so the agency only has to pay for office-staff, rent, computers and advertising. Some agencies are trying to make more profits from its employees through fees. In reviewing the experiences of temp workers that contacted the WAC, we find that workers are increasingly facing fees and illegal set-offs (charges) from temp agencies that place workers as machine operators, cleaners and general labourers. One temp agency that placed

workers in factories and hotels defined all workers as independent contractors and made illegal deductions from their wages, such as charging workers fees if they were late or were unable to work. When wages went unpaid, workers were told to pick up cheques at a subway station at a specified time. In another case, an agency charged workers \$250 to get cleaning work.

## Trapped in Temp Work

Workers report feeling trapped in temp work and described a number of forces contributing to this feeling such as low wages and lack of income security. Jack, who earns \$8.75 on his current assignment, describes how low wages push people into temp work. “If you don’t have very much money saved up, ... you can’t spend a whole lot of time hunting for jobs. So you just have to go where you can get a job quickly, so you take those agencies. If you’re lucky you can get one the same day. It might not be a very good one, at least you are earning money.”

Racial discrimination plays a role in diverting workers to temp agencies, as Zahra’s experience shows.

### Zahra

Zahra worked for a shipping company with other temp agency workers. They worked alongside permanent employees, flipping over and scanning heavy boxes. But the temp workers did not receive public holiday pay, vacation pay, health and other benefits that the unionized workers got.

“[Somali women] would go directly to [the company] for a job. They would bring a resume and everything, but nobody gets hired. As soon as they go to the temp agency, the company hires them, the same person.... It is people like us, who they think that we do not know anything, they want us to be hired through the agency... In the hiring process, the people who were just hired [directly by the company], they have education. They are really good at [English]. Some Somali women they cannot speak English much. That is why they have to go to the agency.”

The union in the plant was successful in getting the company to hire the temp workers on permanently, something the temp workers were looking forward to. Zahra and a number of other Muslim Somali women wear a hijab and jilbab (a long dress). “To be hired, the company said, ‘roll your skirt, put it above the knee.’ I am not going to do that [Zahra said]. They said ‘Okay then do not show up for work tomorrow ... They had never said anything before [about health and safety concerns]... some of us were working there for two years ... It was not anything until [the company] wanted to hire us that it became an issue.”

When they approached the temp agency about this, they were told it was not the temp agency’s problem. The temp agency contract ended when the workers were being hired permanently. With the support of the WAC, Zahra and her coworkers have filed a Canadian Human Rights Complaint.

These Somali women worked alongside permanent workers, doing the same jobs but without benefits, vacation and holiday pay, and with little chance at permanent work. While the company was forced to hire temp workers who had been working for years at the plant, the company refused to hire the Muslim workers.

Zarah's observation that her Somali coworkers would not be hired directly by the company but had no problem being hired indirectly through a temp agency is telling. Many other temp workers report being pulled into temp work because they are told that they need "Canadian experience" and that working through temp agencies is the best way to get that experience. But, as the above experience shows, workers become trapped in temp work, facing barriers to being hired directly. Many temp workers that contact the WAC report that neither the temp agency nor the client company where they worked will give them a reference, making efforts to move out of temp work harder. In fact, working through temp agencies can be a deterrent to finding permanent work as it stigmatizes workers as "not good enough to get regular jobs." This devaluation reinforces the racialization of temp work revealed in Zarah's experience.

## Andrew

As in Jack's case, Andrew began finding clerical and office work through a temp agency because he needed work quickly. He thought it would be a good way to gain some work experience in order to find a permanent job. But he found out that "when they say temporary-to-permanent, they mean permanently in a temp position."

Andrew has taken business courses, but his education and training is rarely taken into account. "It's very rampant in the industry," he says. "Your skill set and your education isn't matched with the jobs that you're given." Andrew, an Aboriginal man, estimates that usually about 90 percent of his fellow temp workers are immigrant workers who are well educated but can't find work in their field.

Sometimes Andrew would have an assignment for a week, sometimes three months; once for two years where he was able to get a raise to \$15. But he would rarely be given notice that the contract was up. Sometimes he would show up to work only to be told his assignment was over. "We would call the temp agency and they would blame the client company and the client company would blame the temp agency, so we're basically a pawn in their game," he says.

It took Andrew two months of phone calls, emails and faxes to be paid for one assignment. This year, Andrew took a temp agency to small claims court to get \$500 in public holiday pay he was owed.

"It's a very vicious cycle and you're dependent on them and they know this," Andrew says. "Once you're caught up in that cycle it's hard to get out because you still need to pay your bills and eat."

Temp agencies generally sign contracts with client companies that charges a penalty if a temp worker is hired directly by the company. The terms of this vary. In one case, Andrew applied for a permanent job in a company that he had never worked for before. He was told he would have been hired, but the company had a contract with a temp agency that Andrew had worked for almost two years prior. The client company-agency contract *prevented any temp worker from being hired by any client company within two years of working for the agency*. Other temp workers who have called the WAC report that the fact that if an agency has faxed a worker's resume to many client companies for possible assignment, the worker is then barred from applying for permanent work at any of the companies that received that fax. While it is hard for temp workers to obtain



information about the terms of contracts between client companies and the agency regarding policies of hiring temp workers directly, some workers report that the company would have to pay the equivalent of about one year's salary as a penalty fee to hire the worker.

The practice seems to differ slightly for some kinds of factory work. There, workers report that the agency threatens to fine them – fees of \$500 or two-weeks' wages – if they are hired directly by the company.

## Second-class Workers

Temp workers feel like second-class workers. Zahra reported that in her company, the permanent workers were given bottles of water and ice cream in the summer when the factory heated up to dangerous levels. The temp workers did not receive any water and they had to use tap water on their breaks. Occasionally the company would provide pizza for the permanent workers; none was provided for the temp workers. Zahra's coworkers came together to bridge the gap. "You see the manager passing everything to the other people, but not us. So the other workers [permanent] would ask for more and then they give it to us."

As a clerical temp worker, Simone finds that "the company expects you to work three times as hard as the regular staff. For example, they expect you to be knowledgeable [about how the company works] to the point where you can walk in and do the job... It's a totally unrealistic expectation of you. They think you can do four people's jobs and if you get stressed out you're not supposed to be stressed out."

## Low Wages and Unstable Earnings

Temp agency workers earn 40 percent less than their permanent coworkers.<sup>25</sup> Making up a large part of that difference is the mark-up or fee that goes to the agency. Few temp agency workers receive benefits compared to the permanent coworkers doing the same work.<sup>26</sup> While the *Employment Standards Act* protects women from being paid less than men for doing the same work (s42) and prohibits discrimination of employment benefits on prescribed grounds (s43), it does not address the discrimination in pay and benefits between temp workers and permanent workers doing the same work.

The McMaster Work and Health survey found that 72 percent of temp agency workers earned less than \$30,000 per year, compared to only 22 percent of permanent workers. This discrepancy is due to both lower wage rates and unstable employment. For instance, 66 percent of temp agency workers had jobs that lasted six months or less, compared to only seven percent of full-time workers.

As a single person trying to survive on the \$8.75 that he gets in his current assignment, Jack says, “it is barely enough to get by on. I just have to do without things. I ride my bike instead of taking transit as much as possible. I really should have had new glasses a couple of years ago, but I just can’t do it right now. ... My cell phone is going now and I can’t afford to buy a new one. ... I don’t have children. I couldn’t raise children on what I’m earning.”

The insecurity of job assignments leaves most temp workers uncertain about their future. People are constantly on the job hunt. As Simone says, “the minute I’m out of a contract, I’ve already started job hunting.” Work ends with no notice, and workers have no access to recourse. Similarly, Andrew says, “They would just call me out of the blue, like before work or even when I get there and say, ‘I’m sorry but your assignment’s up.’ There’s no explanation, nothing.”

Simone describes the strain insecure earnings puts temp workers under. “They put you constantly in a state where you don’t know where your money’s going to come from next. So the times you do work you try to save as much as possible. ... So it’s constant juggling, ‘how am I going to survive?’ You cannot plan anything cause your life is constantly on hold.” Simone tries to organize her life to keep some control. “I stay in the position where I keep on having some choices [by saving money] because I don’t want them to have that much power over me. So if that means not going out to lunch that is what I will do. I want to keep some sort of power to myself. I don’t want them to totally run over me.”

Most temp workers interviewed reported working harder and faster than permanent coworkers did in order to keep their job. On top of that, the temp agency mark-up or hourly fee means that workers are paid less for that work. Temp workers are frustrated that temp agencies do not provide details on how much is deducted from the hourly wage as a fee, but workers say it is generally from 30 to 50 percent although some workers report 100 percent.

## Employment Agency Fees and other Job Scams

Sharif is just one of many workers that have come to the WAC reporting security guard agencies that charge fees for training as a part of job placement requirements. There is no protection under the *Private Investigators and Security Guards Act* for this kind of violation. Nor is there a bar on charging fees where there is no formal employment relationship under the ESA. Even though most of these workers think they have been hired, they only find out the company was lying when it is too late. Workers are left with few options.

### Sharif

“I had been working in a convenience store and I was looking for another job. I picked up the newspaper and found an ad for a security job. ... ‘No experience necessary. Wages \$15 and up. Apply today and work tomorrow.’ So I went there... they requested \$212 to pay a fee for processing training program and to get

a license. Before I paid, the lady I was talking to, she said, 'congratulations you are hired. All you need to have is some training program about security procedures.' That encouraged me to pay. I said, okay, that is fine." So, I paid. Credit card is easy right?

I go to the [training] program and from the first two hours, I discover they are not a proper security company, not providing proper security ... I went to this woman and said 'this is not proper security training.'

I went home after the training and waited for them to contact me about the job. I call the woman and she said by the end of this week... I never received any call. I call her again to ask when I am working (because) I already quit (my job); I told my boss I quit (when the lady told me I was hired)."

Sharif kept calling and calling. He found out from another security company that the company he paid was not a security company at all: it was an agency. "So I called the company again and I start arguing on the telephone with them. They tell me this, they tell me that, but they do not compromise... they said they will not pay refund. ... So I went to Workers' Action Centre... we make delegation of people and went to the company. They refunded the money after hassle."

Sharif explains that the company "wants to take advantage of the newcomer to Canada and anybody desperate for job... 'Doesn't matter, we train them, we take the money, if we find them jobs, we call them. Or if not, they will be gone, they will not come after us'... Their main goal is to get the money. It is not to get you a job... if you get 20 people, \$200 fee, you know, it is \$2,000 to \$3,000, maybe two or three time they do it. It is good money."

Sharif points out that people are trying to improve their working lives by going to places like the security agency. Almost all the other people in the training session were immigrants and workers of colour. "This year, there is not a lot of jobs and people think, security work... I might get \$15. It is a good and decent job. Who doesn't want that? Right? People come from factories, they work, maybe they have a job like myself, but they need to improve, to have better work, better environment. ... They are there because they have been given the talk and the promise that they get a job and the ad is very attractive, \$15 an hour. ... you know it's better than in a factory and everybody respect him (security guard), everybody has a dream."

The *Employment Agencies Act* that was repealed in 2000 stipulated that employment agencies could not charge workers' fees for job assignments or permanent placement. Workers calling the WAC report a big increase in fees charged for work that never materializes. Workers respond to low wages and income and job instability by trying to find second or third jobs. In the absence of effective regulation, companies respond by setting up employment agencies whose main source of revenue is low-paid workers.

## Shirley

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."

The workers were expected to watch training tapes, on their own time, at the company's office. Then they would receive a certificate stating they were qualified cleaners. Shirley was sceptical that she was ready to handle heavy-volume janitorial work, which she had never done before. "How can I be qualified when I never had hands on?" she says. "You have to know how to sling the mop, you know, you don't just walk in there and do it. It takes a little time."

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.

Shirley kept calling the company to find out when they could start work. Now that it had her money, the company started telling a different story. Shirley was told she had to purchase her own cleaning supplies from packages the company offered. Then she was told that the company would charge her \$149 for a "lead," which meant they would give her the name of the company that was hiring cleaners and she could try getting the work. There was no guarantee of work.

Shirley was distressed to have her fear confirmed: that this janitorial company was a job scam. This Canadian-born couple is nearing retirement age. "It is very painful, especially when you need a job and you are fighting not to go on the welfare system," she says. "I was desperate... I didn't carefully think. I don't normally go around in making such a stupid mistake."

## Nominal Subcontracting: Shifting the Costs of Employment

Increasingly businesses are trying to shield themselves from the costs and responsibility that comes with employing workers by subcontracting. In many cases, this is done simply by inserting an intermediary (contractor) between the employer and the worker. Take, for example, the case of newspaper home delivery.

### Raj

Adult newspaper carriers have long been picking up newspapers at 3:30 a.m. to deliver to homes before dawn. Raj was one of these carriers. He delivered newspapers for a major daily paper 364 days a year for almost 18 years before he was fired for trying to improve conditions.

Raj used to work directly for the newspaper. He received a gas allowance and enough wages to earn at least minimum wage. The newspaper used to cover his route when he was sick or on holidays. Still workers wanted better protection of their rights, so they successfully unionized. The newspaper reacted by immediately contracting out the home delivery service.

The former distribution managers and supervisors were inserted as the new subcontractor. They continued the distribution function of their old jobs and took on all human resource functions for the carriers under a new corporate entity. Like Raj, many carriers continued to deliver papers on their same route, working the same way, only for less money through an intermediary – the subcontractor.

The newspaper still controls much of the labour process. For instance, the newspaper signs up customers, receives payment from the customers, and receives complaints and requires replacement papers. The newspaper determines how many free newspapers carriers must deliver to promote home delivery (and to keep circulation numbers up for advertisers). Carriers subsidize the newspaper's advertising by receiving 63 percent less to deliver its free sample papers. Home delivery of papers is still an integral part of the newspaper's business.

Wages and working conditions changed after the work was "contracted out." Competitive bidding among other subcontractors from other regions pressed the subcontractor to get more money from the workers rather than from the newspaper. Carriers no longer received a gas allowance. When the newspaper was late delivering the papers, the workers weren't paid for their wait times of one to two hours. The subcontractor began charging the carriers. At first it was a fee of approximately \$500. Then the subcontractor brought a large technical contract to the carriers one morning and said, "If you want your paycheque you have to sign this contract." The contract said that the carriers were now all independent business people whose paper route was now a "franchise." For the majority of workers, English is a second language and so many workers were not able to read the contract. Workers were not given a copy of the contract to keep. Most had no idea what they signed.

Workers began being charged for more and more costs. Carriers were required to pay two percent of their monthly earnings to the subcontractor as an administrative fee. Workers were charged double and triple their daily wage to be replaced when they were sick or on vacation. So regardless of how sick they were, time off to recuperate became a luxury that most carriers could not afford. When the newspaper received a complaint about a newspaper being wet or missing, the subcontractor charged the carrier \$4. When all the new costs are factored in, workers were making less than minimum wage.

Carriers got together to discuss the decline in their wages and organized an association to put forward their concerns. The subcontractor told workers that it could do nothing without talking to the newspaper. While the carriers got some improvements after a week-long withdrawal of their labour, the subcontractor didn't keep its promise. Next time the carriers came forward, the five elected representatives for the carriers were fired. A supervisor for the subcontractor told them they were fired because the newspaper didn't want them forming a union.

The carriers' situation demonstrates the deterioration that can take place in wages and working conditions through the subcontracting process. Over the years, costs were added to the workers who least could afford it. More than that, the subcontractor in this case clearly provided a supervisory and human resource function, but the newspaper still controlled the labour process. Workers were left trying to assert their employment rights with an intermediary who had no real control.

This case also demonstrates the slippery slope of unregulated work. The subcontractor has been allowed to get away with calling a paper route a "franchise" because, in part, of who they hire. Raj reports that most of the carriers are racialized workers and immigrant workers who work in factories and other jobs that do not pay enough to survive. So workers are forced to look for jobs like paper delivery that they can do before their other jobs. Raj reports, "White workers, for example, have a tendency to leave after two or three months. They tend to talk about rules and regulations of work. So they are likely to get into disputes and leave."

A common-sense review of the work tells us that these carriers are employees in need of basic minimum labour standards. They have no real chance to increase how much money they can make. They cannot make a profit on their route because they cannot negotiate directly with customers over rates, nor do they recruit new clients and there are limits on how many papers one can deliver in the newspapers delivery time. The newspaper controls when and how the paper must be received by the client. Carriers have no real control. Yet we are witnessing in cases such as the carriers, a wide variation in how decision makers at the employment standards and labour board are considering these workers. A recent case brought by carriers to the Employment Standards Branch resulted in an Employment Standards Officer (ESO) determining that the carriers are independent contractors, not employees. The Officer rejected the evidence from the carriers, instead saying that a case had been made that profits could be made by carriers. That case, put forward by the employer, was that the carrier could hire children to deliver the newspapers at a lower wage rate (remember papers must be picked up by 3:30 a.m. and delivered by 7 a.m.). Alternatively, the carrier could deliver other things on their routes, like “flowers or chocolates.” ESOs are left to make decisions of increasingly complex non-standard employment relationships in proceedings where workers are rarely represented by lawyers, while employers are usually represented by lawyers or human resource professionals. In the absence of clear policies and regulations on these new forms of work, jurisprudence is developing that is more in favour of employers.

