Submission to the Standing Committee on Social Policy Review of Bill 27: *Working for Workers Act, 2021*

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November 15, 2021

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1) Schedule 1 and 2 -- Licensing Recruiters and Temporary Help Agencies

Ministry of Labour inspections have exposed persistent violations by temporary agencies and recruiters that do not comply with the Employment Standards Act (ESA) and the Employment Protection for Foriegn Nationals Act (EPFNA). There are little capital costs involved in setting up and operating such agencies. Increasingly, agencies operate through the internet and do not necessarily require much infrastructure. Therefore, owners can easily shut down operations under one name and reopen under another name with or without incorporation. Larger agencies may subcontract to smaller agencies without the client company knowing about it.

An effective and robust legislated licensing architecture could improve compliance with Ontario's ESA, EPFNA and Occupational Health and Safety Act (OHSA). Bill 27 provides some features of a licensing regime that could be effective, however, important amendments must be adopted.

Licensing of Recruiters

Recruitment agencies play a central role in the transnational recruitment of migrant workers[1] for employment in Ontario's agriculture, fisheries and food supply, transportation, tourism, in-home care work for children, the elderly and people with disabilities, food services and much more. The exploitation of migrant workers by some recruiters who charge thousands of dollars in "recruitment fees" for jobs, including jobs that disappear or are substantially different than agreed to, has been well documented.[2]

While the illegal recruitment fees[3] are expensive for minimum wage earners in Canada, they are even more so for workers coming from impoverished countries in the Global South. In some cases, the recruiters want all or part of the fees up front. When you convert that fee into a workers' home currency, the challenge is clear. These fees can represent between six months to

[1] Migrant workers hired under the Temporary Foreign Workers Program, Seasonal Agricultural Workers Program, Caregiver's Program and other temporary foreign worker programs.

[2] Caregivers' Action Centre (2020) Behind Closed Doors; Caregivers' Action Centre (2018) Care Worker Voices for Landed Status and Fairness; Fay Faraday (2014) Profiting from the Precarious: How recruitment practices exploit migrant workers. Metcalf Foundation.; Jenna Hennebry, Permanently Temporary? Agricultural Workers and Their Integration in Canada (February 2012), IRPP Study, No. 26; Judy Fudge, "Global care chains, employment agencies, and the conundrum of jurisdiction: Decent work for domestic workers in Canada,"

[3] fees are prohibited under Ontario's *Employment Standards Act* and *Employee Protection for Foriegn Nationals Act*.

two years' earnings in a worker's home currency.[4] To pay these fees, entire families can go into debt. With families back home in debt, migrant workers are afraid to complain about ill treatment by agencies or employers here. This makes enforcement of labour laws more challenging as enforcement relies on individual workers making employment standards, health and safety and recruiter enforcement complaints.

Bill 27 would require recruiters to be licensed and employers of migrant workers to use licensed recruiters. Recruiters in Ontario would be responsible for any illegal fees charged here or abroad. That is, the EPFNA would be amended to make the recruiter corporation and its directors, and other recruiters down the supply chain, jointly and severally liable to repay fees charged to a foriegn national. While the recruiter that is charged the fee is primarily responsible, workers can proceed against all recruiters and directors. There would be a public registry of licensed recruitment agencies. These are good first steps that our organizations have been calling for since 2008. The following measures are necessary to ensure workers' can be protected from illegal fees and employment standards violations.

Employer Joint and Several Liability

Bill 27 does not make employers of foreign nationals liable for illegal recruitment fees. Rather, the Bill requires employers to use licensed recruitment fees. The only consequence for using an unlicensed recruiter is a possible compliance order (a request to use a licensed recruiter in the future) or a contravention order ($250 first offence for using an unlicensed recruiter). These measures do not compel the employer to use licensed recruiters.

Employers drive the recruitment business model. It is their demand for migrant workers that leads the recruiter supply chain. If employers are jointly and severally liable then they will make sure they use recruiters that do not charge illegal fees. For there to be a real chance that migrant workers can get back the illegal fees they paid, the employer must be held liable. Only then will a new business model of recruitment develop that does not charge migrant workers illegal fees in the first place.

> **Recommendation**: employers of foriegn nationals must be jointly and severally liable with recruiters for compliance under the EPFNA.

Security Deposit

The primary economic incentives in a licensing regime are through the security required for licensing and any fines for violations. The surety provides an incentive to comply with labour

[4] Fay Faraday (2014) p 33

laws as it will be liquidated to fulfil any unpaid orders to pay. Most jurisdictions with licensing regimes require a security deposit in order to obtain a license.

