

UNPAID WAGES, UNPROTECTED WORKERS

**A Survey of
Employment Standards
Violations**

WORKERS' ACTION CENTRE

Acknowledgements

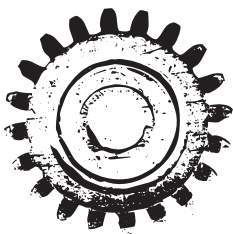
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Unpaid Wages, Unprotected Workers

May 2011

A Survey of Employment Standards Violations

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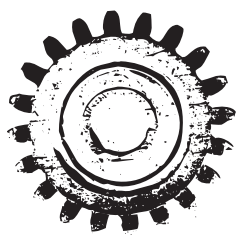
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Executive Summary

This report reveals the everyday experience of people in low-wage and precarious work. It is a world of work where the basic protections of core labour standards that many Ontario workers take for granted are denied. The legal right to minimum wage, overtime pay and wages is not a reality for people in low-wage and precarious work. The lack of protection in Ontario workplaces leaves many of the workers surveyed with little hope of getting the wages they're owed, resulting in significant economic hardship.

In 2011 we conducted a survey of 520 people in low-wage and precarious work. We targeted our survey methodology to reach recent immigrants, racialized workers, women, and non-status and low-wage workers who are often missed in standard surveys. Our goal was to document the extent of employment standards' violations that people in precarious work face and the impact of violations on these workers.

FINDING 1: WORKPLACE VIOLATIONS ARE SEVERE IN LOW-WAGE LABOUR MARKETS

Minimum Wage Violations

- Twenty-two percent of workers surveyed reported being paid less than \$10.25 (minimum wage) in their current job. Minimum wage is a core legal standard below which wages should not fall.

Unpaid Wages

- Thirty-three percent of workers surveyed reported being owed wages from their employer. Of these, 77 percent reported that they were not successful in obtaining the wages owing to them.

Overtime Violations

- Sixty percent of respondents reported working more than 44 hours in a week during the past five years. Yet 39 percent of those workers reported never receiving overtime pay. A further 10 percent reported rarely getting overtime pay while 22 percent sometimes received overtime pay. Only 25 percent of those workers that reported working overtime said they always received overtime pay.

Vacation Pay

- Thirty-four percent of workers surveyed reported problems getting their vacation pay.

Termination Pay

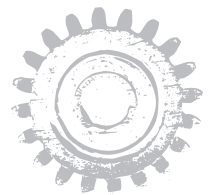
- Thirty-six percent of workers surveyed reported being fired or laid off without receiving termination pay or notice.

Public Holidays

- Thirty-seven percent of workers reported that they did not get public holidays off with pay. Of the 62 percent of people that reported working on public holidays, 57 percent did not receive the required premium pay for doing so.

Pay Stub Violations and Illegal Fees

- Employers are required to pay employees on the regular established pay day. However, 31 percent of workers reported that their pay was late and 17 percent reported getting paycheques that bounced.



- Changes to the Employment Standards Act (ESA) in 2009 made it illegal to charge workers a fee for temporary work assignments. Yet 17 percent of workers surveyed paid fees for work in the past year. Eighty-four percent of these workers were charged these fees by temporary help agencies.

FINDING 2: SUBSTANTIAL IMPACT ON WORKERS

Workers reported mental health problems arising from workplace violations including depression and difficulty sleeping.

“Eat less; don’t go to the doctor even if sick because there is no money to buy medicine.”

Low-wage jobs rarely come with benefits. Eighteen percent of workers surveyed had paid sick days, 29 percent had some health benefits and 13 percent had a pension or RRSP in lieu of a pension.

Workers who least can afford it are being forced to bear significant loss of income due to employer violations of minimum standards. The workers surveyed reported that unpaid wages meant they could not afford to pay bills (19 percent), had to borrow money (20 percent), and/or go in to debt (17 percent).

Discrimination and human rights violations emerged as a key dimension shaping workplace violations in workers’ responses to survey questions. Some workers commented on not having any rights at work because they are new to Canada, have an accent, and/or do not have regularized immigration status.

FINDING 3: WORKERS HAVE LITTLE PROTECTION FROM EMPLOYER VIOLATIONS

Workers evaluated the costs and effects of speaking up about unpaid wages while on the job. Almost one in five workers with unpaid wages reported that they did not do anything to get their unpaid wages. “If we talked to the boss, we will be fired”, said one worker.

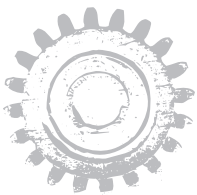
Many workers reported that they talked to co-workers about violations (28 percent) and family and friends (26 percent). But fewer workers took steps to address violations while still on the job. Seven percent of workers who had unpaid wages reported that they went with coworkers to ask their employer for the wages owing; only three percent of these cases were successful. Only four percent of workers with unpaid wages filed a complaint against their employer for employment standard violations at the Ministry of Labour. This suggests that the annual average 20,000 claims at the Ministry of Labour is merely the tip of the iceberg of employer violations.