Many cleaners have come to the WAC with experiences of being misclassified as independent contractors as well. The case of CW outlined below takes this practice one step further. The company has attempted to shield itself from legal liabilities for the employment relationship through creating layers of corporate entities, nominal subcontracting and misclassification of workers as independent contractors. But this company goes further in offsetting the costs of doing business such as marketing, sales, customer procurement and administration onto cleaners by charging a \$3,000 fee for work.

## CW

Touting itself as the business model for the 21st century, CW is a thinly-veiled pyramid scheme. At the top, CW operates a company, which promotes a cleaning service, obtains cleaning contracts from big retailers, office buildings, factories, fitness centres, and restaurants, and provides office administration. Rather than hire workers to do the cleaning directly, almost all workers are independent contractors. Furthermore, each layer of the business shields the top through separate corporate entities. CW has a middle layer of independent contractors to supervise the work and liaise with clients and bottom layer of independent contractors to do the cleaning. CW goes a step beyond the usual misclassification of employees that we are increasingly seeing in the cleaning sector to charging exorbitant fees to each layer of the corporate pyramid.

The middle layer is the supervisors, who are called “partners.” They pay \$12,000 for a territory and are responsible for all the cleaning contracts and cleaners in the territory. Each partner sets up his or her own corporate entity. A WAC volunteer met with the company owner to explore what it meant to be a “partner.” He was told that a partner’s most important tasks are to supervise the cleaners’ work in order to maintain positive client relationships. The partners review cleaners’ work, issue “deficiency notes” and fire people after a certain number of notes.

The bottom layer is made up of cleaners who are also told they are independent contractors. They pay \$3,000 a year for the promise of cleaning work that will pay \$1,000 a month (\$6,000 fee for a promise of \$2,000 a month of work, and so on). Cleaners are given assignments to clean. They cannot negotiate how much they get for a cleaning job and they are told when cleaning has to be done. Workers must buy cleaning products from CW to do their work.

Workers reported that it often took months to get a cleaning job, and then the cleaning job would only pay \$200 to \$400. Even after many calls to the company, few workers ever made the \$1,000 a month as promised. Workers had to travel between the cleaning jobs, often over long distances. Some of the cleaning jobs took so much time that workers were making only \$5 to \$6 an hour.

Frustrated, many cleaners leave after a few months. But that's not a problem for the company. This is how the company makes money. As the owner told the WAC volunteer, the high turnover rate is welcomed because CW keeps the cleaner's \$3,000 (or more) fee and merely passes the cleaning job on to the next cleaner who has paid the fee. The owner said, "it is a negative" for other businesses when the employee quits. But for CW "it is a positive," because it earns more money every instance of turnover. The owner describes an instance in which a "sub-contractor" (a cleaner) quit five weeks after entering into a CW arrangement. CW was able to keep the sub-contractor's \$6,000 and simply pass on the contract to another cleaner.

The CW owner told the WAC volunteer that the turnover rate for cleaners is very high, but that "there are thousands of sub-contractors out there." For example, Saturdays are the busiest days for the company; every Saturday it is approached by up to 80 people who want to become cleaners.

Complex contracts that protect the owners leave workers uncertain of their rights. One worker who paid the \$3,000 but never received any work kept trying to get his money back only to be threatened with a lawsuit by the "partner." Language barriers and unfamiliarity with contracts and legal regimes present huge barriers to workers' seeking justice in these situations. Therefore, as the CW owner indicated, most cleaners leave without ever getting any money back.

## Misclassified Workers

### Sharif

Sharif responded to an ad for a courier job that promised \$500 a week. The company, run out of the owner's home, told Sharif he was a "self-employed" courier. Sharif had to take all the deliveries they gave him and pay his own gas while he delivered packages, envelopes and boxes in his car. "I worked one month, 10 hours every day, sometimes 12. Driving for 10 hours and I spend so much money on gas. For each delivery, they pay you \$2. For example, I delivered a package from East Mall Mississauga to downtown Toronto for \$2. For one month, the total they paid me was \$526." Even without deducting the cost of gas, car insurance and maintenance, Sharif was paid about \$2.60 an hour.

As previously mentioned, misclassified employment – in which an employer treats a worker as an independent contractor or as self-employed -- is on the rise. Employers are engaged in misclassification of employees to avoid the legal responsibilities and costs associated with being

an employer. Companies are off the hook for regulations protecting workers including employment standards, health and safety protections, workers' compensation in the event of an illness or injury, anti-discrimination laws and the right to bargain collectively and join a union. Workers lose out on employment-related benefits such as unemployment insurance, Canada Pension plan contributions and any employer health benefits. In 2000, a U.S. Department of Labor study found that up to 30 percent of firms misclassify their employees as independent contractors.<sup>27</sup> Raj's story and the stories of other carriers presented earlier are illustrations of the same dynamic.

## Raj

Raj has been delivering pizzas for the past 15 years. He works during the week for one pizzeria and on Saturdays, he works for another. In total, he delivers pizzas for 50 to 55 hours a week. Both companies pay the same hourly wage: \$7 per hour in cash. Raj is considered an independent contractor by his boss. Raj can keep any tips that he may get. He doesn't get paid more when he works on public holidays, nor does he get vacation pay. He spends about \$120 a week on gas alone out of his wages. Other workers at the Pizzeria get \$9 to \$10 an hour. "They get free food, but the most we can get is 20 percent off. "

This is better than when Raj started. "At first it was \$2 a delivery. We argued that we should be paid by the hour and we managed to get \$5 an hour for this in 1995." Every few years, delivery workers were able to win increases to the current \$7. So now, even when there are no deliveries and they are doing other work like folding the boxes, they get paid by the hour.

In these cases, a thorough examination of the employment relationship would classify these workers as employees not independent contractors.

## Nalini

When Nalini lost her full-time childcare job, she couldn't afford to go on Employment Insurance because, as a co-signer on her husband's application to sponsor his parents and two sisters, the family income had to be higher than EI benefits would provide. So Nalini and her husband found a job with a cleaning company. The company had them clean an office building in the evening. Together they would earn \$1,200 per month. They both worked six hours a day, five days a week, which means they earned about \$5 an hour each. The cleaning company controlled most aspects of their work and should be deemed the employer. Yet it asked the couple to start up a company to receive the monthly paycheck. Pay started to be a month and then two months late. The employer's excuse was that it would not pay until the client paid. When Nalini asked the client, she was told there was not much they could do either. Nalini kept after the employer to get their pay and then one day they came in to work to find the boss training new cleaners to do their work. After 10 years in Canada, Nalini has come to expect that this is the way companies do business. "Everybody, our people who work [but don't] have enough income, we have to cope with these jobs and get money to support the family. So there is no choice. That is why we take the job and we do it. It is hard."

Immigrants are pulled into this increasingly low-paid, unregulated sphere, whether they lack regularized immigration status, or because of persistent barriers to better-paid jobs, or whether, as in Nalini's case, it is due to the pressure of immigration policies.



## Raj

Raj tried to get other jobs, but “if you don’t know the language well enough you are turned down. I did some business and I also worked as a clerical staff in government departments [in Sri Lanka. But in looking for jobs here] they would not consider it. They only want Canadian experience. I think it is the wrong thing. You know, it is only if we are given work can we show we have Canadian experience. We got pushed towards the lowest jobs. That was all that is available to us.”

This type of work has costs for workers and our community. Workers like Raj, who earn less than minimum wage, are forced to absorb the costs of unpaid wages and to work longer hours or at multiple jobs. This takes away important time from families and contributes to ill-health.

Employers cannot legally get out of their statutory obligations by misclassifying workers as “independent contractors.” But the label has an effect. Workers often have no choice but to accept what employers tell them. When problems arise, such as when already substandard wages go unpaid, workers believe they have no rights because they signed a contract with their employer. Regulatory regimes can vary greatly in how they respond to misclassified employment. Revenue Canada may rule that workers are employees, while an Ontario Employment Standards Officer may rule that a worker such as Nalini is self-employed. Practices such as misclassification become increasingly common-place, which means that officials within regulatory regimes begin accepting employer’s assertions without looking at the substantive employment relationship.

Misclassification brings significant costs to society. While there appear to be no comparable Canadian studies, some findings from the United States are instructive. For instance, Coopers & Lybrand (now Price Waterhouse) estimated in 1994 that proper classification of employees would increase tax receipts by U.S.\$34.7 billion over the period 1996 to 2004. Analysis of New York State’s workers’ compensation and unemployment compensation data found that non-compliance with tax laws means as many as 20 percent of workers’ compensation premiums go unpaid each year.<sup>28</sup>

The Organization for Economic Co-operation and Development and the International Labour Organization recognize the growth of nominal self-employed or misclassified employment. They have called on countries to devise policies to extend social protections and benefits to this segment of workers.<sup>29</sup>

Misclassification of workers as independent contractors allows employers to transfer risks and costs to workers to increase their profits. Job scams proliferate. Meanwhile, workers’ dreams of attaining respectable and honest jobs to make ends meet or to sponsor family members are smashed.

## Self-employed Workers

The misclassification that workers described above involves disguising employees as independent contractors or self-employed to avoid legal obligations to workers. Other workers that come to the WAC describe work that would legally be called self-employed but whose conditions of work are quite marginal (for example, income and work insecurity).

### Kevin

Kevin, whose experience is discussed further in Section 5, is owed \$3,000 in unpaid wages from his job as a personal trainer at a fitness club. Even though the Ministry of Labour ordered this company to pay, Kevin has not seen a cent and the fitness club is still in business. “I got so turned off by this whole business... after this experience it’s too risky. I can’t take that chance.” So Kevin started working on his own, “There’s additional cost for advertising or promoting yourself but at least you know when you get a client the money you get is yours, you don’t have to share it with anyone. ... You might have a good week you might have nothing all week, there are a lot of those weeks. I’m earning about two-thirds of what I need, the rest are loans from family, money off my credit card... I’m living at my parents.”

Hassan and Sharif, whose experiences are heard in other sections of this report, would like to become self-employed, because, as Sharif says, “If nobody will hire me, I will hire myself.” Both men are in an Employment Insurance program that trains people to become independent contractors. Interestingly, both men propose to provide bookkeeping and accounting services.

Own-account self-employment like Kevin’s can often be insecure and poorly paid. Thirty percent of self-employed workers earn less than \$20,000 and have no benefits. For women who are self-employed, that percentage jumps to 45.<sup>30</sup> Immigrants, both men and women, have higher rates of self-employment than Canadian-born workers.<sup>31</sup> While own-account self-employed workers have jobs that resemble employment (for example, they get money for work performed), they have no protection from labour laws such as employment standards and workers’ compensation if something goes wrong and wages go unpaid. Nor do they have access to maternity leave, employment insurance and other benefits.

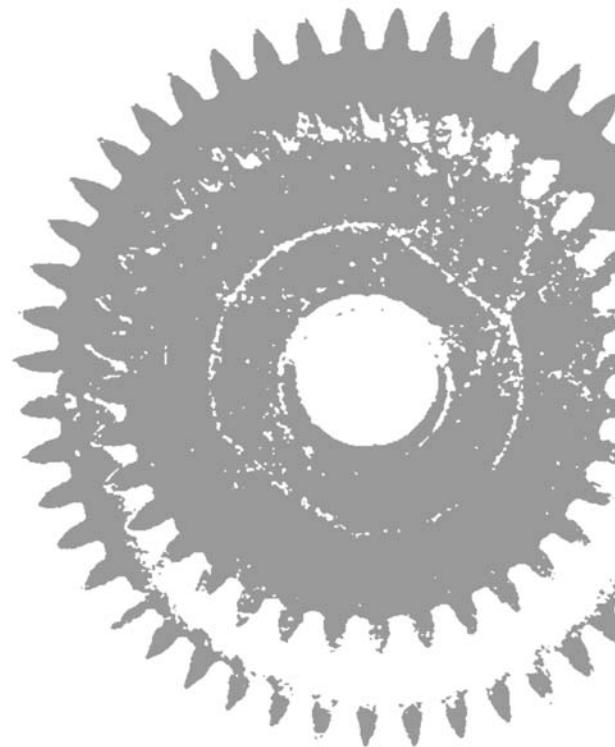
## Expanding the Scope of Labour Laws

Workers’ experiences with temp work, misclassified work, and nominal subcontracting challenge the traditional definition about who the employee is, who the employer is and what the employment relationship is. For instance, temp workers experience two employers controlling their working lives, yet the ESA only recognizes one employer, the agency. Similarly, the newspaper controls the work of newspaper carriers and the subcontractor supervises day-to-day. Yet these carriers are termed “independent franchisees.” Pizza deliverers, couriers and cleaners are increasingly being classified as independent contractors.

This is significant because most labour rights, protections and employment benefits are tied to a legal concept of employee. That concept varies depending on labour legislation. As Judy Fudge notes, “laws and policies that are designed to promote social justice such as human rights and occupational health and safety legislation have the broadest coverage and income tax legislation has the narrowest, the scope of coverage for schemes that regulate the terms and conditions of employment and social wages varies widely.”<sup>32</sup>

Currently, however, defining who is covered by labour laws and who is not is left up to decision-makers in a whole variety of places, such as Revenue Canada, Employment Insurance, Employment Standards, and Human Rights. The experience of the WAC is that adjudicators can vary widely in their decisions about the employment relationship. For example, the Ontario Labour Relations Board determined that newspaper carriers were employees and could be unionized. But a recent Employment Standards decision determined that carriers were independent contractors governed by a franchise agreement.

When we examine the reality of the work of those in labour-intensive and low-paying jobs and how that work is organized, it becomes clear that people are not operating small businesses. It becomes clear exactly who controls the labour process and who benefits from the work. From a public policy perspective, workers in these kinds of jobs should receive the legal rights and protections available to all workers. To do this, we need to expand the scope of labour laws to include people in precarious work. Detailed recommendations are outlined later in this report to address this concern.



# 3

## More Stress: The Health Impacts of Precarious Work



### 3 More Stress: The Health Impacts of Precarious Work

#### Andrew

Andrew describes the impact of being a temp agency worker. “It’s scary,” he says. “You don’t sleep well at night. You don’t eat. There’s stress. It takes a big effect on your physical and mental health. I’ve seen people go through severe depressions and they have quit. If you’re stressed then your body gets sick. It’s overwhelming.” The stress from this kind of work is also caused by a lack of respect at work, being treated badly, bosses who pit workers against each other and by being asked to do extra unpaid work. Andrew has experienced depression because of working under these conditions. Other people he has worked with have turned to drugs and alcohol to cope with their stress from temping.