Bill 27 provides that the Director ***may*** prescribe a security. Section 33(3)(2.6)(i) provides that the Lieutenant Governor in Council may make regulations for security for licensing, including prescribing the amount of security and how it may be used to satisfy obligations owing under the ESA or EPFNA.

> **Recommendation**: amend Bill 27 to ***require*** that a security be a condition of licensing. While the amount of security may be set by regulation, we recommend that the security be no less than $25,000.

Monetary penalties for effective deterrence

Bill 27 merely requires that recruiters be licensed and that employers use licensed recruiters. The consequence of non-compliance for the recruiter would be difficulty getting a license and a possible Part I ticket ($295) or contravention notice ($250 first offence). The consequence for the employer would also be a ticket or contravention notice. These enforcement tools are entirely inadequate. For fines to be effective, they have to be sufficiently large to deter noncompliance and there has to be a real chance that noncompliance will result in a fine or penalty.

Fines for failing to be licensed or to use a licenced agency should be automatic upon confirmation of violation and be set at a minimum of $15,000. Having widely publicized set fines for employers that fail to use licensed recruiters will incentivize compliance.

> **Recommendation**: there should be a minimum set (automatic) fine of $15,000 for employers for failing to use a licensed agency directly or indirectly.

Licensing of employers of workers with temporary work permits

Bill 27 does not require a registry of employers. Almost all jurisdictions that license recruiters require employers of workers with temporary work permits to be registered with the province.[5] Employers cannot recruit a worker on a temporary work permit unless they first register with a provincial labour ministry. Manitoba's registry requires that employers provide the government registry with information about the employer's businesses, who will be engaged in recruitment for the employer, and information about work to be done by the migrant worker. Registration is

[5] Alberta is the lone province that does not require an employer registry.

valid for one year to enable ongoing supervision of the employer's conduct and need to recruit migrant labour.

An employer licensing system can reduce the demand for unlicensed recruiters as employers would be liable for fines for using unlicensed recruiters. Through the licensing process the Ministry of Labour, Training and Skills Development (MLTSD) can provide education to employers about their legal responsibilities in the employment of migrant workers and contracting of recruiters. Licensing can also provide the MLTSD with the opportunity to check its database on employment standards claims or health and safety orders to see if there are any unresolved orders to pay. An egregious record should result in the employer being prevented from registering and thereby employing workers on temporary work permits. A mandatory employer registry would particularly help migrant care workers. In our experience, we see employers who violate the ESA and continue to hire new care workers only to repeat the violations such as unpaid hours of work and overtime and illegal deductions. Mandatory employer registration also enables the ministry to conduct effective, targeted proactive inspections as it will have all the contact information necessary to do so.

> **Recommendation:** There should be a mandatory licensing system including a registry of employers.

Enforcement

Like other provinces, the Director of Employment Standards must be given broad power to investigate the history, financial status and key business relationships (e.g., supply chain relationships) before licenses are awarded to agencies or employers.

Employment standards enforcement in Ontario relies, in the first instance, on employer's voluntary compliance and, where that does not work, on a reactive system that relies largely on individual workers to enforce their own statutory rights by reporting ESA violations through individual claims. While enforcing labour standards one complaint at a time is time consuming and costly, it is even more ineffective when dealing with employees of temporary help agencies and migrant workers. These workers face even greater barriers to enforcing their rights through individual claims. Mandatory licensing and a registry of employers of migrant workers provides an important step in improving compliance among temporary help agencies, client companies and recruiters. But there are some necessary components that are needed for effective enforcement.

Recommendation: The license should not be transferable or assignable. In the event of a change in ownership, a new license must be obtained.[6]

Recommendation: Migrant workers must be able to make anonymous complaints of any violations of the new licensing regime.

Recommendation: In the event of complaints by migrant workers, the onus of proof should be reversed, that is recruiters must prove that fees were not paid.

Licensing of Temporary Help Agencies

The government sought to improve protections for temporary agency workers in 2009 through Bill 139, the *Employment Standards Amendment Act* (Temporary Help Agencies) and in 2014 through Bill 18, the *Stronger Workplaces for a Stronger Economy Act*. There is still much work to be done to protect temporary agency workers.

One key factor giving rise to noncompliance in the temporary help sector is that the ESA is largely enforced through individual complaints. As temporary help agency workers are most vulnerable and at risk of loss of income and employment given the nature of the work arrangement, these workers are least likely to assert their rights with either the client company or the temporary agency. The reactive compliance model is not capable of addressing the structural features of the triangular employment relationship that leaves assignment employees with the least power. Alberta, British Columbia and Quebec have all instituted mandatory licensing regimes for temporary help agencies. It is time for Ontario to close the gap in enforcement for temporary agency employees.