FINDING 4: SUBSTANTIAL IMPROVEMENTS IN WORKER PROTECTIONS ARE NEEDED

Some workers commented that they did not have any rights at work. When asked what they thought the government should do to ensure that employers follow the law, two-thirds of workers said the government should inspect workplaces to make sure employers follow the law. Sixty-seven percent of workers surveyed want fines and penalties for employers that violate employment standards. Sixty-four percent of workers surveyed said that they don’t know where to go to get help with workplace violations. Not surprisingly, 73 percent of workers said that workers need more education about their rights.

“...inhuman conditions since I am illegal.”

“I did not have any rights at work.”



1. Introduction

Low-wage work is leaving workers and their families struggling in poverty and facing economic insecurity. More people are working part-time or on contract, often juggling two or three jobs. Workers are facing greater difficulty planning their daily lives and supporting families. Many jobs today fail to provide adequate incomes, supplemental health benefits, sick pay or pensions. Employment standards provide an important social policy tool in fighting poverty. The Ontario government has stated that poverty reduction can be aided by improving “the protection of vulnerable workers and to ensure fair workplaces by getting tough on employers who contravene employment standards legislation and regulations.”¹ Now more than ever, Ontario workers need effective and enforced employment standards.

Over six million workers in Ontario rely on employment standards for basic wages and working conditions. Twenty-eight percent of workplaces have unions, leaving most workers without collective representation to enforce rights at work.

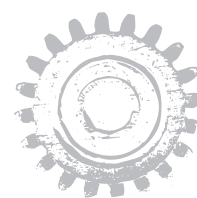
Ontario faces an 8.7 percent unemployment rate – higher than the rest of Canada. The quality of jobs has gone down through the recent recession. There are more part-timers, self-employed workers and temporary workers than before the recession.² These factors make it even harder for workers to leave substandard jobs and find replacement jobs when wages go unpaid.

Precarious work is characterized as non-standard work that is temporary rather than permanent work and own-account rather than waged-work.³ It is work marked by job and income insecurity, low wages and limited employment benefits. It may also be work shaped by immigration rules and by instability. Precarious work includes work that lacks meaningful access to employment rights. As precarious work has developed over recent decades it has become marked by processes of racialization and gendering. By that we mean the ways in which women, immigrant, migrant and racialized⁴ workers are incorporated into the labour market, Non-racialized Canadian-born workers who work in these sectors are compelled to work under similar conditions in work that is marked by feminization and racialization.⁵

Immigration rules make it hard for workers to fight against long hours at low pay in difficult working conditions. Work permits under the Temporary Foreign Workers Program tie workers to a single employer or service of employment before they can apply for permanent residency. Family reunification through immigration sponsorship requires workers to maintain certain income levels to qualify for sponsorship. In the current recession, job losses have been heavier for recent immigrants.⁶ Thus workers cannot risk losing a job – even one that pays below minimum wage.

Poverty among racialized families is three times higher than among non-racialized families. Discrimination in employment contributes to higher rates of poverty.⁷

There are fewer safety nets for workers to enforce their rights. For example, when they lose their jobs social assistance is not an option for immigrant workers seeking to reunite families. That is because they cannot be on social assistance while sponsoring family members. Less than one in three (32 percent) of unemployed Ontario workers received regular EI benefits



in August 2010. That's well below the national average of 44.4 percent even though Ontario has a higher unemployment rate than the rest of the country. Many (about 30 percent of claimants) are exhausting their EI claims before they find a new job.⁸ Many unemployed, especially recent immigrants and people in temporary work, face greater difficulties getting EI because they cannot meet the eligibility requirements.

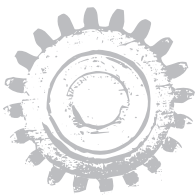
There is growing evidence that employers are violating our core ESA protections. The few studies that have been done confirm substantial formal employment standard violations. In the late 1990s, a federal government Labour Standards Evaluation surveyed employers and found that 25 percent of employers were in widespread violation of the Canada Labour Code and 50 percent were in partial violation.⁹ These findings were confirmed a decade later by Statistics Canada.¹⁰

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In 2007 we documented the experiences of workers who live with the reality of low wages, income stability and few employment benefits and protections in our report, ***Working on the Edge***. Through in-depth interviews we painted a portrait of precarious work and the impact on workers.¹¹ However, very few studies have been done documenting the rate of employment standards violations faced by people in precarious work and workers' response to violations.

This report presents new research to begin to fill that gap. We wanted to find out how common workplace violations such as unpaid wages and unpaid overtime were among low-wage workers. We wanted to know how workers responded to violations. From November 2010 to March 2011, we surveyed 520 workers in low-wage work in Toronto, the Greater Toronto Area and Windsor, Ontario. Please see Appendix A for a description of the methodology.

This report provides a window into the current state of employment standards violations – unpaid wages, wages below the legal minimum, unpaid overtime – facing people in precarious work. It points to substantial rates of violation that are having huge impacts on workers and our workplaces. Finally, this report underscores that everyone has a stake in addressing the problem of workplace violations.



2. Workplace Violations

“I had to work from 4 pm to 4 am and I did not get payment (overtime premium) for the extra hours.”