Many of the workers that participated in this research spoke about the incredible stress that precarious work causes. The stress of low wages, economic and job uncertainty, entering new work environments, experiencing greater supervision than permanent staff, feeling like you have to work harder than permanent staff – these are all features of temporary work that contribute to poor health.<sup>33</sup> Researchers find that features of precarious work contribute to employment strain and toxic employment relationships.<sup>34</sup>

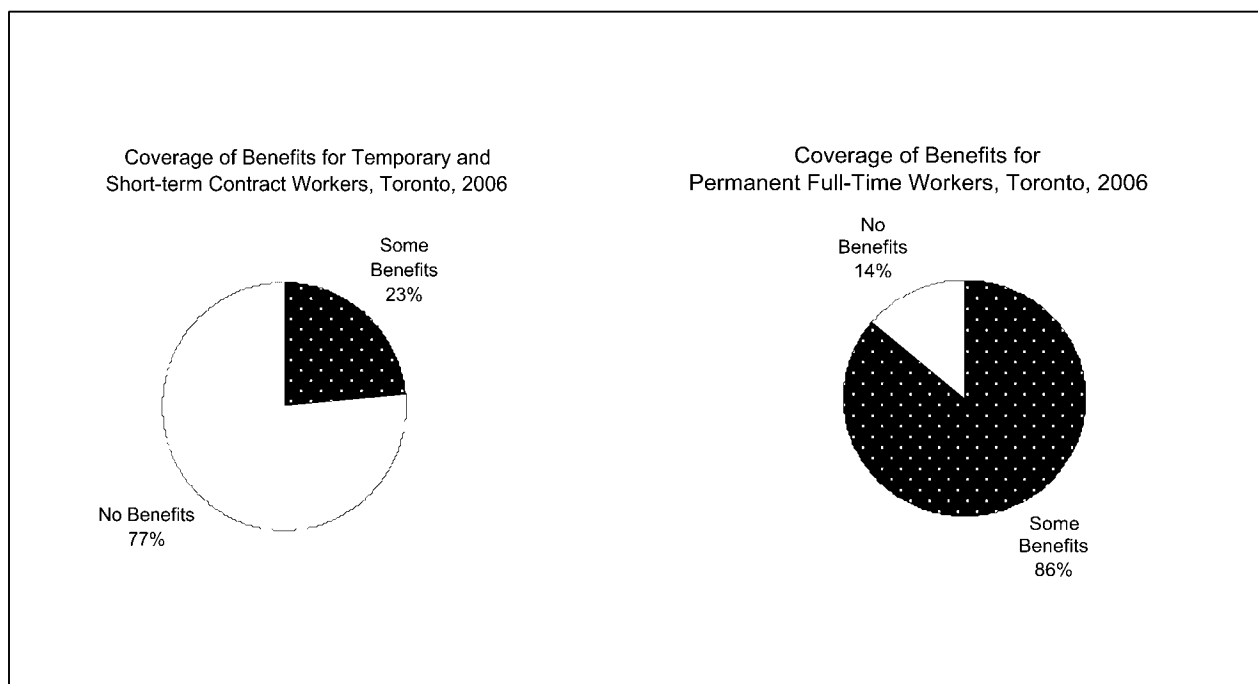
A team of researchers based at McMaster University are examining the health implications of precarious work. They argue that, to understand the impacts of precarious work, we have to look beyond what happens in the workplace. Through precarious employment relationships, employers are weakening their commitment to their workforce. Therefore, we need to look more broadly at the dimensions in and out of work.<sup>35</sup>

Their research shows that workers’ health suffers when they experience three related conditions that are features of precarious work. In particular, a high level of uncertainty about future work; a greater effort searching for work, training for work, and having to do things at work to increase the odds of getting more work; and a general lack of support all contribute to employment strain. This employment strain is creating toxic employment. Workers with high employment strain are more than twice as likely to report poor health and suffer from mental health problems.<sup>36</sup> The researchers concluded, “The high levels of stress and health issues reported by the majority of workers in precarious employment in our study indicate a worrying trend that points to higher levels of stress related ill-health for workers, diminished capacity in the Ontario workforce, and higher health care costs.”<sup>37</sup>

At the same time workers who face higher health risks in precarious work also have less access to sick leave and health benefits than permanent workers. Temporary agency workers are less able to take time off when sick. “If you go off sick for more than, let’s say two days, you might as well kiss that assignment good-bye because they are going to try and replace you as fast as they can,” says Andrew. While most people in precarious work do not get paid for sick days, temp workers

face additional challenges. They are not paid for sick days and can easily be replaced by other agency workers and risk job loss when illness hits. Even though the ESA provides 10 days emergency leave per year, temp workers have a hard time proving they have been fired for taking sick days because the client company and the agency just say the assignment was over. Seventy-three percent of temp agency workers reported never receiving paid sick days compared to only 21 percent of permanent employees.<sup>38</sup> As Figure 1 shows,<sup>39</sup> people in precarious work are less likely to have benefits to pay for prescriptions and healthcare not covered by OHIP than those in permanent employment.

**Figure 1 – Benefit Coverage – comparison of permanent and temporary/short-term contract workers**



Vacations, which should provide people with an opportunity to relax and recuperate from work, are often unattainable for people in precarious work. “I haven’t had a vacation I think in nine years” reported Simone. Similar to sick days, many client companies will fire and replace temp workers rather than give them leave for vacation. Because some temp workers and contract workers are on assignment year after year with the same company, they never get vacation. Other temporary workers, desperate for work, simply cannot turn down a contract of work to take unpaid vacation.

Being a temporary worker can set up barriers and strain with friends and family. “You cannot plan long term” to do things with friends and family like take vacations, says Simone. “I’m not jealous of them because I understand it’s not about me; it’s just a sign of the times. But there are certain things I just don’t discuss because again, they don’t know, they don’t understand your reality.” Some people withdraw from friends and family. “You become very reclusive, very mistrusting, and cynical and you find yourself thinking ‘well if so and so can actually do something and get ahead, why can’t I do it?’” says Andrew. Another worker said that the low wages and economic instability were part of the reason why he did not have a family. Support from friends and family are important for workers’ health. Yet features of precarious work such as low pay, long hours, multiple jobs, working evenings or nights, and job insecurity create barriers to getting the support that is necessary.



# 4

## A Fair Day's Pay for a Fair Day's Work





## 4 A Fair Day's Pay for a Fair Day's Work

Workers trapped in low-waged precarious work want fair wages. "One job, eight hours a day, should be enough", says Nalini, "without the pressure of extra work, extra jobs. It is too much pressure and takes time away from the family."

### Raj

Raj, who has lived in Canada close to 20 years, reports still being "pushed towards the lowest jobs that are available to us." 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 until he was fired for trying to enforce his rights.

His wife also works at a minimum wage job and his three children have part-time jobs. "My eldest child is starting university in September." The whole family is working to make ends meet: "We often use credit to get by."

The costs are high. "There are lots of ways it affects us. There is no entertainment. I cannot do the hobbies that I would have really enjoyed doing. We can't spend enough time as a family. It affects one's bodily well-being, bodily health and also one's mental well-being. Working for minimum wage creates many kinds of effects on us.

We don't have time to [get involved in the community]. If we work 55 hours a week, we have to come home, make food, sleep. We spend 2 to 3 hours with the children and .... seeing to other things you just have to do, there is no time."

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."

Raj feels the government has to make sure that "everybody that works, they should at least get the minimum wage. Then people like me would benefit. ... \$10 [minimum wage] immediately would be good. \$10 is not enough. [Only] if husband and wife are both working and they get \$10, then you can live on that."

The Canadian economy has grown over the past 25 years, almost doubling since 1981. Much of that growth has occurred in the past decade. Yet workers at the bottom have not received their fair share of Canada's booming economy.<sup>40</sup> People like Raj are working longer hours and remain trapped in poverty.

The rewards and costs of Canada's growing economy are unequally distributed. Not only have median wages stagnated but the share of low-wages jobs (those earning less than \$10 an hour), has stayed about the same between 1980 and 2000. The top one percent of earners, on the other hand, has enjoyed a 113 percent increase from \$156,757 to \$333,382 during the same period.<sup>41</sup>

Low-paid work is a large part of our economy – 25 percent of people in Ontario earn wages below the poverty line.<sup>42</sup> This too is unequally distributed. Almost one-third of women and people of colour are low-paid, while the number jumps to 38 percent for women of colour.

## Kalil

Kalil, a foreign-trained engineer, tried to get accreditation to practice in Ontario. The series of fees, tests and response from the Association of Professional Engineers of Ontario left him feeling that “there is no place for visible minorities, no matter how good you are, I am not going to pass.” The barriers were too high. So he worked as a computer technician where he found that immigrant and racialized workers were kept in the plant, doing assembly and repair, while the white workers would do the sales and customer service. For the inside-workers, it was “lower pay, higher pressure.” Kalil says that even though he frequently received awards for his work, he was never promoted to work outside and was laid-off after protesting the discrimination.

Immigrant and racialized workers like Kalil and Jameela (see her story below) are relegated to precarious employment in low-wage sectors and low-end occupations. This is due to the barriers in the economy that do not recognize credentials and deny workers the opportunity to get jobs and wages appropriate to their training, experience and expertise.<sup>43</sup>

## Jameela

It took Jameela almost eight years to get her immigration status regularized after she came to Canada. But that had a huge impact on what work she could do. “I never had a chance to look for a good job because I was on a work permit and it limited my time frame for [finding a] job... I worked for three different call centres over three or four years. ... I have a work permit I have to show the government right away that I have done something, like I can work and establish myself... You want to take any job... You can’t even get a chance to show what you had from back home. So through my community friends, they told me the call centre is the easiest to get in.”

Her pay at the call centre was low, only \$9 and there were no benefits. “The first job I had, like if you go for one, two or three hours and you can’t make a sale, and you are trying hard over the phone, but they say ‘go home.’ So it’s so stressful, you know. In the morning you come and you try to make a sale so that you can be there and get the hours. ... All those hours I put in – my mouth, my head ache so much I can’t talk. When I go to sleep it’s just killing me because I’ve talked so much.... You want the concentration to study but I feel very tired.

The process [for immigration] is so expensive and then you don’t know even how [the lawyers] are doing their job. They just get money, they get so much money that you just keep on working and you try to survive on it and you are working hard you know. You don’t even know where you stand.”

At one point in the process, her work permit was not extended and she faced deportation. “I worked under-the-table as a home caregiver for a person who had Alzheimer’s.”

“For a long time, I didn’t have time to go to a mosque for prayers because the call centre normally was evenings up to midnight and those are the times that you go to the mosque or that is the time for communities in the nights and evenings. But that time was just for earning money and paying lawyers [for immigration].”

As an administrative worker with years of experience, Jameela has been frustrated by a system that pushed her into low-wage and precarious work since coming to Canada. Her immigration status and experience in the labour market forced her to forgo additional studies while she regularized her status.

## Sangita

We heard about Sangita's experience working nights at factories through temp agencies. She worked from midnight to 7 a.m. at one job and from 4 p.m. to midnight at another earning below minimum wage.

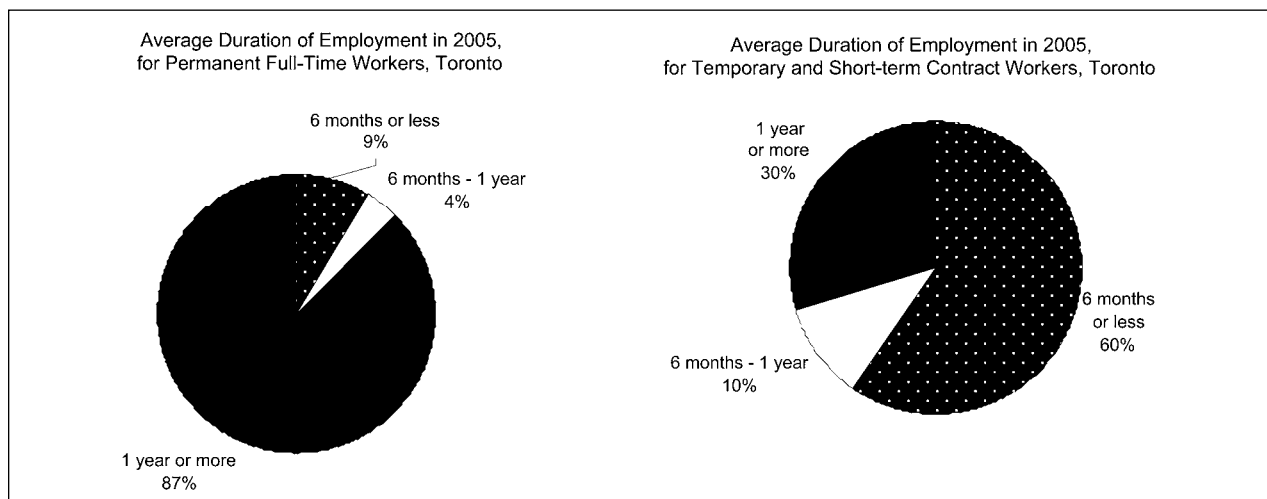
Her struggles at work are compounded by the lack of awareness she faces at school. "If I am late to submit work, they think I am only making excuses when I tell them it is because I have to work long hours. They tell me to choose between studying and working and not to do both. They don't understand that many of us, especially new immigrant youth, have to work in order to be able to afford to study.

The public needs to have an awareness about the impact that minimum wage employment has on young people." There are now large numbers of students, particularly among immigrant youth, for whom part-time and full-time work is a necessity for their family if they want to study.

## Income Insecurity

Workers report that they are putting more time and energy into working, but getting less out of it. As Figure 2 shows, people in temporary and contract work face considerably more job instability than full-time workers. While over 80 percent of permanent full-time workers had jobs lasting more than a year, less than 38 percent of temporary workers did. The majority of temporary workers had jobs lasting less than six months.<sup>44</sup>

**Figure 2: Duration of Employment - comparison of permanent and temporary/short-term contract workers<sup>45</sup>**



Low wages in unstable jobs are a key factor pushing people from one low wage job to the next. As Jack notes, when you're working for \$8.75 you can't save up much money. "You can't spend a whole lot of time hunting for jobs. So you just have to go where you can get a job quickly."

## Andrew

Andrew says that uncertain incomes from temp work is "non-stop; you go from feast to famine basically. I have to depend on my friends. Thank god for my friends .... I have to pay them back, but still it's like for three months if you're looking [for work] and your roommates and your friends are like 'here you can pay us back when you can.' It's scary, it is."

Workers use a variety of strategies to deal with the costs of job and income instability including borrowing money from friends and family, relying on expensive forms of credit such as credit cards and loans, and combining extended families and more than one family in one apartment or home.

Workers like Andrew, Raj and Kalil absorb the costs of labour market adjustment due to job instability and inadequate workplace protections. Whether it is paying for training or being without an income, the costs are high. Changes to Employment Insurance mean that more temporary, part-time and misclassified workers are ineligible for benefits when, like Raj, they need it most. Changes to eligibility requirements, duration of benefits and cuts to benefits have contributed to the percentage of unemployed receiving EI falling from roughly 80 percent nationally in 1990 to 27 percent in Ontario. With more immigrants and people in precarious work in Toronto, only 22 percent of the unemployed receive benefits.<sup>46</sup> The barriers to obtaining Employment Insurance benefits shift the costs of job loss and getting a new job on to workers. These barriers also contribute to the forces pushing workers into precarious work.

Social Assistance is not much of an option for unemployed workers who do not qualify for employment insurance. Benefits have eroded 46 percent since 1995 and workers are required to use all their savings before applying for welfare. Further, federal policies make it hard for people trying to regularize their immigration status or sponsor family members. Together these factors pose significant barriers, further pushing workers from one low-paid precarious job to the next.

## Less Access to Employment Benefits

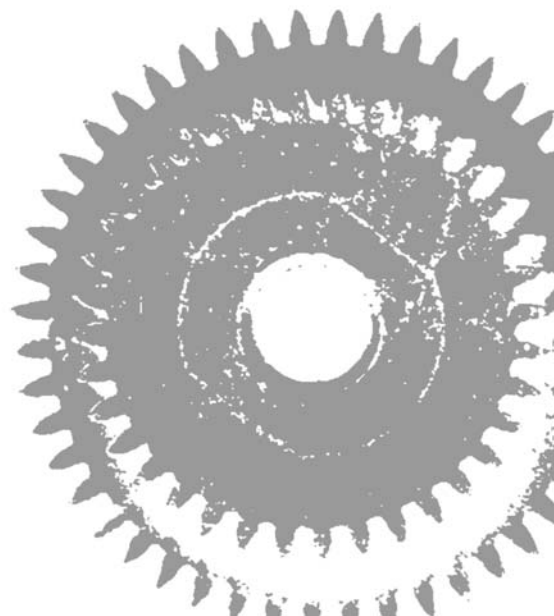
Low-wage jobs rarely come with employer-provided benefits. Therefore, workers who can least afford it are left trying to find ways to cover health and dental costs. Wearing prescription glasses that no longer help you see. Sharing prescription drugs or going without. Working well beyond your 65th birthday. These are just some of the strategies workers report using to deal with the lack of medical, dental and pension benefits. People in temporary, part-time, contract, own-account work rarely have such benefits. Similarly, workers in low-wage full-time jobs also go without. The chance of getting any employer coverage of benefits drops dramatically when people move

from permanent full-time work where 86 percent of people surveyed said they had some coverage of benefits to temporary work, where a low of 19 percent of workers reported having some benefits.<sup>47</sup> As Harry Arthurs points out in his review of the Federal Labour Code, the costs are not simply born by workers and their families. Without disability benefits or sick benefits, workers are left with little choice but to seek public assistance when they cannot work. If medical conditions deteriorate because a worker cannot afford drugs, the public health system may bear additional costs.<sup>48</sup>

Some discussions of income security discussions have begun to look at household incomes rather than individual incomes to measure poverty levels.<sup>49</sup> If we talk about family incomes only, however, we lose sight of some important dimensions of the problem. As in Raj's case, there is a higher than average number of wage earners and multiple jobs holders in racialized families. Simply considering family or household incomes masks differential responses to low income, barriers to social services and social impacts of such work arrangements.<sup>50</sup> Longer hours of work and multiple jobs held by the same worker contribute to stressful family relations and even break-ups. Many workers talked about their guilt feelings from not spending enough time with their families because of long hours of work.

Provincially-regulated minimum wages have institutionalized low wages that fail to keep up with the cost of living. Indeed, Ontario's minimum wage has fallen 21 percent below peak levels of the mid-1970s. A full-time, full year worker in Ontario earning the current \$8 minimum wage falls about \$6,000 below the poverty line.

Recall what Nalini said at the beginning of this section; "one job, eight hours a day, should be enough, without the pressure of extra work, extra jobs." This is the sentiment of all of the people interviewed for this report. Workers want a fair day's pay for a fair day's work. That means that minimum wage should be enough to bring workers out of poverty. There was unanimity among workers that an immediate move to \$10 was an important step that would make real improvements in their lives. Persistent low wages in the context of rising living costs leave workers working more hours, having more family members work or juggling two or three jobs. But workers are at the edge. There is not a lot more they can take on.