Bill 27 would require temporary agencies to have a license and client companies would be required to use a licensed temporary agency. There would be a public list of temporary agencies. The Director ***may*** require a security for licensing.

Ontario used to require temporary agencies to be licensed to operate in the province. This provision was rarely enforced, fell into disuse, and was abolished in 2009. For the same reasons as set out in the section above on recruiters, amendments are necessary to ensure licensing can achieve the goal of increased compliance with the ESA. We recommend the following amendments.

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[6] Worker Recruitment and Protection Act (WRAPA)

Recommendation: amend Bill 27 to ***require*** that a security be a condition of licensing. While the amount of security may be set by regulation, we recommend that the security be no less than $25,000.

Recommendation: there must be a set fine of at least $15,000 for a temporary agency's failure to obtain a license and for a client company's failure to use a licensed temporary agency.

Recommendation: temporary agency workers must be able to make anonymous complaints of any violations of the new licensing regime.

Health and safety for temporary agency workers

The Temporary Help Agency Consultation Paper recognized that under COVID-19, temporary assignments in a variety of different workplaces place agency workers and client company workers at risk of COVID-19 infection. Yet there are more fundamental challenges facing the health and safety of temporary agency workers. As research done for the Institute for Work and Health concludes,

> "The primary challenges regarding the prevention of injury and disease affecting workers placed by temporary employment agencies arise because of disorganisation associated with triangular and cascading employment relationships, which makes it difficult to ensure the adequate training of workers, the provision of appropriate safety equipment and adequate representation in joint health and safety committees."[7]

When a temporary agency worker gets hurt, the company is not fully responsible because the temporary agency assumes liability at the worker's compensation board — saving their clients' money on insurance premiums. This is a crucial financial incentive to use temporary agencies. This can and must be addressed. In 2014, the *Workplace Safety and Insurance Act* (WSIA) was amended through the Stronger Workplaces for a Stronger Economy Act, 2014 (Bill 18).[8] Schedule 5 amended the WSIA to make client companies of temporary help agencies liable for WSIB premiums based on experience ratings of injuries, accidents and deaths of the company's temporary help agency workers (rather than the temp agency bearing that liability). These regulations have not yet been made by Order in Council or signed by the Lieutenant Governor.

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[7] Katherine Lippel, MacEachen Ellen, Saunders Ron, Natalia Werhun, Kosny Agnieszka, Mansfield Liz, Christine Carrasco & Diana Pugliese (2011) Legal protections governing the occupational safety and health and workers' compensation of temporary employment agency workers in Canada: reflections on regulatory effectiveness, Policy and Practice in Health and Safety, 9:2, 69-90,

[8] See Schedule 5 Workplace Safety and Insurance Act

> **Recommendation**: We strongly recommend that the regulations set out under WSIA s 83(4) be immediately brought into effect

While licensing could assist in enforcement if our recommended amendments are adopted, there are far more important changes that temporary agency workers seek. The following measures are just a few of the changes that agency workers want.

- Temp agency workers should earn the same as directly hired workers when they do the same work.
- There should be a limit on how much of an employer's workforce can be hired indirectly through temporary agencies.
- Temp agency workers must become directly-hired workers of the client company after three months of assignment
    - The company and temp agency must provide just cause if, at the end of the assignment, another temp agency worker is hired to do the job of a previous temp agency worker

2) Schedule 2 - Disconnecting from Work

Bill 27 would require employers to have a written policy on disconnecting from work. This is only for employers with 25 or more employees. "Disconnecting from work" is defined as "not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work." Bill 27 does not spell out any specific content that an employer's policy must contain; this may be set out in regulation.

Approaches that rely on companies having a policy in place by statute have proven to be ineffective. For example, The Federal Jurisdiction Workplace Survey (2017) reports that in 2015 nearly two-thirds (63.7%) of federally regulated employers had no company policy on prevention of sexual harassment in the workplace, despite the statutory requirement to do so. Furthermore, a statutory requirement to have a policy does not ensure that employers will abide by the policy and that workers have a job protected right to follow the policy.

Greater access to mobile devices and technology has contributed to the blurring of work time for some workers. To protect workers' autonomy, ability to enjoy personal and family life, and protect work-life balance, workers must have a job-protected right to disconnect. That is, there must be a job-protected right to refuse overtime and work after the regular work day.

> **Recommendation**: a strong statutory right to refuse overtime. This includes time spent responding to, or being available to respond to, work-related e-communications.

Recommendation: Strong protections for workers' privacy and personal information and employees' right to be free of monitoring, surveillance and intrusion in their personal spaces and lives.