Employment standards are supposed to set a minimum floor of standards for workers least able to negotiate fair wages and working conditions. They set out social norms such as the ability to earn wages that are enough to live on and decent conditions of work that allow a person to balance work and family life.¹² The enforcement of employment standards regulates the labour market by establishing a minimum floor, below which employers should not be able to go. This protects employers from unfair advantage by those who would operate below minimum standards. The employment standards system that developed over 40 years ago is unravelling. As we demonstrate below, the low-wage workers we surveyed regularly face violations of minimum employment standards.

MINIMUM WAGE VIOLATIONS

The minimum wage established under the ESA sets the basic minimum standard of pay for most workers.¹³ The minimum wage applies to workers regardless of their being part-time, full-time, paid cash or working without immigration status.

Almost 22 percent of workers surveyed reported that they made less than minimum wage in their current job. Most of these people worked in food services,¹⁴ manufacturing, janitorial, retail, childcare, transportation and delivery and construction.

Another 22 percent of workers surveyed reported making \$10.25 per hour. This is the current minimum wage. For many of the workers surveyed, it appears the statutory minimum wage sets wage rates and limits wage increases. “I cannot survive on minimum wage” said one worker surveyed. As another minimum wage earner reported, workers have little power to negotiate wage increases.

“Increase the minimum wage. I cannot survive with only one job.”

“I work at this company for 3 years. The company earned much money, but they seldom give employees a raise. If someone asks for a raise, they say ‘you can choose to leave.’ I hope I can quickly improve my English skill so that I can leave this company fast as well.”

Ontario’s minimum wage has increased from \$8 in 2007 to \$10.25 in 2010. It has not been increased since 2010 and is 10 percent below the poverty line for a single person working full time, full year.¹⁵ A family of four in 2011 would require almost double the current minimum wage to bring their family out of poverty.¹⁶ Of the 520 people we surveyed, 64 percent made \$12.50 or less. The average industrial wage is \$23.87. Workers want a fair day’s pay for a fair day’s work without the pressure of working excessive overtime or juggling more than one job.

OVERTIME VIOLATIONS

The ESA establishes a standard eight-hour workday (or the employers’ established work day if longer) and a 44-hour work-week beyond which overtime rates apply, and a 48-hour limit on weekly hours of work. Employers can seek arrangements for overtime beyond 48 hours, but



“Half my pay was official cheque and half was cash [no overtime premium pay].”

this requires a permit from the Ministry of Labour. Overtime rules are put in place to ensure that workers are protected from long working hours. The law provides premium pay or time off in lieu for hours worked in excess of 44 per week. Unpaid overtime is among the top five employer violations investigated at the Ministry of Labour.¹⁷

Sixty percent of respondents reported working more than 44 hours in a week during the past five years. Yet 39 percent of those workers reported never receiving overtime pay. A further 10 percent reported rarely getting overtime pay while 22 percent sometimes received overtime pay. Only 25 percent of those workers that reported working overtime received overtime pay.

Overtime violations take other forms as well. One in four workers reported working overtime at their regular wage-rate. These workers did not receive the premium overtime pay (one and a half times their regular hourly wage) for each hour worked beyond 44. A further 18 percent of workers surveyed said that they worked overtime but did not receive any wages for the overtime hours worked. The rate of unpaid overtime is consistent with what Statistics Canada found nationally. One out of five Canadians worked an average of 8.4 hours of unpaid overtime per week in 2010. That works out to be roughly \$12.7 billion in unpaid wages.¹⁸

“...every other paycheque had a shortage of hours I worked.”

UNPAID HOURS OF WORK VIOLATION

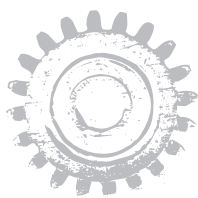
The ESA requires employers to pay workers for all of the hours they work. One in four workers (26 percent) reported working hours that they did not get paid for. These unpaid hours took various forms. One in five (21 percent) workers faced “off the clock” violations. This is when people work before or after their regular shift without being paid for that work. Sixteen percent of workers reported that they did not receive wages owing when the job ended. In some cases, this was the wages for the last pay period, in other cases it was a month or more in unpaid wages. One worker reported “My boss did not pay me for one month since I am working illegally [without regularized immigration status].”

TERMINATION PAY VIOLATIONS

Employers are required to provide a week of notice, or pay in lieu of notice,¹⁹ to employees that are being fired or laid off. The purpose of this provision is to cushion employees against the adverse effects of losing a job and searching for a new job. Thirty-six percent of workers surveyed reported being fired or laid off and not having received termination pay or notice.

VACATION VIOLATIONS

Workers are entitled to two weeks paid vacation after one year of work or four percent vacation pay for each dollar earned. Vacations are part of a package of employment standards that recognize the importance of providing workers with time away from work for health and well-being. Thirty-four percent of workers reported problems getting their vacation pay.



PUBLIC HOLIDAY VIOLATIONS

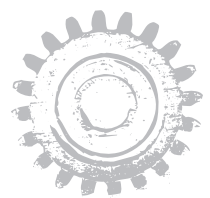
Similar to vacations, the ESA sets out statutory public holidays that are intended to provide respite for workers and time to spend with families and friends. Yet 37 percent of workers reported that they did not get public holidays off with pay. Of the 62 percent of people that reported working on public holidays, 57 percent did not receive the required premium pay for doing so. While a day of rest for some workers, for many workers surveyed, public holidays are a day of economic loss.