# 5

## Enforcing Employment Standards in Ontario



# 5 Enforcing Employment Standards in Ontario

## No protection on the job

*“There’s no protection under the law.... It’s a very precarious situation. It’s getting worse.”  
(Andrew)*

The ESA was developed to protect workers like Andrew who have little power to bargain in non-unionized workplaces. The ESA was supposed to establish a floor of minimum employment standards that reflect social norms. But workers who come to the WAC point out that there is no floor of rights or protection when their employers violate employment standards.

What is strikingly clear from workers’ experiences is the “everydayness” of substandard working conditions. Workers do not come forward with just one experience of employer violations. When reviewing previous job experiences, it becomes clear that people in low-wage and precarious work experience violations of labour standards in job after job. As Kalil’s story at the beginning of this report demonstrates, workers go from one bad job to the next with no protection against employers’ violations.

There are few studies documenting the pervasiveness of violations of labour standards, but the ones that are available confirm what workers say. The federal government’s Labour Standards Evaluation surveyed federally-regulated employers and found that 25 percent of employers were in widespread violation and that 50 percent were in partial violation of the federal Labour Code.<sup>51</sup> The 2005 Statistics Canada Federal Jurisdiction Workplace survey of employment practices confirmed these findings. These studies are based on employer reports and most likely understate the level of compliance with the federal Labour Code.<sup>52</sup> The rates of non-compliance in Ontario can only be higher due to the larger percentage of sub-contracting, smaller workplaces and lower union density in provincially-regulated workplaces.

The majority of workers who come to the WAC experience violations of their employment standards.<sup>53</sup> The most common violations workers face are unpaid wages, vacation pay, termination pay, overtime and public holidays. This is consistent with the types of violations confirmed by the Ministry of Labour through individual claims.<sup>54</sup> Callers to the WAC report violations from many sectors, including banking, call centres, clerical, cleaning, computer/IT, construction, factory, general labourer, homecare services, retail, sales, temp agency, and transport.

### Siva

Siva moved here just over a year ago. He has been met with the view that newcomers must expect it to be hard and that he should not expect to receive the same rights at work as others. An experienced businessperson, he is now working for minimum wage at a gas station.

Siva works six days a week for minimum wage with no overtime pay or vacation pay. Because the gas station usually only hires people part time, he is told he can't expect to get overtime pay. He plans to work at the gas station for two or three years in order to get a job managing a station in order to improve his income. Even though that will mean a couple of years of minimum wage work without vacation and overtime, he will do it because, he says, "I can't worry too much about what kind of work. I need work that will support us."

Siva says that the companies are the problem and suggests that the government should audit companies to see how much income they have to determine what workers' salaries could and should be.

Many forces push different groups of workers into low-waged work with substandard conditions. With immigration policy increasingly putting the costs of settlement on individuals and families, workers, such as Nalini, report being compelled to accept any kind of work they can find in order to comply with immigration income requirements for sponsorship.

Up against such barriers, workers find themselves in workplaces with persistent and long-standing violations.

## Isabel and Manuel

Isabel worked in a garment shop for 14 to 15 hours a day, five or six days a week, for over four years. The first seven-hour shift was paid directly by the company. The second seven-hour shift of the day was paid by the company's own temp agency on a separate payroll to avoid paying overtime. The workers never received overtime pay, public holiday pay or vacation pay. Manuel, another worker, said, "We were being forced to work longer hours. They were wanting us to work Saturday and Sunday too. If I was sick, they would just keep calling, being really upset at me." Isabel and Manuel worked along side undocumented workers who received less than minimum wage.

White workers who are born in Canada also experience low wages and lack of protection in Ontario's workplaces. Year after year, workers absorb the costs of unpaid wages and substandard working conditions.

## Shirley and Fred

Shirley's husband, Fred, worked for 18 years as a meat cutter for a family-run grocery store. But he and the other workers always worked overtime without receiving overtime pay. "I told him to look at the owner's \$30,000 car ... That's your wages, that's your overtime pay; and not just you, but all the workers, that's your overtime. How does it make you feel?" Shirley says. "But my husband says 'I have to pay the mortgage'."

The enforcement of employment standards has essentially been privatized. In the absence of active enforcement of standards in the workplace, the onus is placed on individual workers to enforce their own statutory rights by reporting ESA violations through individual claims.

When Shirley called the Ministry of Labour to find out what her husband could do to get his overtime pay, she was told that the only thing he could do was to file an individual claim against



his employer. Her husband could not do that because he could not risk losing his job. As Raj says, “We can’t stand up to the employers by ourselves... Managers can fire one person and hire another.” With unequal power between workers and employers and no real protection against reprisals, workers can do little to enforce their rights while they are on the job. Workers are forced to put up with substandard conditions until they can move on to the next job or, as many workers at the WAC experience, they are fired when they ask for their rights.

Workers who least can afford it are being forced to bear significant loss of income due to employer violations of employment standards. Take the case of the garment workers above. Over a four-year period, Isabel worked 14 hours a day at \$10 an hour. She lost over \$64,000 in unpaid overtime pay, \$5,670 in unpaid public holiday pay and \$11,970 in unpaid vacation pay. Manuel, who worked less overtime, lost over \$32,000 in unpaid overtime, over \$4,000 in public holiday pay and over \$4,600 in vacation pay.

This loss of income has many effects. Low-wage workers have to make up for lost wages, often by working longer hours or at a second job. Manuel and Isabel would not have had to work such long hours if they were getting their statutory entitlements. Workers try to make rational work choices within a system that is failing them. Faced with limited “choices” Siva’s plan is to work in substandard conditions while he puts in his time in hopes of getting a higher-paid job. As discussed elsewhere in this report, the “choice” to work long hours and or at multiple jobs has significant health and social costs for workers, families and communities.

## Nalini

Nalini went two months without her wages before she was fired from her cleaning job. “When they didn’t pay for two months, I have a lot of late payments. It costs me money. It was hard for me. A lot of things I lose. I lost my credit card because everything is late payment. You know, two months I cannot pay anything. I only can pay the mortgage, take care of my daughter, feed her. I cannot pay, so I borrow from friends. Because I take money from the credit card to pay bills, they changed it [credit card debt] to a loan I have to pay [now] every month. I cannot use it [credit card] now. It is hard for me... The credit card is like a buffer. Too much pressure because we are just establishing here.”

When employers do not pay workers their wages, the costs are high, especially for workers with little or no savings.

When workers are dismissed or fired, wages are often owing to them. Then workers must wait for employment insurance or welfare, if they qualify, and most must look for work without wages coming in.

## Zahra

The cost of job loss was hard on Zahra. “I had no Employment Insurance because I was only working for seven months and it was only for four hours. ... My family is not here and my mom is back home. I used to

send whatever I could to her and I use to go to school as well.... But after [being fired] I had no job. I wanted to apply for Social Assistance and they said, you know if you get fired from a job you have to wait for assistance for three months. You cannot get money for three months... It was very hard, very very hard."

## Enforcement in a Deregulated Labour Market

The experiences of workers that have come to the Workers' Action Centre confirm that the violations of minimum labour standards are the norm, rather than the exception in many workplaces. The daily reality of labour-law violations have made them seem ordinary and expected in labour sectors where new immigrants, racialized, women and low-waged workers dominate given barriers to better jobs. As workers' experiences tell us, it is not a question of a few "bad apples." In Siva's case, he worked for two of the multinational oil and gas companies operating gas stations and the experiences in both jobs was similar. Nor is it a question of individual vulnerabilities due to a worker's race, gender or poverty. Rather, workers' experiences discussed here demand that we shift our focus to the actions and practices of employers, to the system that enables these practices and the forces that constrain workers.

For people in low-wage and precarious work, the workplace is often a place without regulation or protection of basic minimum employment standards. As a Law Commission of Canada report observes, this has developed both actively and passively.<sup>55</sup>

Active deregulation has occurred by lowering standards through a variety of ways. Over the years, employers have been able to gain exemptions from minimum standards. For example, domestic workers, superintendents, construction and agricultural workers do not have the same protections as other workers. Overtime permits enable employers to schedule work beyond 48 and even 60 hour work-weeks. "Agreements" enable employers to get out of employment standards on hours of work and overtime through averaging agreements. Lower minimum wages have been set for liquor servers and students. Most of the exemptions relate to the regulation of overtime pay, hours of work and minimum wage, enabling a regulatory regime that allows employers to minimize the costs and scheduling of labour.<sup>56</sup>

Passive forms of deregulation have also undermined employment standard law's capacity to protect workers in low-wage and precarious work. As demonstrated above, today's employment standards do not reflect the changes in the economy and organization of work. Minimum wages are now 21 percent below mid-1970s levels in real wages, leaving one in four Ontario employees working for wages below the poverty line. Many more workers are not much better off, earning just above the poverty line. Based as it is on the standard employment relationship, the ESA does not adequately address many of the new ways that employers are organizing work. Many workers find themselves with little or no labour law protection. Moreover, more of the costs and liabilities of the employment relationship are being passed to workers whom can least afford it. The failure of governments over the past 30 years to adequately fund and staff the regulation of employment standards, and the move from enforcement in workplaces to individual claims resolution for former employees, has essentially shifted the onus for enforcement onto workers.

While the Ministry of Labour has begun to bring enforcement back on to the agenda, much needs to be done to address substantial under-resourcing, inadequate enforcement, improving workers' access to enforcement of rights, and claims processing.

## How are Employment Standards Enforced?

The Ministry focuses its efforts and resources almost entirely on investigating complaints from individuals against their former employers. The Provincial Auditor concluded in 2004 that the Ministry's inspection activities relating to protecting the rights of currently-employed workers was inadequate.<sup>57</sup>

It has not always been this way. In the late 1960s, the Employment Standards Branch enforced the ESA primarily through proactive inspections of problem industries or geographic areas. So, for example, the Branch would conduct surprise spot checks or planned visits to investigate a company's compliance with the law. The Branch responded to increases in individual claims by using them "as levers to pry open and expose to scrutiny" the company's entire range of operations. Officers were required to do full audits to disclose all violations. The number of employees receiving payments because of Branch interventions in 1971 was 52,263.<sup>58</sup> Contrast that with the 11,258 workers that received unpaid wages and entitlements from Branch interventions in 2005/06.<sup>59</sup>

The Employment Practices Branch essentially relies on employers to voluntarily comply with the ESA. Yet, as the Task Force on Hours of Work and Overtime determined in the late 1980s, the probability of detection, the probability of assessment, and the expected penalty, (discussed further below) combine to create a low monetary cost for ESA violations.<sup>60</sup> The consequence is growing direct and indirect non-compliance with the ESA, which persists today.

### Pizza

A small independent pizza chain in Toronto functioned like many in the fast food restaurant sector. For years, it did not pay overtime to kitchen staff who regularly worked up to 80 hours a week. Vacation pay was only paid on the first 40 hours of work. Pizza delivery workers were misclassified as independent contractors and did not receive overtime pay, vacation pay or public holiday pay. Some wait-staff were paid less than minimum wage. Pay was often late. Workers put up with this until cheques started bouncing and wages went unpaid.

In early 2005, the company began having financial difficulties. First, it stopped paying its bookkeeping and administration staff. One worker was owed \$10,000 in unpaid wages before she finally quit after too many broken promises. Another worker was owed \$8,000. Some workers began filing claims at the Ministry of Labour for unpaid wages. Other workers, owed smaller amounts, just moved on.

One by one, claims were filed. The Ministry of Labour did not expand its claims investigation to find out if other workers were also going without their wages.

It was not until the WAC launched a public campaign that the Ministry of Labour finally conducted an inspection of the company. With the assistance of the former bookkeeper, Parkdale Community Legal Services outlined how the company hid the unpaid overtime, unpaid public holiday pay and bounced paycheques. But the inspection report, received by PCLS through a Freedom of Information request, found that only wait-staff were paid less than minimum wage. The Inspector did not confidentially interview workers. Rather than review the materials outlined through the bookkeeper, the Inspector asked the employer to do a “self-audit” (employer-completed questionnaire).

The Inspector failed to uncover the ongoing unpaid overtime from 80-hour work weeks, 12 weeks of bounced paycheques and unpaid public holiday pay. Workers continued to have their rights violated and go without pay throughout the entire inspection. Six of these workers were forced off the job, owed thousands of dollars in unpaid wages. The violations that took place during the inspection were later confirmed by individual claims investigation and subsequent orders to pay. Despite repeated offences, the Ministry of Labour did not fine the employer, as it has the power to do, when issuing orders to pay.

Now, over two years after the Ministry of Labour was made aware of the violations in this workplace, workers have still not been paid. The government has found that the employer owes \$74,645 to 11 workers and ordered the company to pay more than \$59,000 (the \$10,000 limit on orders capped what workers can recover). During this entire time, the company continued to operate and hire more workers that did not receive their legal entitlements. Former workers repeatedly asked the Ministry to use its powers to prosecute employers and seek restitution for the workers.

The experience of Pizza workers demonstrates some of the main problems workers face. First, Pizza workers experienced violations of unpaid overtime, excessive hours of work, and delivery workers misclassified as self-employed for years with no hope of protection. Yet when even their hourly wages went unpaid and they went to the Ministry of Labour, workers still received no protection.

## How are Employers’ Violations Detected?

Employers’ violations of employment standards are detected through proactive or surprise inspections by the Ministry of Labour. Inspections can find violations against current employees. Or, violations are found or when an individual files a complaint against the employer, usually after the worker has left the job. The Ministry of Labour investigates whether the employer violated the individual’s rights.

Without increases in funding and staffing resources to meet the growth in the number of workers to be protected under the ESA, branch activity shifted from currently employed workers to individual complaints of former workers. Inspections became almost non-existent during the 1980s and 1990s. The increase starting in 2000-01 was due in part to fewer individual complaints enabling the Ministry to divert resources to proactive inspections. But even then, this represented less than one percent of Ontario workplaces and quickly declined as individual claims rose again.

In response to calls on the government to improve the protection of workers, the Ministry of Labour developed an Inspection Team in 2004 to conduct 2,000 proactive inspections (increased to

2,500 in 2005) targeting high-risk employers in high-risk sectors such as restaurants, business services and the garment industry. The Employment Practices Branch<sup>61</sup> has only 20 staff to do 2,500 proactive inspections of 350,000 workplaces covering almost six million workers in Ontario. While this represents a modest improvement on proactive inspections, the risk of detection for employers remains small. Less than one percent of employers face any real risk that the Ministry of Labour will investigate whether the employer is following the law.

## Extended Investigations

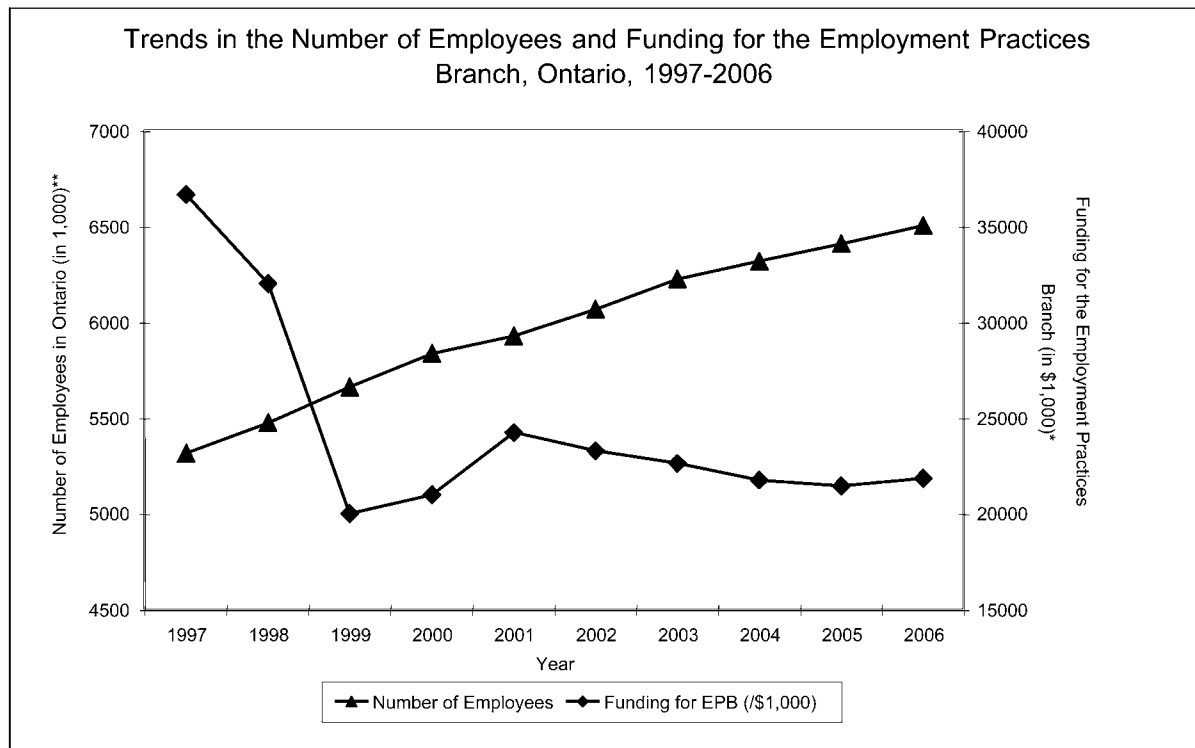
When an investigation of an individual complaint confirms a violation of the ESA, for example, unpaid overtime pay or public holiday pay, the likelihood is that the employer is also violating the law for its current employees. After Jack won his public holiday pay through appeal at the Labour Board, he said, “the fact that one worker wins the case doesn’t change the situation for all the other workers. ... I don’t think these companies will pay you unless they have to. .. It is because of the way the Labour Ministry works on a case-by-case basis ... rather than changing the company’s whole policy.”