3) Schedule 3 - Amending Fair Access to Regulated Professions and Compulsory Trades Act 2006

According to the Ontario Council of Agencies Serving Immigrants, "Canadian experience" has long served as a proxy for institutional and systemic xenophobia and discrimination based on a person's country of origin or training. Addressing these barriers is overdue but the legislation must be expanded and amended to ensure fairness for racialized and women migrants working in regulated occupations. Expanding accreditation will ensure that those that need accreditation to qualify for PR will be able to do so. We urge that the spirit and intent of Schedule 3 be expanded to include health-regulated professions and that accreditation measures be informed by labour market data to address inequities such as race, gender and immigration status. We support the recommendations set out in the Ontario Council of Agencies Serving Immigrants' submission to the Standing Committee on Social Policy.

Recommendation: expand Schedule 3 to include health-regulated professions

Recommendation: Legislation obligates regulatory bodies to guarantee timely assessments /registrations and occupational licensing within an appropriate timeframe.

Recommendation: Convene multi-interest holder conversations or tables, that include, regulators, educational and training institutions, employers, unions, refugee and immigrant service organizations as well as impacted refugees and immigrants themselves.

4) Schedule 4 - Access to Personal Information in the Agri-food Sector

The Ministry of Agriculture, Food and Rural Affairs would be empowered to collect personal information of migrant agricultural workers. The Bill does not say what the information would be used for. The provision gives excessively broad powers to collect, use and disclose personal information. As migrant workers' precarious immigration status puts them in a vulnerable position, workers are concerned about what information would be gathered, who would have access to and where it would be used. In particular, workers would want to ensure that no

information is shared with the Canada Border Services Agency or other federal immigration agencies.

Recommendation: repeal schedule 4

5) Schedule 5 -- Requiring Business Owners to Permit Washroom Access for Delivery Workers

Bill 27 would require the owner of a workplace to provide access to a washroom to workers making deliveries to or from the workplace. While this is the least the government can do, it risks failure because there are too many opportunities for companies to get an exemption from this requirement. For example, exceptions could be made if providing access would not be "reasonable or practical". These exceptions are exceedingly broad in scope and must be removed.

Platform delivery workers have identified key changes that are necessary to provide basic protections. These are set out in a Bill of Rights.[9] We recommend the government enact the provisions as set out in the Gig Workers' Bill of Rights as follows:

- A worker is a worker; Full employment rights with no carve-outs from minimum wage, sick leave, vacation pay and other minimum employment standards.
- Payment for *all* hours of work: Paid time from when workers sign in until they sign out of the app with a clear and concise breakdown of how pay is calculated.
- Compensation for necessary work related expenses to ensure gig workers' *real* wages are not reduced below the minimum wage
- Full and equal access to regulated benefits programs like Employment Insurance (EI), Canada Pension Plan (CPP) and injury compensation (WSIB).
- Data transparency: access to all data collected and how the algorithm affects workers, including any forms of discipline.
- Make all work count: gig work must count towards Permanent Residency applications.
- Put onus on employers to prove that workers are not employees, instead of workers proving that they are not independent contractors. Enshrine the predictable and purposive ABC test for employment status.

[9] Gig Workers United, Bill of Rights

- Recognize gig workers' right to form a union, with the union they choose, to have a collective voice at work.
- Workers must have the right to negotiate for livable wages and benefits with their employer. Real, worker-led sectoral bargaining to enable meaningful collective bargaining to raise industry standards
- An end to arbitrary deactivations and fair compensation for glitches: Just cause protection against deactivation, access to a clear and free process and enforcement mechanisms for minimum standards. Compensation for technical issues on the platform's end.

6) Schedule 6 -- Distribution of WSIB surpluses to employers

Bill 27 allows surpluses over certain levels in the Workplace Safety and Insurance Board's ("WSIB") Insurance Fund to be distributed to businesses. Bill 27 provides that in certain circumstances, the WSIB is permitted or required to distribute amounts in the insurance fund in excess of prescribed amounts to qualifying employers.

Employers' WSIB premiums have already been reduced by over 50% since 2018. Reducing premiums and remitting surpluses to businesses is the wrong thing to do as we come out of COVID-19. Too many injured workers in Ontario are living in poverty. Many injured workers end up on ODSP because they cannot support themselves on WSIB or they have been denied benefits. We need to expand coverage, increase benefit rates and reduce unjust denials, not limit WSIB through drawing down surpluses. We support the recommendations set out in the Injured Workers Action for Justice submission to the Standing Committee on Social Policy.

> **Recommend** Repeal Schedule 6 and its provisions that would allow surpluses to be distributed to businesses.