PAY STUB VIOLATIONS AND ILLEGAL FEES

Employers are required to provide information about a worker's pay and statutory deductions (e.g., Employment Insurance). This information enables workers to confirm that their pay is correct. One in four workers surveyed did not receive pay information that included a record of deductions and hours of work. Similarly, one in four workers reported being paid in cash. While employers are allowed to pay wages in cash, if there is not record of pay and deductions, workers find it difficult to recoup unpaid wages.

Employers are required to pay employees on a regularly established pay day. However, 31 percent of workers surveyed reported that their pay was late. Seventeen percent reported getting paycheques that bounced.

Changes to the ESA in 2009 made it illegal to charge workers a fee for temporary work assignments. Yet 17 percent of workers surveyed paid fees for work in the past year. Eighty-four percent of these workers were charged these fees by temporary help agencies.



3. Features of Employers that Violate the ESA

Ultimately workplace violations are the result of employer decisions to comply with the law or not. It is the employer who decides whether or not to pay minimum wage or overtime pay. That is why we explored key features of employers that violate minimum standards.

“We need permanent jobs, good job; get the employers to hire full-time instead of temps and contract workers.”

Employers have adopted strategies for work organization over recent decades that evade core labour laws and create legal distance between the employer and workers.²⁰ There has been growth in work outside of standard full-time, permanent employment with a single employer.²¹ Yet our labour laws, regulatory regimes and employment benefits are still based almost exclusively on a standard employment relationship developed in the mid 1900s which linked decent wages, benefits, working conditions and job security to full-time permanent employment. Gaps in the ESA, such as coverage for own-account workers,²² have created incentives for employers to misclassify workers as independent contractors or other new forms of work. These practices shift the legal liability that employers have for their employees, working conditions and employment benefits onto intermediaries and, in some cases, onto workers themselves. Arguably, non-compliance with employment standards is another form of shifting employer responsibilities on to workers.

“There should be some kind of regulations for temp agencies to prevent them from taking jobs that could be given as full-time employment jobs. Where I live it is difficult to get a non-temp job.”

The workers we surveyed have a high rate of precarious forms of work. Only 15 percent of workers classified themselves as permanent workers. The other 85 percent of workers in the survey identified themselves as temporary full-time, contract, part-time, casual, temporary help agency workers, live-in caregivers, and temporary foreign workers. But this small sample of permanent low-wage workers provides insight into the relationship between the form of work and ESA violations and conditions of work. As Table 1 indicates, permanent workers have greater stability in hours of work, with fewer permanent workers working too few hours or too many.

Table 1.

Hours of work in your current / last job	Part time, temp agency, casual, contract, temporary	Permanent
Unemployed	14%	2%
1-20 hrs /week	13%	7%
21 – 34 hrs/week	12%	7%
35 – 44 hrs/week	38%	70%
45 – 55 hrs / week	12%	11%
56 – 65 hrs /week	6%	2%
66 plus hours per week	3%	-

While the low-wage permanent workers surveyed still experienced violations of minimum wage, they were less likely than part-time, temporary and contract workers to do so.

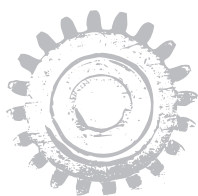


Table 2.

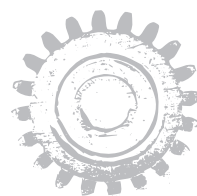
Differential treatment of wages paid in current job	Part time, temp agency, causal, contract, temporary	Permanent
Less than minimum wage	20%	15%
At minimum wage \$10.25	20%	13%
\$10.26 to \$12.50	18%	13%
\$12.51 to \$18.50	19%	27%
\$18.51 to \$22.50	10%	13%
Above \$22.50 per hour	6%	19%

While permanent workers surveyed had a 1 in 10 chance of unpaid hours of work, more precarious workers surveyed had a one in four chance of not being paid for all hours worked.

Table 3.

Have you worked hours that you didn't get paid for	Part time, temp agency, causal, contract, temporary	Permanent
Yes	26%	10%

These findings suggest there is a relationship between form of work and workplace violations. More precarious forms of employment among the workers we surveyed, such as part time, temporary, casual and temporary agency, had higher rates of workplace violations than did low-wage permanent workers.



4. Impacts on Workers

“I went to the food bank and to social services.”

ECONOMIC COSTS

The current minimum wage is 10 percent below the poverty level. The workers we surveyed have extremely low wages – almost 44 percent earn minimum wage or below minimum wage.²³ Ninety-three percent of our survey respondents earned below the average industrial wage of \$23.87.²⁴ There is little economic security for the workers surveyed.

Workers who least can afford it are being forced to bear significant loss of income due to employer violations of minimum standards. Of the workers surveyed who reported unpaid wages, 20 percent could not afford to pay their bills. Workers reported not being able to pay the rent and one worker lost their home. People had to go into debt and use their credit cards (33 percent), borrow money (20 percent), and use personal savings (17 percent). Workers also reported that unpaid wages caused family stress due to difficulties in paying bills and resulted in workers turning to food banks.