“Greater ministry emphasis on extending investigations of a substantiated claim to cover other employees of the same employer to determine whether additional violations had taken place would be an effective and efficient means of enforcing the employment standards legislation. For example, a complaint by a former employee against an employer in 2001 identified violations relating to unpaid wages, vacation and termination pay. At the time, the investigation was not extended to include other employees. However, from 2001 to 2003, four subsequent investigations of complaints against the same employer determined similar violations with a total assessed amount of about \$25,000 owing to those employees. We also noted that prosecutions were not initiated for any of these claims.”<sup>64</sup>

Individual claims’ investigations are rarely extended to expose violations against current employees even though individual claims generally confirm violations in about 75 percent of workplaces.<sup>62</sup> This confirmation of violations in a workplace could be used to “pry open and expose” other violations through extending the investigation to include all employment practices. If the Ministry had used the first few claims from former Pizza workers, which in one case was \$8,000 for three months of unpaid work, then other workers might have been protected from the same fate. Further, it would have reduced the workload on the Ministry from having to process claim after claim. Currently the practice in the Ministry is to refer cases where Officers expect that other possible violations may be occurring to the Inspection Team for inspection. So far, in 2006-07 the team has conducted only 142 such inspections.<sup>63</sup> That is only 142 inspections out of an estimated 11,000 claims where violations have been confirmed.

The Ministry responded to the Provincial Auditor, stating that “It has the statutory responsibility to resolve claims and that limited resources left little time for staff to extend investigations and pursue proactive investigations.”<sup>65</sup> As Figure 3 demonstrates, funding for the Employment Practices Branch declined in the late 1990s and levelled off over the past five years while the number of employees to be protected by the ESA has increased by 20 percent. This trend is not new. Employment standards have been consistently under-funded.

**Figure 3: Trends in the Number of Employees in Ontario and Funding for the Employment Practices Branch**



\* Ministry of Labour, "Historical Funding – Operations, 1997-98 to 2006-07", Monday April 16, 2007.

\*\* Statistics Canada, Labour Force Surveys by Economic Region, Table 2820054

Proactive inspections and extended investigations are two primary ways of detecting violations in the workplace. Again, the lack of adequate resourcing questions the effectiveness of the few inspections that do take place. With only 20 staff dedicated to inspections and extended investigations, the reliance on employers' self-audits and test audits of payroll records will fail to expose substantial violations, as was the case for the Pizza workers.

## Detection of ESA Violations Relies on Workers

The other primary way that an employer is detected for violations is when an individual employee files a claim. In fact, given the relatively small risk of detection from proactive inspections or extended investigations, the system relies on workers making claims against employers for violations of the Act. Workers must undertake a long and complicated legal process, largely on their own, in order to get the wages that they should have received in the first place. Employers, on the other hand, only have to comply to the law for the former worker who has filed a claim, not its current employees.

Workers who we interviewed demonstrate a clear understanding of power relations in the workplaces, which leaves them with no protection against penalties or job loss in order to file a claim against their employer while still on the job. This is confirmed by the fact that the majority (at least 90 percent) of claims are filed after a worker has left the workplace. The majority of workers who contact the WAC move from one substandard job to the next, without seeking to recover unpaid wages, overtime, vacation, termination and public holiday pay.

Workers' experiences suggest that the 15,000 to 20,000 annual claims filed at the Ministry of Labour are only the tip of the iceberg. The system relies on workers with the least capacity and resources to detect and report a violation of minimum standards. Workers' experiences highlight many factors for this lack of confidence in the Ministry of labour process.

## No Faith that the System will Work for Workers

Workers report a profound disaffection with the government's capacity to protect workers' rights. Workers' everyday experience shows how their rights are not protected in the workplaces. So they have little hope that their rights will be protected once they leave the job. For example, in one case where a factory hired recent immigrants, wages were often late, payments were only partial and, increasingly over the last year, not received at all. The WAC actively encouraged to workers in this factory to press for unpaid wages. Only 22 workers came forward to file claims. Yet a Ministry of Labour inspection of the workplace, conducted just before the company closed down, found that 99 workers were owed more than \$136,000 in wages. These minimum wage earners were owed an average of \$1,300, or about a month's wages. Yet 80 percent of workers never came forward to file claims for unpaid wages, despite significant publicity around the case.

## Barriers to Filing Individual Claims

The claims process is difficult for workers whose language is not English or French as there are no interpretation services provided. There are few support services to help people to gain knowledge and information about their ability to pursue their rights. For example, workers misclassified as independent contractors may not know they can file a claim.

Workers without regularized immigration status and groups of migrant workers (farm workers, live-in caregivers) fear that employers will have them deported or returned to their home country if they speak out. Because of this, most workers will never pursue claims against employers in violation of the law.

Barriers to employment insurance result in many people moving from one low-wage precarious job to another. Taking time off work to pursue claims often results in loss of pay, job loss or reprisals in the new job.

### Hassan

Hassan filed a claim against his previous employer for approximately \$7,000 in unpaid wages and vacation pay. “The claim form, I got it, but they should have somebody to help, to give advice how to fill in these forms. I lost my job, I am hungry. I need money for my children, for my family. I have to pay their way. I can’t think well. I try to. But I do not have time to think. So they should have some kind of legal assistance, how to fill in the form. The [claim] form they gave, it is so complicated. They should simplify it. Your name, your address, what you want, your company. It is simple.”

“It took eight months until the investigation. That is too long to wait.” At the fact-finding meeting with the Officer and his employer, Hassan felt that the Officer was acting in favour of the employer. She “asked leading questions to help the employer.” Hassan put forward proof of his claim, but in the judgement, the officers trusted the employer instead of Hassan. Even though the Officer confirmed that the employer did not provide pay stubs or vacation pay, there was “no punishment for the employer for not complying with the law.”

Hassan believes the process has to be more transparent. Investigations have to be public so that an employer’s actions and the government’s inspection come under public scrutiny.

## Bureaucratic and Legal Claims Process Excludes Many

Employers are in a much better position than workers to secure legal and human resource support during the claims process. Hassan tried to get assistance to hire a lawyer but to no avail. Legal Aid Ontario does not provide legal aid certificates for low-income workers for employment standards claims. Low-wage workers cannot afford private bar lawyers. When Hassan tried to get a lawyer, the lawyer refused to take his case saying the \$7,000 claim was too little for the lawyer to proceed. Very few community legal clinics provide support for employment standards as well. In fact,



in Ontario only 78 workers were represented in ESA claims by a handful of clinics in 2005. As Hassan discusses, the claim form and process is challenging for many, especially in the context of job loss, loss of income, and abuse of rights.

## **Claims Process has Become Dispute Resolution not Enforcement of Standards**

The investigation of individual claims has shifted from an investigation of violations and enforcement of minimum standards to a dispute resolution process to address severance of employment. Each step of the process is geared towards reaching a settlement. The Ministry of Labour asks workers to use a self-help kit to determine what they are owed and are encouraged to pursue the issue with the employer themselves. If that does not work, then a worker can file a claim.

An Employment Standards Officer investigates the claim through telephone calls and letters to both sides to get more information. The Officer may, or may not, conduct a “fact-finding” meeting where both the employer and employee are given an opportunity to present their case. If no resolution is achieved, the officer will decide whether a violation of the Act has taken place and issue an order accordingly.

Approximately 80 percent of claims are resolved without orders being issued. This means that the employer and worker “agree” to a sum of money to compensate for employer violations. But this “agreement” takes place in a context that is biased against people in low-waged and precarious work. As discussed above, the employer is more likely to have representation from people with legal or human resource expertise. One senior Ministry staff characterized individual claims investigation as “he-said-she-said.” When workers do not have experience giving testimony, do not know what information is important, face incredible stress in an alien legal process, or come from different communities and cultures, the worker’s word is often not viewed as credible, as Hassan and many other workers have discovered. The purpose of the ESA is to enforce standards and not to mediate disputes.

The process can take a long time. The number of claims has increased from an average of 15,000 claims per year to 23,000 claims in the past year. This substantial increase in the number of claims means that workers must wait at least six months on average for the process to begin.<sup>66</sup> Nalini waited almost a year for the investigation of her unpaid wages from the cleaning company to begin. She kept phoning to find out what was happening and she says, “Sometimes I feel like giving up.” Workers may feel pressured to settle for less than they were statutorily owed rather than risk not getting anything at all. The “agreement” to settle may mean that workers are pressed to accept less than they are legally entitled to.

Not only does this institutionalize settlements below statutory minimums, but these settlements are between the worker and employer. Because there is no Branch order confirming the violation and requiring the employer to pay, there is no right to appeal if wages still go unpaid. Yet with the priority being settlement of claims, there is no order to the employer to comply with the law for all its other employees.

Employers not only benefit from “voluntary settlement” by often paying less than they should, it also keeps their violation off the record. Fines of \$250 to \$1,000 per violation and a 10 percent administration fee can only be issued with orders to pay. Therefore, settlements enable employers to avoid fines. Further, the fines increase when an employer is found to be repeatedly violating the law. However, this can only be tracked through orders to pay. In short, it is in employers’ interest to settle and avoid orders to pay.

For agencies with limited resources, voluntary settlement may appear cost effective, but scratch the surface and these practices expose huge costs to workers who lose wages. This practice maintains the burden on workers to initiate claims as the only way to ensure that their rights are adhered to. Moreover, this practice makes the government party to contracting out of basic minimum standards through substandard settlements and sends the message to employers: “don’t worry if you are caught, it won’t cost you.” This reduces the incentive to comply with the Act, creating more claims in the future, not less.

## Kevin

Kevin worked for a year at a fitness club. Then Kevin’s boss had problems paying him. After six weeks without pay, Kevin was forced off the job. He tried to get his wages without luck. He filed a claim at the Ministry of Labour. After about a year, the Ministry issued an order against his former employer to pay close to \$3,000 in unpaid wages. Again the employer did not pay. So the Ministry of Labour sent Kevin’s claim to a private collection agency for over a year.

“Throughout this whole period I would check on them periodically... They’d tell me they’d done this or that, but to me I wasn’t getting the impression that they were really going out of their way to make sure this problem was being solved in the best way possible.... There’s a lot I didn’t know that they could do, like order the director to pay or to prosecute them. But now it’s over two years and they say it’s too late.

“I think that they’re overburdened with a lot of work and they probably have stacks of work. But by the same token, I feel the government laws are very lax. I feel the labour law should be similar to everything else. If you go in to a bank and take money, the police go and arrest the person. I don’t understand why it’s not the same [with unpaid wages] there should be severe legal implications for them.... What kind of message are you delivering to the community? That it’s okay?

“The other thing is, even if the labour laws were enforced and at the end of waiting say two years or three years, at the end the person just had to pay what they originally owed. That’s no incentive for them to do it initially because they’ll figure ‘there’s a chance we’ll get away with it.’ They can still invest my money and by the time they have to pay me what they owed me... I think that there should be on top of that a penalty, a deterrent for them to never do that in the first place, you know what I’m saying? ... These guys should get a criminal record without a question.”

## No Penalty for ESA Violations

In the roughly 20 percent of cases where settlement is not achieved, the Employment Standards Officer will investigate the claim and determine if a violation has occurred and, if so, issue an order to pay against the employer. As in Kevin's case, unless employers voluntarily agree to pay, the chances of the Ministry of Labour enforcing the order to pay are slim.

<b>Employment Standards – Amount of unpaid wages collected and uncollected by the Ministry of Labour<sup>67</sup></b>					
	2001-02	2002-03	2003-04	2004-05	2005-06
Monies owed to workers	\$30.1 million	\$28.7 million	\$38.2 million	\$34.9 million	\$37 million
Monies collected for workers	10.1 million	\$12.2 million	\$15.5 million	\$14.9 million	\$15.7 million
% not collected	66%	58%	59%	57%	58%
<b>Total not collected</b>	<b>\$20 million</b>	<b>\$16.5 million</b>	<b>\$22.7 million</b>	<b>\$20 million</b>	<b>21.3 million</b>

Just over \$100 million in workers' wages that the Ministry ordered employers to pay went uncollected in the past five years. Bankruptcy only explains a part of the story. For example in 2005-06, only 293 claims were for employers who filed bankruptcy and receivership (or about 16 percent of cases where orders were uncollected).<sup>68</sup> Some employers simply refuse to pay because they feel there are no repercussions. Other employers just change the name of their business to avoid payment. As discussed further below, these employers face no fine or penalty for not paying workers' wages.

The workers who do persevere through the system receive an order against their former employer, and then still do not get their wages, are surprised at how few collection powers the Branch uses. Workers experience this as a crime against them. As Kevin says, "If you work for somebody and they owe you money and they don't pay, then they've stolen your money .. That is serious. I was under the impression that first of all it would be faster. And another impression was that they would either actually go into the owner's bank account and take the money or put them in jail." Other workers call it "wage theft." Workers feel the government takes tax evasion or other criminal matters seriously, but not wage theft.

The long-standing policy for the speedy resolution of individual claims has meant that fines and prosecution powers within the ESA are rarely used. Most workers interviewed say there should be an effective cost to breaking the law to deter employers from doing it again. Officers have the authority to levy fines of \$250 per violation and per employee violated, increasing the fine for repeat offenders up to \$1,000. These modest fines could be applied with each violation, but they are not. "From December 2001, when they were first introduced, to February 2004, only 218 notices of contravention (fines) were issued resulting in assessed total penalties of approximately \$140,000."<sup>69</sup> In the Pizza case, escalating fines with each new claim may have got the employers' attention. Instead, the employer received only orders to pay what should have been paid in the first place each time a worker came forward.

The Act allows the Ministry to prosecute offenders with fines up to \$50,000 for individuals and/or 12 months in jail or fines of \$100,000 for corporations. For repeat offenders, the fines increase to \$500,000. The 2004 Auditor's Report found that in the previous five years, only 18 cases were sent for prosecutions out of 51,000 cases of confirmed violations resulting in \$210,000 in fines.<sup>70</sup>

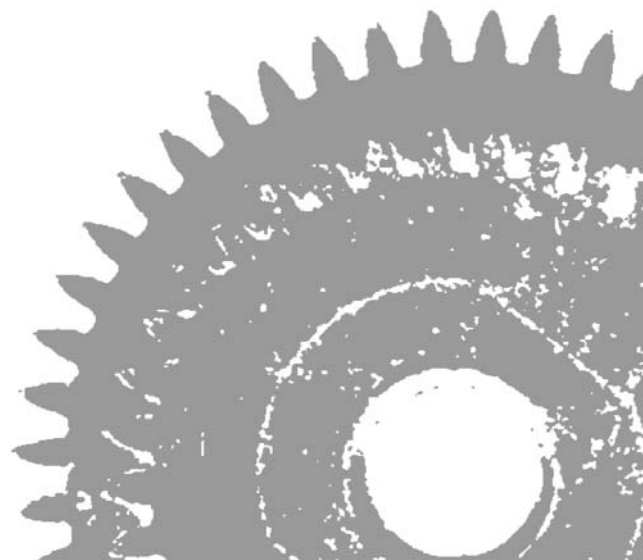
There have been modest improvements since the Ministry of Labour's 2004 announcement to increase fines and prosecutions within a tougher enforcement strategy. For instance, in 2005-06 the Ministry of Labour found that employers violated workers rights in 11,358 claims and that almost \$37 million in unpaid wages and entitlements was owing to these workers.<sup>71</sup> Yet it only prosecuted four companies and two directors of companies resulting in fines of \$55,901 under the Provincial Offences Act (Part III).<sup>72</sup> In comparison, the Ministry's Health and Safety branch completed 386 prosecutions in 2004 with fines over \$6.2 million to employers in violation of the Health and Safety Act. In the case of the Pizza workers, if the Ministry of Labour had prosecuted the employer after the first order to pay went unpaid, further violations, job loss and lost wages may have been prevented.

Under the rubric of a "more efficient means of charging offences," the Ministry introduced a ticket system. This allows Officers to issue Part I tickets under the Provincial Offences Act. These tickets are similar to speeding and parking tickets. Officers issued 434 tickets in 2006 for fines of \$120 to \$360. Tickets were issued for violations such as paying less than minimum wage, not paying overtime, vacation pay, public holiday pay, and excessive hours of work. Tickets are not an effective cost for violations in the first place, nor will they act as a deterrent to ongoing or future violations.