“I had to ask my friends for food.”

“Each time I think of the unpaid wages, I feel upset and my emotions pass to my family. I can’t help not being angry about the money because I worked so hard.”

HEALTH IMPACTS

While we did not ask workers questions about the effect the violations had on their emotions, a number of workers reported being depressed and unable to sleep. One worker reported that the “plan was to commit suicide.” Many other workers reported having no rights at work, suggesting not only a critical understanding of the power dynamics of the workplace, but disaffection with the government’s ability to protect their rights.

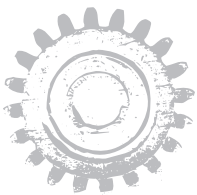
“Lost trust; discouraged about [finding] honest work; followed by depression.”

There is increasing evidence that precarious work is related to higher levels of stress-related ill-health for workers. Features of precarious work such as a high level of uncertainty about future work and greater effort required in searching for work and keeping work contribute to employment strain. Workers with high employment strain are more than twice as likely to report poor health and suffer from mental health problems.²⁵

BENEFITS

“I have been employed with one company for over ten years on a continual basis, working an average of 40 hours as a temporary part-time employee as a way to avoid paying me a higher hourly wage and providing me with a benefits package. Laws should be put in place to stop employers from abusing the system to avoid paying proper wages.”

Low-wage jobs rarely come with benefits. Of the workers surveyed, 18 percent had paid sick days, 29 percent had some supplementary health benefits and 13 percent had pension or RRSP in lieu of a pension. 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.²⁶



DISCRIMINATION

This survey purposively sought participation of recent immigrant, non-status, temporary foreign workers and racialized low-wage workers. As other research demonstrates, immigrant and racialized workers are more likely to be in low-wage and precarious work. In 2008 Statistics Canada found that recent immigrants were more likely than Canadian-born workers to be in temporary or part-time jobs, end up in jobs for which they were over-qualified, and be paid lower wages.²⁷ Racialized Canadians also earn only 81.4 cents for every dollar paid to non-racialized Canadians. This gap in earnings is larger for racialized women who earn 55.6 cents for every dollar that non-racialized men earn.²⁸ While this survey did not pose specific questions on discrimination, a number of issues arose in survey responses.

A number of respondents worked through the Temporary Foreign Worker Program as live-in caregivers and seasonal agricultural workers. Caregivers must complete the equivalent of 24 months of employment within three years before being able to apply for permanent residency and are required to live in their employer's home. People who work under the Seasonal Agricultural Program and low-skill Temporary Foreign Worker Program (TFWP) are tied to one employer for a specific term and are returned to their home country upon completion of the contract or termination of employment. These federal immigration program requirements create conditions ripe for abuse and that limit what a worker can do to address violations. As once caregiver said, "I have to work more time than 40 hours since I live in the house."

Even though workers without regularized immigration status have the same rights to employment standards as those who have regularized status, workers reported that they had no rights at work. "I did work without safe conditions since I am illegal." Employers can keep workers in substandard conditions under the threat of reporting non-status workers to immigration should the worker complain about violations of their rights.

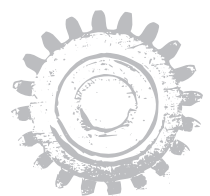
Respondents frequently said that they have no rights. This suggests some employers may be confident that recent immigrants may not be aware of their rights or unable to do anything about their rights. As one worker reported, "my boss just laughed at me because he told me I don't have rights."

Block and Galabuzi find in their recent study that discrimination in employment is a contributing factor to racial disparities in labour market outcomes.²⁹ Some respondents in our survey reported experiencing such discrimination. "They don't give chance to immigrant; always white people get the chance," said one worker. Another reported, "I have been discriminated since I'm not Canadian, because some jobs are only for Canadians."

"I need to earn the same money as Canadian workers since I did the same job."

"...worked and lived on a farm. We had to buy everything but it was hard to get to the store; some days I cannot get any food."

"He [employer] told me I don't have rights since I am illegal and he can call the police."



5. Workers Have Little Protection in Workplaces

Nineteen percent of workers surveyed reported doing nothing in response to unpaid wages and employer violations. In open-ended comments, some of these workers report that they quit their job in response to unpaid wages; others said that they could not talk or they would be fired.

“ I have seen my co-workers fired because they fight for their rights. Employment standards don't or can't do anything once a worker is fired.”

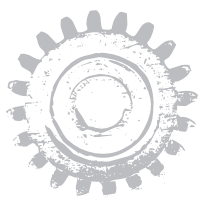
When asked how they responded to problems at work, the most frequent survey response was to talk to co-workers (28 percent) and family and friends (26 percent). Some workers did take action. Seven percent of workers went with co-workers to ask their employer for unpaid wages and were successful in three percent of the cases. The capacity for this group of workers to get non-complying employers to address violations while they are on the job appears limited.

Only four percent of respondents with unpaid wages filed an ESA complaint at the Ministry of Labour. This suggests that the average 20,000 claims filed at the Ministry of Labour per year are merely the tip of the iceberg. Underlying this is a vast array of unpaid wages and employer-violations of the ESA in Ontario workplaces that are not investigated. These findings are consistent with a UK Department of Trade and Industry survey that found that only six percent of workers who had experienced workplace problems pursued their rights through the employment tribunal.³⁰

Workers weigh the costs and benefits of speaking up about unpaid wages while on the job. Workers' comments on the survey show a substantial fear of employer retaliation that shapes what they do. People's response to violations of rights in their work can be based on an evaluation of factors such as: wages coming in to the family; savings; capacity to survive on employment insurance benefits while seeking new employment; realities of getting another job at the same or similar wages given the likelihood of job loss; impacts on immigration status and family sponsorship, and whether they will be successful in getting the minimum employment standards they should have received in the first place. This is set against the reality that there is little protection against penalty or firing for workers that try and enforce their rights while they are still on the job.

“ I always have to live in fear of getting fired if I complain or don't do what the employers tell me to do.”

How workers experience and respond to violations of their employment standards rights is shaped by labour market location which is mediated through gender, race, and immigration status and changing labour market conditions. For workers facing substandard employment conditions, the fraying social safety net reduces workers' options even more. While Ontario has the third highest unemployment rate in the current recession, it has the lowest level of employment insurance coverage with only 41.3 percent of unemployed workers receiving EI coverage in June 2009.³¹ Workers that do qualify are only eligible for 55 percent of their previous wages. For people in low-wage work, EI does not buttress those displaced from their jobs for trying to enforce their rights. Besides benefit levels well below the poverty line, social assistance is not an option for many people who are trying to regularize their immigration status or sponsor family members. In addition, workers are required to strip away most of their assets (e.g., their house, savings or RRSPs) before becoming eligible for social assistance.



6. Improvements in Worker Protections are Needed

“When I talk to a lot of workers in Canada, most of them (99%), don’t like their workplace... We are not enjoying our jobs because employers have more power on us. They can do whatever they want. They can fire us quickly. We have to face all the problems and still, we have to feed our family. The government should help workers. Bosses aren’t scared about the government. That is why they are doing this to us.”

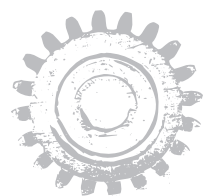
The enforcement of the ESA effectively relies on employers complying with the law. Where employers violate the ESA, the onus is on workers to enforce their statutory rights by first seeking unpaid wages from the employer and, where that fails, requesting the Ministry of Labour to investigate their claim of unpaid wages. With unequal power between workers and employers, there is little protection against reprisals. Workers cannot do much to enforce their rights while they are on the job. A number of respondents commented that if workers are going to complain about violations on the job they will need strong support in order to keep their jobs. Until there is substantial protection for workers in the workplace to pursue their ESA rights, workers face substandard conditions until they can move on to another job. They risk being fired or penalized when they ask for their rights.

The Ministry of Labour inspects less than one percent of Ontario’s 370,000 workplaces to make sure employers follow employment standards.³² Sixty-seven percent of workers surveyed believe that the government should inspect workplaces to make sure employers follow the law.

Sixty-seven percent of workers surveyed want effective penalties from employers that violate employment standards. A number of workers pointed out that unpaid wages should be viewed as robbery and employers should face jail time for not paying workers their wages. There is currently little cost to employers who break the law. Employers that are detected as violating the ESA following a worker’s complaint only have to pay wages they should have paid in the first place. Sometimes the case is settled for less than the wages owed. Just over two percent of employers found in violation of the ESA pay a penalty, generally a ticket for \$360.

Sixty-four percent of workers surveyed said that they don’t know where to go to get help with workplace violations. Not surprisingly, 73 percent of workers said that workers need more education about their rights and 64 percent said employers need more education about their legal responsibilities.

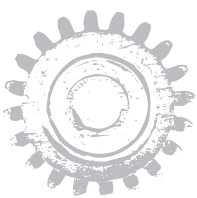
The Ministry of Labour has made strides in improving language accessibility to employment standards information. On its website there is information on the ESA in 24 languages and interpreters are available at the Ministry of Labour’s call centre to provide information on legal entitlements. But there is no assistance in filling out the claims form (which is in English) and translating legal rights to the worker’s individual situation.



The Ministry of Labour's education and employment standards complaints system relies heavily on individuals being able to access the website. Reliance on internet access creates significant barriers for many people in precarious work. Statistics Canada reports that there is a digital divide in the rate of internet use on the basis of income, education and age. If you are poor, older, have less formal education, live in a rural community and were born elsewhere, you are less likely to use or have use of the internet.³³

Workers face barriers to making claims at the Ministry of Labour for unpaid wages. Sixty-three percent of respondents said that workers need help in order to make a complaint at the Ministry of Labour about employment standards violations. Unlike the situation for other employment-related rights, there is no government funded assistance for workers who believe their employment standards rights have been violated. The government provides direct and indirect funding for information, education and legal support in areas of Health and Safety, Workplace Safety and Insurance and Human Rights, (e.g., Occupational Health Clinics for Ontario Workers, Office of the Workers Advisor, Human Rights Legal Support Centre). An overwhelmed community legal clinic system provides little support for workers requiring assistance with ESA issues. There are no legal aid certificates for ESA matters. The \$10,000 limit on amount of unpaid wages recoverable under the ESA means that few private bar lawyers would represent workers on ESA matters. So workers are left to learn how to make a complaint on their own. Workers have to go back and forth between the ESA guide (over 100 pages), the guide to the claim form and the claim form itself, often going through the three documents on the Ministry of Labour website.