## Conclusion

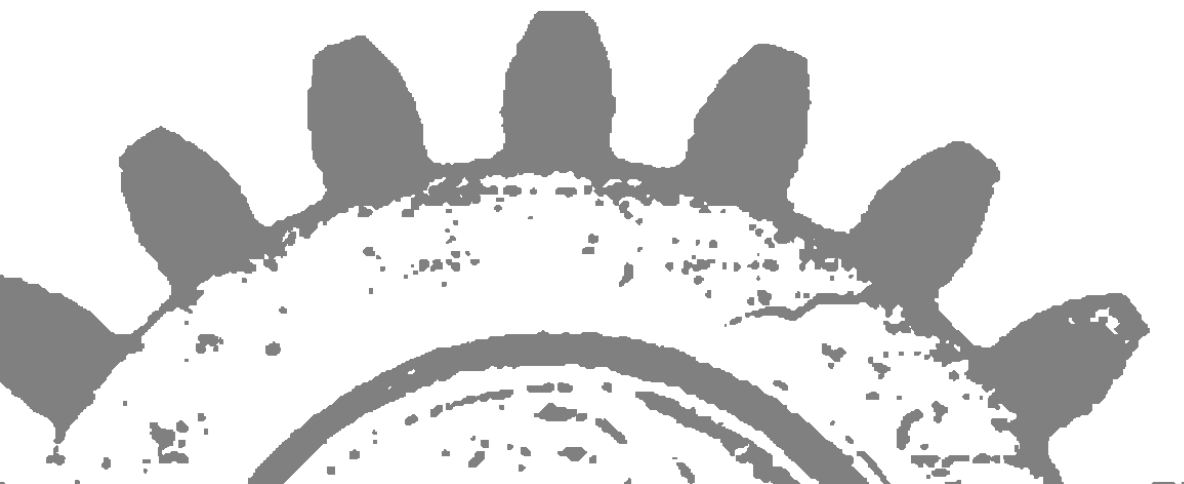
Changes in labour market regulation have realigned the distribution of risks, costs, benefits and power between employers and employees. Employers' goals for efficiency and flexibility have not only become more significant in shaping the employment relationship, but have been strengthened through current regulatory regimes.

From the position of workers in low-wage and precarious work, Ontario is failing to provide a basic floor of minimum standards in Ontario workplaces. Left unchecked, substandard working conditions will grow, which will only press more employers to follow suit either directly or indirectly. As Arthurs states in his review of the federal Labour Code, "high labour standards are associated with high-performance economies."<sup>73</sup> While this economic imperative is important, there is a moral imperative at stake. Employers who do not follow the law fail to see the humanity of workers and a moral right of workers to fair treatment. This is how Sharif puts it: "they are not caring about the rights of people, of human rights.... Cheating [workers] is inhuman."



# 6

## **Working on the Edge – Change is Needed Now**

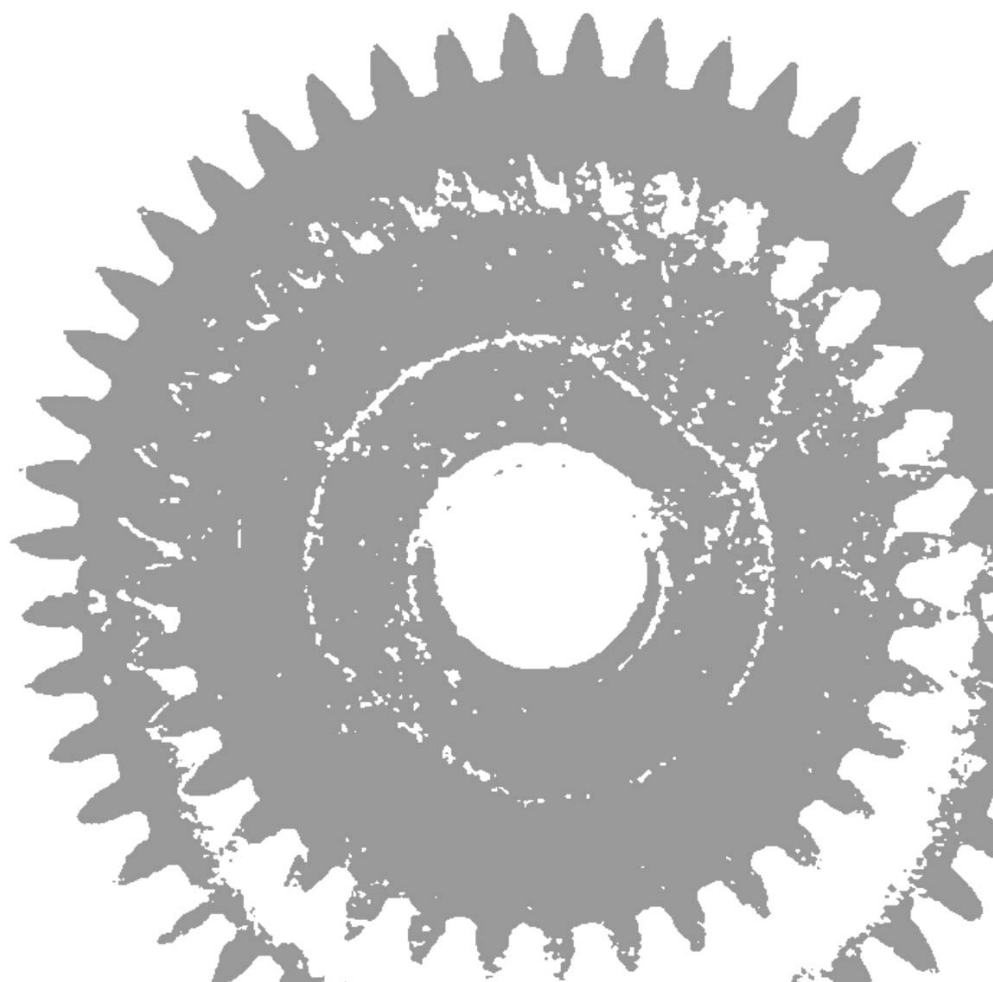


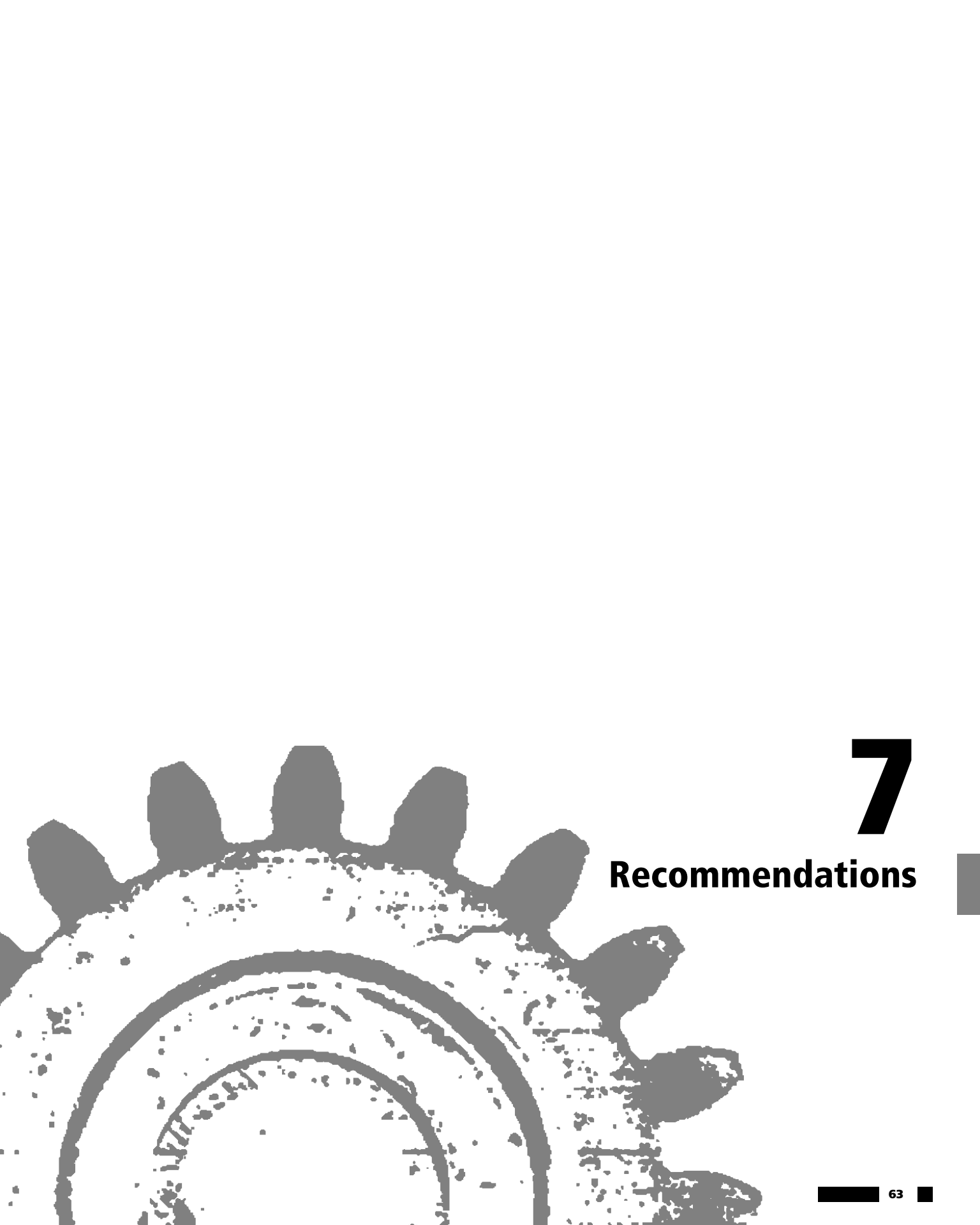
## 6 Working on the Edge – Change is Needed Now

Workers are bearing the costs of substandard workplaces by absorbing unpaid entitlements and/or job loss when trying to enforce their basic rights. When their rights are violated workers are bearing the costs of moving from one job to the next. Workers are increasingly bearing the costs businesses pass down to them. Workers are bearing the costs of poverty wages.

Workers, especially women, immigrant and racialized workers, face barriers to moving out of low-wage work. More work is being done outside the boundaries of standard employment, leaving workers with even less protection and little recourse. Workers are coming up against barriers to fair wages and adequate incomes; barriers to fair working conditions; barriers to stable jobs; barriers to employment benefits and statutory rights; and barriers to justice.

That is why the members of the Workers' Action Centre called for this report to expose the reality of what is happening to workers. We need to open the space so workers, like those heard in this report, can join in a dialogue about the changes that are necessary. Towards this goal, we outline below a series of recommendations to begin that process of change. These recommendations come out of the experiences of thousands of workers that have come to the Workers' Action Centre over the years. The recommendations are shaped by the problems and challenges workers face in the struggle for justice.





# 7

## Recommendations



## 7 Recommendations

This report is focused on wages and working conditions of people in low-waged and precarious work because the ability to earn an income and support our families and ourselves is the dominant issue workers raise at the WAC. What clearly emerged through reviewing WAC's records of workers problems and interviews with workers was that other labour regimes are also being challenged by the rise of precarious work. We need comprehensive reviews of these labour regimes to examine the effectiveness of these regimes to provide healthy workplaces free from discrimination and real access to workers' compensation and employment insurance. The recommendations below focus on the provincial Employment Standards Act and federal Wage Earner Protection Plan.

### Precarious Work and New Employer Practices

Many workers are deprived of employment rights, benefits and protection because their work arrangements do not conform to the standard employment model underlying labour standards, policies and practices.

The scope of the *Employment Standards Act* should be extended to include precarious forms of employment. This is necessary to improve regulatory effectiveness of our changing labour markets. Simply expanding the legal definition of employee to include current indirect employees or own-account self-employed may exclude the way employers will organize work tomorrow.<sup>74</sup> The starting point should be that all workers are entitled to minimum labour standards. Sections of the Act could then be tailored for particular groups of workers such as temp agency workers. For example, Ontario's ESA sets out specific conditions for the unique position of homeworkers.

#### **New definition of Worker**

As a first step toward the goal of universality, the definition of employee must be broadened along the lines of Ontario's Health and Safety Act, which defines a worker as "a person who is paid to perform work or supply services."

#### **Employer Liability**

A century ago, labour subcontracting was known as the "sweating system." Today, again, employers use subcontracting as a key strategy to reduce labour costs, increase profits and shift liabilities down the chain of the "sweating system" of production. Employers should be held at least jointly responsible and liable for the employment conditions of indirect employees (for example, workers hired through temp agencies). First, we propose adding a provision to make companies that use temporary agencies and, subcontractors as well as subcontractors themselves,

liable for treating workers according to the law. This reflects Québec's *Act Respecting Labour Standards*, which makes companies that engage subcontractors jointly liable for monetary obligations. Second, we propose adding “dependent employer” to the definition of employer to ensure joint and several liability for minimum standards is imposed throughout the subcontracting chain.

## Joint and Several Liability

Employers who enter into contracts with subcontractors and other intermediaries, either directly or indirectly, must be liable both separately and together for money owed and statutory entitlements under the ESA and its regulations.

## Dependent Employers

Dependent employers are individuals and entities that are functionally dependent on another individual or entity.

## Equality

The ESA has a role in establishing a framework for equality among workers doing comparable work. The government should not enable employers to impose inferior conditions on workers, primarily women, workers of colour, immigrant workers and young workers, simply because of the form of employment or employment status. This measure would help bring the ESA in line with the Ontario Human Rights Code.

## Equal Pay for Precarious Work

Extend the principle of equal pay for work of equal value to include those who are being paid a lower rate simply by virtue of employment status and/or form of employment (for example, part time, casual, temporary agency worker, and contract work)

## Equal Benefits for Precarious Work

Society needs universally available public statutory rights and entitlements, regardless of paid or unpaid work status, to provide income security in retirement and coverage for prescription drugs, dental care and other basic health care needs. But until that time, employers should no longer be able to discriminate by only providing benefits to some workers and not to others because of employment status.

Employer-provided benefits must be provided to all workers: full-time permanent to part-time and/or temporary workers, agency, contract and seasonal workers. Full and equal benefits are the priority since prorated benefits do not amount to equivalent conditions.

## No exemptions

Exemptions from the ESA create a patchwork of rights and entitlements from basic, minimal standards. Some occupations are excluded from some provisions. For example, information technology workers are excluded from hours of work and overtime protections, resulting in excessive overtime with no right to refuse. There is no reason to exempt any but the most senior management levels from provisions of the Act.

## Temp Agency Workers

Working for a temp agency means a worker has two employers: the agency and the client company. In some areas they have separate responsibilities, in others they overlap. That makes it more difficult for workers to enforce rights. That is why we are proposing the following recommendations for temp work:

### New section for employment agencies

Add a new section to ESA that will make provisions for workers engaged by temporary agencies. All other relevant parts of the ESA would pertain to these workers as well.

### No Fees or illegal deductions from wages

The agency should not charge a direct or indirect fee for applying for work at a temp agency and/or for placing a worker in any assignment or permanent job. The agency should not set off any costs against wages (such as training, transporting workers, cheque cashing, health and safety equipment, customer complaints) unless they are specified in the ESA.

### Publicize Mark-ups charged to Client Companies

All temp agency workers are burdened with an invisible fee in the mark-up between the hourly or weekly wage they receive and the hourly or weekly amount the client pays the agency. This mark-up -- the difference between temp workers' hourly wage and the hourly fee charged to client company -- is unregulated. Some workers have reported mark-ups of 100 percent -- for example, the client company pays the temp agency \$20 per hour but the temp worker only gets \$10 per hour. The mark-up should be put in the employment contract and regulated according to the real costs incurred.

### Access to Jobs

The agency and client company should not limit a worker's access to direct employment in the client firm, or in a group or industry serviced by the agency. This would include prohibitions such as anti-competition clauses barring workers from seeking employment with client firms and "buy-out fees" charged to client companies and fees charged to workers.

## Equal Pay and Benefits

The temp agency should pay wages, statutory holiday and other pay at rates equivalent to those paid to employees in comparable jobs in the client company.

If benefits that the client company offers to its employees are not available to the worker on assignment, the agency should pay its workers an amount equivalent to the client company's contribution to benefit plans. The law should not set a minimum number of hours-worked to qualify for this benefit.

## Precarity Pay

At the end of each pay period, the agency should pay the worker an additional four percent of the wages the worker has earned during that pay period. Precarity pay recognizes the costs born by the temporary employee to provide flexible labour for employers. In France, for example, temporary workers get an additional 10 percent of wages earned if they are not hired into a permanent position with the client company.

## Include Time Worked

When a temp agency worker is hired by the client company at the end of the worker's assignment, the duration of the contract of assignment should be considered for purpose of probationary period and should be recognized in calculating the length of continuous service.