Workers have little protection in their workplaces when rights are violated. People in low-wage and precarious work face barriers pursuing unpaid wages through the Ministry of Labour Employment Standards investigation process after they have left their jobs. As our survey demonstrates, only four percent of workers with unpaid wages filed ESA complaints for unpaid wages.



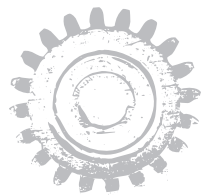
7. Conclusions

This report provides a window into the current state of unpaid wages, minimum wage violations, unpaid overtime and other violations facing people in low-wage and precarious work. It is not only the ‘underground’ economy or a few bad industries where violations are taking place, violations take place across many industries. Some employers in industries at high risk for violations comply with the ESA. These employers face immense competitive pressure from non-complying employers to lower standards.

This survey exposed substantial violations facing low-wage workers – most significant is to be paid less than minimum wage. That 22 percent of workers surveyed were being paid less than \$10.25 in their current job demonstrates that our employment standards regime is failing these low-wage workers. And that 44 percent of the workers we surveyed were making at or below minimum wage, demands substantial changes to our labour market regulation. Low wages and unpaid wages place a huge burden on workers who least can afford it. Employment Standards should be a social policy tool that effectively fights poverty through protecting workers’ wages.

As some employers shift work beyond the reach of government regulation in order to avoid minimum standards, workers, families and our local communities and economy suffer. When the floor of labour standards is driven down or dismantled altogether, all of us – not just those at the very bottom – are affected.³⁴

Effective labour market regulation through employment standards has a key role to play in protecting the rights of workers, in raising the floor of minimum standards and protecting complying employers from unfair advantage.



Appendix A - Methodology

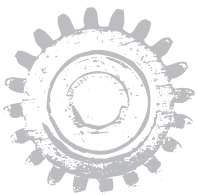
The Workers' Action Centre, with the assistance of Parkdale Community Legal Services, conducted the survey. Our goal was to document the extent of employment standards violations that people in low-wage and precarious work face and some of the impact of violations on workers.

We conducted the survey from November 2010 to March 2011. We wanted to reach out to workers who are typically hard to find in traditional surveys. That is, we wanted to get at the experiences of those low-waged and precarious workers such as recent immigrants, racialized workers, people with non-regularized immigration status, temporary foreign workers and live-in caregivers. To do this, we used a snowball sampling strategy that relied on people in community agencies working directly with people in low-wage and precarious work. Front-line staff at the Workers' Action Centre, Parkdale Community Legal Services, settlement and employment service agencies, and legal clinics participated in reaching out to and delivering the survey. We also used the social networks of members of the Workers' Action Centre. We asked that workers have worked in Ontario in the last five years and be low-waged if they wanted to be included in this study.

This method of sampling enabled us to obtain 520 surveys. While this is not a representative sample of workers, it is a sample that is rich in the experiences of workers in low-wage and precarious work. It has allowed us to reach populations of workers who most need protection from violations of employment standards.

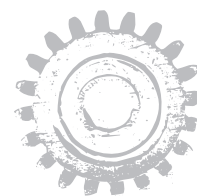
We chose not to request demographic information from participants in order to develop trust with respondents who were disclosing personal and difficult information and also to maximize the time respondents had to focus on workplace violations and experiences. That being said, the survey involved the following workers:

- 190 from Toronto; 124 from Toronto's inner suburbs (e.g., North York, Scarborough); 54 from the Greater Toronto area (e.g., Ajax, Oshawa, Markham, Vaughn, Brampton); 45 from Windsor and the rest are unknown.
- People who primarily worked in low wage industries in Ontario within past five years
- 47 workers completed Chinese surveys; the rest filled in English surveys; some workers were provided Tamil and Spanish translation.
- The workers we surveyed had lower average wages than Ontario workers. While Ontario's average hourly wage in March 2011 was \$23.87,³⁵ only seven percent of workers surveyed made above \$22.50, with the remaining workers surveyed making less per hour.