## Signed Contract and Copy

There are two contracts affecting a temp worker: the contract between the agency and the client company and the contract between the temp worker and the agency. In our experience, most temp agencies do not provide workers with copies of the contracts that they sign upon registration with the agency and little information is provided to workers about the client company on each assignment.

A contract between the client company and the agency and the temp worker should be signed for each assignment and include: the mark-up fee, the terms and conditions of the assignment, name of the client company and job description for the temp worker. A copy should be given to each party.

A contract between the temp worker and the temp agency should be signed upon hiring or registration with the agency that outlines the terms and conditions of work. The agency must provide the worker with a copy of this contract at the time of signing.

## Work hours

Society's well-being depends on our ability to support the human potential for productive work. To sustain that, we need to look at ways to change working arrangements so that the costs of flexibility for employers and insecurity for workers are borne by the party that benefits – namely, employers.

Employers should be required to:

- Offer available hours of work to part-time workers before new workers performing similar work are hired.
- Provide advance notice of hours and minimum shift hours to part-time workers.
- Provide just-cause protection to contract workers if, at the end of a contract, a newly-hired worker or another contract worker is doing the work previously done by the contract worker.
- Consider limits on renewal of contracts such that seniority translates into permanent job status.

## Minimum Wage

The 2007 minimum wage of \$8 is \$6,000 below the poverty line for a single person working full-time all year. The current government's proposal to increase minimum wage over three years to \$10.25 would still leave people working below the poverty line for the next three years. Without protection against the inflation, when the minimum wage reaches \$10.25 in 2010, it will be almost \$1 an hour below the poverty line.

The minimum wage should be based on the principle that a person working full-time, all-year, should at least earn enough to be at or above the poverty line. No one should work full-time yet still live in poverty. Further, a fair minimum wage policy should ensure protection against inflation. An annual cost-of-living increase would provide a basic level of financial stability for Ontario's lowest paid workers.

Increase the minimum wage immediately to \$10 and move to benchmark the minimum wage to the low-income cut-off (LICO) index or some similar standard and adjust annually by the cost of living increase. The formula for fixing and adjusting the minimum wage should be set out in the ESA rather than in regulation.

# Effective Enforcement of the Employment Standards Act

## Workplace Education

Improving education about rights to employees and responsibilities to employers is often the first-line response to concerns about widespread violations. While there is a need for improved education, we caution that it is not the panacea for improving employer compliance. As other jurisdictions demonstrate,<sup>75</sup> where there is a real risk of being found in violation and a cost to that violation, employers take steps to learn about legal responsibilities. At the same time, workers may not know specifically what rights are being violated by employers but they do know when they are being abused and that there are power relations in the workplace preventing them from doing anything about it. Any education program must account for these realities. We also recommend the following.

- Provide information in clear language and in workers' first languages. The Ontario Ministry of Labour is moving forward in this area, providing summary pamphlets in 24 languages. Language accessibility should be expanded to the Ministry of Labour's call centre that handles half a million calls annually.
- Information must be presented that addresses the power imbalances in the workplace. Workers need to know not only about protection against reprisals, but that the labour program will actually protect them from reprisals.
- Information about discrete legal rights may fail to address the realities of changing employer practices. Workers need to know about new employer practices such as the misclassification of employees as independent contractors, which is common in many industries as our research shows. Dominant problems faced by workers and emerging employer practices should be mapped in order to develop educational materials that address the way in which violations are taking place.
- Deliver education programs in workplaces where workers and employers need it most. Materials summarizing standards, common problems and how complaints can be filed should be distributed to all workers on a regular basis, starting from the date of hire.
- Funds should be made available to community and worker organizations to promote greater awareness of standards and how to enforce those standards.
- Industry organizations should promote greater awareness of employer responsibilities.
- The government should develop strategic plans for education based on mapping of high risk sectors for violation and previous complaints of violation.
- The Employment Standards Branch should integrate employee and employer education into an expanded program of proactive inspections. The government is in a unique position of having the authority to enter employers' premises. This opportunity should be used to target educational efforts (on-site workshops during work time for workers in first language of workers about rights) in companies known to be in violation.
- The government should launch a public campaign promoting employees' rights and employer responsibilities similar to the Ministry of Labour's public Health and Safety campaign

## Proactive Inspections

In the case of Ontario, proactive inspections uncover violations in 40 to 90 percent of inspections, depending on the sectors inspected.<sup>76</sup> Such high rates of violation demonstrate not only the need for more proactive inspections but also their potential effectiveness in enforcement.

A short and long term plan to increase proactive inspections should include:

- Mapping of labour market practices (including previous cases of employer violations, new forms of work organization, concentrations of young workers, recent immigrants, women and workers of colour, and other indices of high rates of employer violations) to develop a strategic plan for inspections.
- Establish year-by-year targets for inspection rates that would include sectoral targets (for example, sectors with high rates of violation such as cleaning and janitorial) and overall targets. On the latter, we would suggest a target of 10 percent of employers. That would bring the government in line with the rate of inspections currently done by the Ontario Health and Safety Branch (conducts over 35,000 health and safety inspections -- that is 10 percent of employers).<sup>77</sup>
- Post Employment Standards Officers' reports and all orders arising out of inspection in the workplaces.
- Evaluate the effectiveness of inspection process for employers and employees in terms of exposing full range of violations, non-reprisals against employees, due process for appeals of orders by employers and employees and overall effectiveness in improving compliance.
- Issue orders where violations found (rather than request voluntary compliance).
- Where violations have been substantiated, require mandatory follow-up audit/investigation to ensure compliance to reduce high rate of repeat offenders.
- Investigate a workplace for violations when a worker makes an anonymous complaint, just as the Ontario Ministry of Labour does in the Health and Safety regime.
- Track outcomes, evaluate costs and changes in compliance.
- Continue practice of posting Part I and Part III prosecutions of employers in violation of the ESA on the Ministry of Labour website.

## Extend Investigation of Claims

We need to shift the locus of claims investigation from individual former employees to investigating employer violations for all employees. Only in this way will we begin to enforce a basic floor of rights in our workplaces.

- The scope of claims investigation should be extended to cover all employees of the same employer. This was recommended by the Provincial Auditor to the Ontario Ministry of Labour and should be adopted by the Employment Standards Program. This effective and efficient means of enforcement would reduce duplication of officers processing individual claims against the same employer, often year after year.

## Tougher Enforcement Measures used in investigations

As the Provincial Auditor pointed out, the majority of claims are settled without an order being issued or fine levied so that employers may become confident that the government tolerates violations.<sup>78</sup>

- Issue orders in all cases when violations are confirmed even when the issue is resolved through a settlement.
- Track all violations, regardless of whether a settlement has been achieved.

## There must be a cost for breaking the law

### Fines

- All employers found in violation must pay the fine, regardless of whether the employer agrees to pay what is owed and/or the parties have reached a “settlement.”
- Increase the fines from the current escalating fines of \$250/\$500/\$1,000 per employee per violation to \$1,000/\$2,000/\$5,000.
- All employers found in violation must be kept on file to facilitate prosecution.<sup>79</sup>

## Penalties

- Make prosecutions policy simple and transparent. Each repeat violation or non-payment of orders must be prosecuted under Part III. Seek restitution for unpaid orders through Part III prosecution.
- Use money from fines and prosecutions to expand proactive inspections, extended investigations and collections activities.<sup>80</sup>

## Orders for unpaid wages must be enforced.

- Integrate payment of orders into investigations and claims process. In Ontario's experience, orders arising in proactive inspections have higher rates of payment, presumably because the Officer is in the workplace. Requiring payment of orders in the context of increased proactive inspections and extended investigations should improve collection rates.
- Develop clear steps and timelines for Officers to collect orders in default.
- Where collection strategy fails, prosecution should be mandatory.



## Wage Earner Protection Program

The federal Wage Earner Protection Program (WEPP) was passed in 2005 but has not been proclaimed. It awaits amendments that are before Parliament. The WEPP is supposed to enable workers to get up to \$3,000 in unpaid wages and vacation pay when a company files bankruptcy. Currently, workers have no protection to recover wages.

- The wage protection plan should be paid for by employers, similar to the Workplace Safety and Insurance system, not through general revenues. Employers, not taxpayers, should share the costs of restructuring since it is employers (particularly up the chain of production) who make decisions shaping insolvency, including pitting contracting companies against one another.

By shifting the responsibility for wages back to employers, an employer-paid wage protection plan would encourage viable companies to restructure operations rather than using bankruptcy to discharge their employer obligations. The sharing of costs and liabilities of bankruptcy should be among employers not workers.

- There should be no cap on wages recovered under a protection program. Industry Canada predicts that the cap of \$3,000 would capture 97 percent of workers in a bankruptcy situation. Therefore removing the cap for that additional three percent will provide universal protection and ensure all earned wages are recovered.
- The six-month cap on determining wages owed should be extended to one year to improve workers' ability to recover wages.
- The WEPP should include all basic labour standard entitlements, in particular severance and termination pay, not just wages and vacation pay. This would be the most effective way to address employers who use bankruptcy as a way to discharge their legal responsibilities to pay severance and termination.

## Improving Workers' Capacity to Enforce Rights

Steps are needed to assist workers who face employer violations to enforce their rights while they are on the job. And for those workers that have been forced out of the job, assistance is required to pursue claims.

### Anti-reprisals:

- The anti-reprisals provision (s. 74) in Ontario's *Employment Standards Act* states that employers cannot intimidate, dismiss, penalize or threaten workers who ask about their rights, ask the employer to comply with the Act, file a claim or participate in any investigations. There is a reverse onus on the employer to disprove reprisals. If found guilty of reprisals, an employer can be ordered to reinstate and/or compensate the worker for losses. The reality is that most workers do not have confidence in the province's anti-reprisals provisions and it has rarely been used since it came into force in 2001. There needs to be aggressive education and outreach to inform employers and employees about anti-reprisals. Information about anti-reprisals cases should be publicized in the media, government websites and in educational materials. Workers will need to know that these protections can work before they will trust them.
- There should be an expedited investigation process for reprisals and interim reinstatement, if requested by the worker, pending ruling on cases of dismissal due to reprisals. This would reduce the penalizing impact of reprisals on the worker.

### Unjust Dismissal

Our experience with anti-reprisals protections for people taking maternity and parental leave shows us that employers disguise reprisals to avoid liability. As a result, workers need protection against unjust dismissals to support their efforts to enforce their rights on the job.

- Establish protection against unjust dismissal that is available to all workers
- Establish an expedited investigation process for unjust dismissal and interim reinstatement, if requested by the worker, pending ruling on cases of dismissal.

### Anonymous Complaints and Third-Party Complaints

- Workers must be able to make anonymous complaints of violations that will result in a proactive inspection of the employer. This is essential to enable workers in vulnerable positions to bring employers into compliance with the law without having to leave the job.
- Third party complaints should be pursued from organizations representing workers. The government should provide funding to support such organizations.

## Improve Accessibility to Information and Claims Process

- The “Service Ontario” model may not be appropriate for the proper enforcement of the ESA. Our experience with generalized government access centres and call centres that use non-specialists suggests that both employers and workers are often given incorrect information and conflicting advice. Often this is either one more hoop to jump through or a door that closes inappropriately on a worker with a valid claim. Employers and workers need to deal with staff who know the ESA and Branch policies and practices.
- Supportive services should be provided to people who do not speak English and French so that they too can make claims for their statutory rights.
- Non-unionized workers who file a complaint under the ESA should be provided with free legal representation, as is the case in Quebec.
- There should be funding and support to improve community legal services for employment violations. The Legal Aid Certificate plan should be expanded to include ESA matters.

## Substantial increases in Staffing

- Provision should be made for more resources and staffing in order to improve enforcement and compliance.
- Money from fines and prosecutions should be dedicated to increasing enforcement measures.

## Measuring Compliance

A plan of strategic proactive inspections of 10 percent of workplaces, as recommended above to improve detection of violations, would also allow the government to begin tracking compliance and evaluate enforcement strategies over time. Surveys of employees can also provide useful information about compliance. Employer surveys understate compliance.

## New institutional Mechanisms

Workers face significant barriers accessing their statutory rights while on the job and after they are forced out of substandard workplaces. One strategy to improve access to justice is to empower new labour organizations (non-profit community-based organizations, legal clinics and sector-based worker associations) to advocate and represent workers to employers and the employment standards departments as recommended by the Canadian Labour Congress.<sup>81</sup> These organizations could provide third-party complaints and assist the government in identifying problem employers and industries. Resources would be necessary to fund these initiatives.

# Psychological Harassment / Workplace Bullying

Our society should value a person's right to dignity, respect and integrity. With the exception of Quebec, our workplace laws do not protect us from psychological harassment,. Many of the people we work with suffer from psychological harassment by management and co-workers. The Act should follow the Quebec model. Quebec requires employers to establish formal procedures to deal with psychological harassment in the workplace. Employers are also required to create a work environment free from psychological harassment and take reasonable actions to prevent it and stop it when the employer becomes aware of any problems. Harassment includes: "any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee. A single serious incident of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment."<sup>82</sup>

## Updating Other Standards

Many other provisions of ESA date back over 40 years to 1968. It is time that these basic standards on hours of work, vacations, leaves and termination are updated.

### Hours of Work and Overtime

We need to commit to an hours of work and overtime policy that reduces excessive overtime and inequalities and that supports job development.

There are already six jurisdictions within Canada -- the provinces of Manitoba, Newfoundland, Saskatchewan, British Columbia, Quebec, as well as the federal jurisdiction -- that provide for a 40-hour work week, with overtime thereafter. That means more than half of Canada's people enjoy a standard 40-hour week ours is central to addressing the unequal distribution of earnings.<sup>83</sup> The Fair Labor Standards Act in the U.S. also provides for a 40-hour work week with overtime pay, at the rate of time and a half, after 40 hours. It is time that Ontario catches up with the common practice of overtime pay after 40 hours per week. Applying costs to excessive overtime promotes job development and healthy working lives.

The ESA should provide for an eight-hour day and a 40-hour work-week. Employees should have the right to refuse overtime beyond 40 hours. Overtime at time and one-half should be paid (paid or time taken in lieu) after 40 hours.

## Effective Enforcement

While the ESA provides for a maximum work-week of 48 hours, with overtime paid after eight hours per day and 44 hours per week, these standards are largely ignored and not enforced. Workers need the real power to refuse demands for overtime in excess of 44 hours, except in emergencies. That is why our recommendations for effective enforcement and compliance are essential to improving hours-of-work protection for workers. More than that, however, we need a clear social policy commitment to reduce excessive overtime, redistribute working time and for effective job development.

## Overtime Averaging

Overtime averaging must be revoked. This provision merely allows employers to get more work for less pay. Unpaid overtime premium pay is already one of the biggest areas of employer violations. Averaging gives employers huge control over scheduling with harsh consequences for workers, especially people with families. By reducing employers' overtime costs, averaging encourages excessive overtime, rather than job stability, healthy communities or job creation. The focus has to be on improving enforcement rather than lowering the floor of rights under the guise of flexibility.

## Permits

Permits for overtime in excess of 48 hours per week must be reviewed. Permits should only be given in exceptional circumstances and be conditional on demonstrated efforts to recall employees on layoff and/or offer hours to temp, part-time and contract employees and the hiring of new employees. In many cases, scheduled overtime is a result of poor planning rather than genuine need for overtime. Annual caps must be set on overtime hours allowed by permits of no greater than 100 hours per employee. Annual permits must set a weekly cap or quarterly cap to avoid unhealthy overtime in busy periods. Workers should retain the right to refuse overtime under a permit each and every day. This is particularly important for women and workers with families. Names of companies with excessive overtime permits and duration of permits should be publicized.

## Breaks

The ESA does not provide for breaks over the workday. Two paid coffee breaks plus a half hour unpaid lunch after five hours is a reasonable response to workers' needs for breaks to refresh themselves and to conduct safe and productive work.

## Scheduling

The ESA requires workers to be paid a minimum of three hours when called in to work whether they work the whole time or not, but allows for scheduling shifts less than three hours. The ESA should be amended to specify a minimum three hours for shifts, scheduled or on call-in.

With increasing inequities of earnings being rooted in fewer hours of paid work, the ESA should set limitations on shifting the burden of flexibility onto workers. Workers are the ones who bear additional commuting and other fixed costs when working scheduled shifts of one or two hours.

## Advance Posting of Shifts

The ESA should be amended to require that work schedules be made available to workers at least two weeks in advance. This is necessary for part-time workers, temporary workers and workers with irregular shifts, and for parents trying to juggle childcare. Many workers are forced to hold two or three jobs to get by and advance scheduling is critical to reduce stress and job loss.

## Vacations and Paid Holidays

Paid vacations and holidays are important to balancing work, family life, community involvement and providing workers with rest and renewal. The ESA only provides paid vacations of two weeks after one year and eight paid public holidays. These provisions pale in comparison with many European countries, which average more than five weeks annual paid vacation. None has less than four weeks vacation. In Canada, only Saskatchewan entitles workers to four weeks vacation -- but that is after 10 years.

The ESA should be updated to provide three weeks vacation after two years of service and four weeks vacation after five years.

A ninth general paid holiday should be added. As the Canadian Labour Congress suggests, consideration should be given to accommodate the needs of different cultural communities, allowing workers to take a ninth day as a public holiday.

## Leaves

Our labour laws still assume that “someone else” is going to pick up the pieces of our frayed social safety net. In most families, all the adults are working. Inadequate and expensive childcare and limited elder care leaves many families constantly scrambling to meet basic needs. The government needs to address how to update leave policies to help balance work and family demands and enable flexibility for workers to meet those demands.

## Enforcement

While the ESA's maternity and parental leave provisions provide job-protected leave to parents for up to 52 weeks, the reality is that many workers, especially temp and contract workers, are fired or penalized when they try to return to work. Enforcement of this provision is still a major problem that not only targets women, who still are the majority of workers utilizing this leave provision, but it also works as a disincentive to the other parent to consider taking such leaves. Enforcement measures as outlined above are essential to improving real access to parental leaves.

## Emergency Leave

The 10-day job-protected emergency leave should be available to all workers, regardless of firm size or form of employment. Make this a paid leave.

## Paid Sick Leave

Most workers in precarious employment have no paid sick days. With wages so low, people are forced to go to work when extremely ill. This is not good for the health of the worker or the public. Temp workers in particular report that calling in sick is a sure way to lose your assignment. Many companies already provide employees with paid sick days; enacting paid sick days would provide basic protection for workers who need it most.

Workers should have up to six days of job-protected sick leave.

## Compassionate Care Leave

Currently compassionate leave only provides for up to eight weeks job-protected leave and is unduly restrictive to palliative care of a close relative. The requirement that there be a "significant risk of death" within 26 weeks should be eliminated. Workers cannot meet this requirement as many doctors refuse to give such a prognosis. This definition needs to be expanded to capture a more realistic range of illness and care requirements and be expanded to 12 weeks.

## Job Security measures and Severance Pay

Temporary agency workers are often denied the right to notice of termination. These workers should be entitled to the same notification rights as other workers or be provided with a contract specifying term of assignment.

Severance not only recognizes an employee's service with an employer but it also recognizes that a worker will lose benefits and service entitlements that will not be duplicated when a worker gets a new job. Severance also promotes job security, adding an incentive to employers to maintain jobs. Severance pay should be provided regardless of firm size or tenure of employment.

Protections against unjust dismissal and reprisals are addressed above in the section on enforcement.

# Endnotes

- <sup>1</sup> Formerly known as Toronto Organizing for Fair Employment (TOFFE) and Workers Information Centre.
- <sup>2</sup> Leah F. Vosko, *Temporary Work: the Gendered Rise of a Precarious Employment Relationship* (Toronto, University of Toronto Press, 2000) 49.
- <sup>3</sup> See, for instance, Vosko, *Temporary Work*. The standard employment relationship developed after World War II and was primarily a white, male norm. It linked decent wages, benefits, working conditions and job security to a full-time permanent job with one employer.
- <sup>4</sup> See, for example, Leah F. Vosko, ed. *Precarious Employment: Understanding Labour Market Insecurity in Canada* (Kingston & Montreal: McGill-Queen's University Press, 2006) and Judy Fudge et al., *The Legal Concept of Employment: Marginalizing Workers*. (Ottawa: Law Commission of Canada, 2003).
- <sup>5</sup> Armine Yalnizyan, *The Rich and the Rest of Us: The Changing Face of Canada's Growing Gap* (Canadian Centre for Policy Alternatives, March 2007).
- <sup>6</sup> Grace-Edward Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canada Scholar's Press, 2006).
- <sup>7</sup> See, for example, "Vulnerable Workers Series," Centre for Policy Research Network. Available at [www.cprn.com](http://www.cprn.com).
- <sup>8</sup> See for example, the *Toronto Star's* "War on Poverty" series relating to minimum wage, temp work and contract work.
- <sup>9</sup> Cynthia J. Cranford and Leah F. Vosko, "Conceptualizing Precarious Employment: Mapping Wage Work Across Social Location and Occupational Context," *Precarious Employment: Understanding Labour Market Insecurity in Canada*, ed. Leah F. Vosko (Montreal & Kingston: McGill-Queen's University Press, 2006).
- <sup>10</sup> We use the term "racialized" to refer to those who are seen as the "other" or the "minority" in our society on the basis of "race", a socially constructed marker of difference based on arbitrarily selected physical characteristics. Historically, this includes Aboriginal, non-white, non-English or non-French speakers in different regions and contexts, immigrant, refugees and anyone who is not seen as being part of the dominant society. Although all bodies are racialized, including "whites", we reserve the term in this report to refer to the racialized other, in keeping with the way in which the Ontario Human Rights Code employs the term.
- <sup>11</sup> The McMaster Work and Health survey data has 1753 respondents from 60 census tracts in Toronto who reported working in the 2001 census. The mailed survey targeted members of the household over 18 who worked in the previous month. Surveys were available in English, Chinese and Tamil.
- <sup>12</sup> Barriers, including regulatory barriers under the Labour Relations Act, make it difficult to unionize in the kinds of small workplaces in which Kalil works. Unionization is even more difficult in non-standard work arrangements such as temp agency work, subcontracting and own-account work.
- <sup>13</sup> For example, only 22 percent of unemployed workers in Toronto receive Employment Insurance (EI) benefits. Benefits are only 55 percent of former earnings. For a discussion of problems with EI, see for instance, "Time for a Fair Deal, Report of the Task Force on Modernizing Income Security for Working-Age Adults" (Toronto, May 2006) 21. Available at [www.torontoalliance.ca/tcsa\\_initiatives/income\\_security/](http://www.torontoalliance.ca/tcsa_initiatives/income_security/).
- <sup>14</sup> Cynthia Cranford, Leah F. Vosko and Nancy Zukewich, "Precarious Employment in the Canadian Labour Market: A Statistical Portrait," *Just Labour* 3. 2003.
- <sup>15</sup> "nominal subcontractors," we are referring to arrangements whereby companies use intermediaries to basically supervise or "payroll" workers who become employees of the intermediary/subcontractor.
- <sup>16</sup> Cranford and Vosko, "Conceptualizing Precarious Employment," 44.
- <sup>17</sup> People that work for temporary employment agencies call themselves "temp workers." This report will use the term "temp" to refer to temporary agency workers and temporary agencies.
- <sup>18</sup> Experiences from callers to WAC hotline.
- <sup>19</sup> The rate for all workers earning less than \$10 was 25 percent (Statistics Canada, Income Statistics Division, Survey of Labour and Income Dynamics, Custom Table R16253YC-1, 1999).



- <sup>20</sup> United Way of Greater Toronto and the Canadian Council on Social Development, "Poverty by Postal Code: The Geography of Neighbourhood Poverty 1981-2001" (2004).
- <sup>21</sup> Leah F. Vosko, "Precarious Employment: Towards an Improved Understanding of Labour Market Insecurity," Vosko *Precarious Employment*.
- <sup>22</sup> Vosko *Temporary Work*, 128.
- <sup>23</sup> Nancy Preston and Michel Savard, "Report on the 2004 Survey of Employment Services" (Statistics Canada, 2004).
- <sup>24</sup> Elect-to-work" is supposed to refer to those workers who can freely choose to work or not work without penalty. It was originally intended for casual roster workers who phone in on a daily basis to see if there is work, for example, supply teachers or supply nurses.
- <sup>25</sup> Statistics Canada, "Earnings of Temporary Versus Permanent Employees" *The Daily* (Wednesday, January 26, 2005).
- <sup>26</sup> Only 8.2 percent of temporary agency workers, versus 64.3 percent of permanent workers, reported having extended health coverage in 1995. Vosko *Temporary Work*, 170.
- <sup>27</sup> Catherine K. Ruckelshaus, "Providing Fairness to Workers Who Have Been Misclassified as Independent Contractors: Hearing Before United States Congress House of Representatives Committee on Education and Labor Subcommittee on Workforce Protections" (March 27, 2007). Available at [www.nelp.org](http://www.nelp.org).
- <sup>28</sup> Ruckelshaus *Providing Fairness*.
- <sup>29</sup> Law Commission of Canada, *Is Work Working? Work Laws that Do a Better Job* (Ottawa, 2004) 10.
- <sup>30</sup> Leah F. Vosko, *Confronting the Norm: Gender and the International Regulation of Precarious Work* (Law Commission of Canada, July 2004) 75.
- <sup>31</sup> Community-University Research Alliance on Precarious Employment, *Ten Ways of Seeing Precarious Employment* (Toronto Training Board, November 2005) 10.
- <sup>32</sup> Judy Fudge, "Labour Protection for Self-Employed Workers" *Just Labour* 3. 2003: 41.
- <sup>33</sup> Wayne Lewchuk, Marlea Clarke, Alice deWolff, Andy King. "Working Without Commitments: Precarious Employment and Health" (December 2006) 9.
- <sup>34</sup> Wayne Lewchuk, "Precarious Employment: Can You Stand the Strain?" Presentation at the St. Lawrence Forum, Toronto, Tuesday March 20, 2007.
- <sup>35</sup> Wayne Lewchuk. "Working Without Commitments: Precarious Employment and Health" (Unpublished paper, December 2006) 2.
- <sup>36</sup> Lewchuk, "Precarious Employment."
- <sup>37</sup> Marlea Clarke, Wayne Lewchuk, Alice deWolff, Andy King, "This Just Isn't Sustainable: Precarious Employment, Stress and Workers' Health" (Unpublished paper, October 2006) 36.
- <sup>38</sup> McMaster University, Work and Health Survey Data (2006). .
- <sup>39</sup> McMaster University, Work and Health Survey Data (2006).
- <sup>40</sup> Yalnizyan, *The Rich and The Rest of Us*.
- <sup>41</sup> Human Resources and Social Development Canada, "Hourly Minimum Wages in Canada for Adult workers Since 1965" (Ottawa: HRDSC, 2005) and Emmanuel Saez and Michael R. Vaell, "Evolutions of High Incomes in Canada, 1920-2000" (National Bureau of Economic Research Working Paper, 2003).
- <sup>42</sup> 24.5 percent of Ontario workers earned \$10 or less in 1999 (Statistics Canada, Income Statistics Division, Survey of Labour and Income Dynamics, Custom Table R16253YC-1, 1999).

- <sup>43</sup> Cheryl Teelucksingh and Grace-Edward Galabuzi, *Working Precariously: The Impact of Race and Immigrant Status on Employment Opportunities and Outcomes in Canada* (The Canadian Race Relations Foundation, May 2005) 9.
- <sup>44</sup> McMaster University, Work and Health Survey Data.
- <sup>45</sup> McMaster University, Work and Health Survey Data.
- <sup>46</sup> *Time for a Fair Deal*, 21.
- <sup>47</sup> McMaster University, Work and Health Survey Data. This includes medical insurance, dental insurance, vision care, drug plan, life insurance, long-term disability and company pension.
- <sup>48</sup> Harry Arthurs, *Fairness at Work: Federal Labour Standards for the 21st Century* (Ottawa: Federal Labour Standards Review Commission, 2006) 239.
- <sup>49</sup> See for instance Morley Gunderson, "Minimum Wages: Issues and Options for Ontario" (Prepared for the Ministry of Finance, February 2007) 13. Available at [www.fin.gov.on.ca/english/publications/2007/Gunderson/](http://www.fin.gov.on.ca/english/publications/2007/Gunderson/).
- <sup>50</sup> Teelucksingh and Galabuzi "Working Precariously," 11.
- <sup>51</sup> Human Resource Development Canada, *Evaluation of Federal Labour Standards (Phase I) Final Report* (August 1997) 41.
- <sup>52</sup> Arthurs *Fairness at Work*, 192.
- <sup>53</sup> In addition, workers face issues related to human rights, employment insurance, workers' compensation and problems in unionized workplaces under the labour relations act.
- <sup>54</sup> Unpaid wages, vacation pay, termination, overtime and public holidays accounted for 90 percent of violations confirmed by the Ministry of Labour for workers filing claims in 2004-05. See, Ontario Ministry of Labour, Employment Practices Branch: 2004-05 Fiscal Year Report.
- <sup>55</sup> Law Commission of Canada, *Is Work Working?* 34.
- <sup>56</sup> Mark Thomas, "Regulating Flexibility: The Ontario Employment Standards Act and the Politics of Flexible Production" (PhD Thesis, York University, December 2002) 299.
- <sup>57</sup> Office of the Provincial Auditor of Ontario, *2004 Annual Report*, 239.
- <sup>58</sup> Marion Lane, "Administration in action: An Institutional Analysis of the Ontario Employment Standards Branch" (Berkeley: University of California, July 1977).
- <sup>59</sup> Ontario Ministry of Labour, Employment Practices Branch: 2005-06 Fiscal Year Report.
- <sup>60</sup> Ontario Task Force on Hours of Work and Overtime, "Working Times: The Report of the Ontario Task Force on Hours of Work and Overtime" (May 1987).
- <sup>61</sup> Responsible for employment standards.
- <sup>62</sup> For example, investigation of individual claims in the past 5 years confirmed violations in 73 to 76 percent of claims. See Ministry of Labour, Employment Practices Branch: 2000-01 to 2004-5 Fiscal Year Reports. These rates of confirmed violations likely understate the case due to barriers low-wage and precarious workers face in the process to represent their claims. This is discussed further below.
- <sup>63</sup> Stephen Grier, Provincial Coordinator, Employment Practices Branch, Ontario Ministry of Labour, personal communication, April 16, 2007.
- <sup>64</sup> Office of the Provincial Auditor of Ontario, *2004 Annual Report*, 242.
- <sup>65</sup> Office of the Provincial Auditor of Ontario, *2004 Annual Report*, 242.
- <sup>66</sup> Stephen Grier, personal interview, March 14, 2007.

<sup>67</sup> Data compiled from Ontario Ministry of Labour, Employment Practices Branch: 2001-02 to 2005-06 Fiscal Year Reports

<sup>68</sup> See Ontario Ministry of Labour, Employment Practices Branch: 2005-06 Fiscal Year Report. Employers who are bankrupt or use bankruptcy to avoid liabilities are a problem for securing outstanding wages. The current legislation does not enable workers to receive unpaid wages, much less severance pay from insolvent employers. Bill C-55, the federal Wage Earner Protection Program (WEPP), was passed in 2005 but not proclaimed. This Act would provide up to \$3,000 of unpaid wages and vacation pay for workers in the case of bankruptcy. While there are problems with this Act, it would provide some assistance to some workers. Proclamation of the WEPP Act is awaiting amendments that are before the federal parliament.

<sup>69</sup> Office of the Provincial Auditor of Ontario, *2004 Annual Report*, 245

<sup>70</sup> Office of the Provincial Auditor of Ontario, *2004 Annual Report*, 245.

<sup>71</sup> Ontario Ministry of Labour, Employment Practices Branch: 2005-06 Fiscal Year Report.

<sup>72</sup> Ministry of Labour website

<sup>73</sup> Arthurs, *Fairness at Work*, 191.

<sup>74</sup> Stephanie Bernstein et al. "Precarious Employment and the Law's Flaws: Identifying Regulatory Failure and Securing effective Protection for Workers" Vosko *Precarious Employment*. .

<sup>75</sup> We would argue that employers make the effort to learn about their obligations where there are costs. Consider the much higher rates of compliance for remittances to Revenue Canada, or Health and Safety, due to high penalties and workers compensation premiums

<sup>76</sup> Office of the Provincial Auditor of Ontario, *2004 Annual Report*, 240.

<sup>77</sup> Health and Safety Statistics: Summary, Ontario Ministry of Labour website  
[www.gov.on.ca/LAB/english/hs/stats/summary.html](http://www.gov.on.ca/LAB/english/hs/stats/summary.html)

<sup>78</sup> Office of the Provincial Auditor of Ontario, *2004 Annual Report*, 244..

<sup>79</sup> Ontario's Ministry of Labour is now in the process of setting up an integrated computer system to enable an officer to check to see if there have been previous claims and orders against employers.

<sup>80</sup> Money from fines and prosecutions currently goes in to the provinces general revenues fund.

<sup>81</sup> Canadian Labour Congress, *Labour Standards for the 21st Century: Canadian Labour Congress Issues Paper on Part III of the Canadian Labour Code* (April 6, 2005) 35.

<sup>82</sup> La Loi sur les normes du travail RSQ 2002, c. 80, s. 47.

<sup>83</sup> Doreen Duchesne, "Working Overtime in Today's Labour Market" *Perspectives on Labour and Income* 9. 1997.

NOTES



## NOTES





**Working on the Edge**

**Workers' Action Centre**

2007

Workers' Action Centre  
720 Spadina Avenue, Suite 223  
Toronto, Ontario M5S 2T9  
tel 416-531-0778 fax 416-533-0107  
email [info@workersactioncentre.org](mailto:info@workersactioncentre.org)  
web [www.workersactioncentre.org](http://www.workersactioncentre.org)