Notes

- 1 Ontario Ministry of Labour (2009) "Ontario Helping Live-in Caregivers" Press Release, October 21, 2009. Online <http://news.ontario.ca/mol/en/s009/10/ontario-helping-live-incaregivers.html>
- 2 Andrew Jackson, "Recession Watch Bulletin" Issue 4, Winter 2010, Canadian Labour Congress.
- 3 The term "own account" is used here to encompass labour practices in which a worker sells his or her labour to a company or individual.
- 4 The term racialized is used here to refer to those seen as the "minority" or other in our society on the basis of "race", a socially constructed marker of difference based on selected physical characteristics.
- 5 For a fuller discussion of racialized and gendered labour market segmentation, see Thomas (2009) 19 – 29. See also Grace-Edward Galabuzi (2006) *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century*. Toronto: Canadian Scholars Press; and Leah Vosko (ed) (2006) *Precarious Employment: Understanding Labour Market Insecurity in Canada*. Montreal and Kingston: McGill-Queen's University Press.
- 6 Sheila Block, "A View from Ontario: Notes from Ground Zero" Ontario federation of Labour, November 18, 2009
- 7 Sheila Block and Grace-Edward Galabuzi, *Canada's Colour Coded Labour Market: The gap for racialized workers*. Toronto: Wellesley Institute and Canadian Centre for Policy Alternatives, March 2011.
- 8 Andrew Jackson, "Recession Watch Bulletin" Issue 4, Winter 2010, Canadian Labour Congress.
- 9 Human Resources Development Canada (1997) *Evaluation of Federal Labour Standards (Phase 1) Final Report*, Ottawa, p 41.
- 10 2005 Statistics Canada Federal Jurisdiction Workplace survey of employment practices, cited in Harry Arthurs (2006) *Fairness at Work: Federal Labour Standards for the 21st Century*, Ottawa: Federal Labour Standards Review. 192.
- 11 Workers Action Centre (2007) *Working on the Edge*. Toronto.
- 12 Harry Arthurs, (2006) *op cite*.
- 13 Student workers have a minimum wage rate of \$9.60 and liquor servers of \$8.90. Other workers such as building superintendents and student instructors of children are exempted from minimum wage.
- 14 banquet, coffee and sandwich shops, restaurants – only liquor servers have a lower minimum wage.
- 15 Based on Statistics Canada 2009 Low Income Cut-off for a single person living in a large city working full time full year (before tax) plus CPI increase of 2.2% for March 2009 to 2010 and 3.3% for March 2010 to March 2011. Statistics Canada, Table 2: Low income cut-offs (1992 base) before tax. Online: www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tbl02-eng.htm. Accessed May 5, 2011.
- 16 Adjusting for inflation, a family of four, with a person earning full time full year in a large city, would require \$21.24 per hour in 2011.
- 17 Ontario Ministry of Labour, (2011) "Investigations and Inspection Statistics" Online: www.labour.gov.on.ca/english/es/pubs/enforcement/investigations.php. Accessed April 26, 2011.



- 18 This should be read with some caution as some of the workers included in Stats Canada's survey may be excluded from provincial and federal overtime provisions. The figure is calculated as follows: overtime premium pay 1.5 (overtime premium pay) x average Oct 2010 hourly wage (\$22.81) x 8.4 hours (average hours of unpaid overtime worked per week) x 52 weeks x Stats Canada 2009 total employment (16,982,900 x 5%) = \$12,692,170,315. Sources: Statistics Canada, Table 282-0081; Labour Force Survey, Average hourly wages of employees, October 2009 – 2010, CANSIM table 282-0069 and 282-0073 and CANSIM Table 282-0002 and 282-0022.
- 19 Up to a maximum of 8 years.
- 20 See WAC (2007) op cite; Judy Fudge (1991) *Reconceiving Employment Standards Legislation: Labour Law's Little Sister and the Feminization of Labour*. Journal of Law and Social Policy 7:73-89 and in the united States, see Annette Bernhardt, Heather Boushey, Laura Dresser and Chris Till (eds)(2008) *The Gloves off Economy: Workplace Standards at the Bottom of America's Labor Market*. Labor and Employment Relations Association Series.
- 21 See Vosko (2006) op cite; and Ron Saunders and Patrice Dutil (2005) *New Approaches in Achieving Compliance with Statutory Employment Standards*. Ottawa: Canadian Policy Research Network.
- 22 The term "own account" is used here to encompass labour practices in which a worker sells his or her labour to a company or individual.
- 23 Based on Statistics Canada Low Income Cut-off for 2009 before tax with inflation adjustments.
- 24 Statistics Canada (2011) Average hourly wages of employees by selected characteristics and profession, unadjusted data, by province (monthly), Ontario, Online: www40.statcan.ca/101/cst01/labr69g-eng.htm.
- 25 Wayne Lewchuk, Marlea Clarke and Alice de Wolff, (2011) *Working Without Commitments: The Health Effects of Precarious Employment* McGill-Queen's University Press.
- 26 Harry Arthurs, (2006) op cite. 239.
- 27 Statistics Canada (2009) "Study: Quality of employment in the Canadian immigrant labour market" The Daily Monday November 23, 2009.
- 28 Sheila Block and Grace-Edward Galabuzi (2011) op cite;
- 29 ibid
- 30 Meager, Tyers, Perryman, Rick and Willison (2002) "Awareness, Knowledge and Exercise of Individual Employment Rights" Employment Relations Research Series No. 15. UK: Department of Trade and Industry.
- 31 Statistics Canada, "Employment Insurance, June 2009" The Daily August 25, 2009.
- 32 The government inspects over 10% of workplaces for health and safety violations recognizing the importance of risk of detection in enforcement.
- 33 Although those immigrants arriving in the last 10 years that live in urban centres are slightly more likely to use the internet than Canadians as a whole. Statistics Canada (2008c).
- 34 Annette Bernhardt (2008) et al, op cite.
- 35 Statistics Canada (2011) Average hourly wages of employees by selected characteristics and profession, unadjusted data, by province (monthly), Ontario, Online: www40.statcan.ca/101/cst01/labr69g-eng.htm.

