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Submission to the Consultation on Modernizing Canada's Employment Insurance Program

from the Workers' Action Centre and Parkdale Community Legal Services

Prior to the pandemic, Employment Insurance (EI) coverage rates had plummeted to 40% of unemployed in Canada, and even lower in major urban centres. The decline in EI accessibility and adequacy has been exacerbated by the changing nature of the labour market. Low-income workers, women, Black and workers of colour, Indigenous, migrants, young workers and those with disabilities are disproportionately represented in precarious low-wage work and more likely to be excluded from accessing EI benefits.

The pandemic demonstrated that the EI program was not up to the challenge. However, the government took important action to create CERB and temporary EI changes, including lowering qualifying hours, eliminating waiting periods and increasing benefit rates. We saw EI coverage increase to nearly 75% of unemployed workers (and 80% of women workers). The pandemic benefits played a significant economic stabilizer role in our economy.

We are still in the fourth wave of COVID. Some sectors of the economy are only slowly recovering, and we don't yet know the full extent of change in economic behaviours stemming from COVID crisis. Workers still need CRB income support and will need it until the COVID crisis actually subsides. In the meantime, it is clearly urgent that the government act now to make permanent changes to the Employment Insurance so that the system will be ready for the next economic crisis or public health outbreak.

Canada Recovery Benefit (CRB) - bring it back!

Almost one million workers saw their Canada Recovery Benefits (CRB) cut on October 23, 2021. Yet we are still in the fourth wave of the pandemic. COVID-19 still impacts jobs and hours of work. Sectors of the economy are still slow to return to full capacity services and production. Recovery benefits are still critical to supporting workers and their families.

The evidence shows that eliminating the CRB will not end the labour shortage. This is because the labour shortage is not caused by workers abusing CRB as some claim, but rather because workers are moving away from jobs with poverty wages, unsafe working conditions and unstable hours of work.

However, eliminating CRB has created untold hardship for many workers, including workers of colour, newcomers, workers with disabilities, and older workers who are finding it difficult to find new employment and are not yet eligible for Old Age Security.

The government should extend the CRB, retroactively from October 23, 2021, until there is a more complete recovery from COVID. The government should also restore the \$500 minimum weekly benefit. \$300 per week is completely inadequate for workers to pay rent and put food on the table. Across the country foodbank use is increasing exponentially as the long term impacts of COVID-19 are being felt by the most vulnerable in our communities.

Access to EI

Universal EI qualifying rule for all regions.

Remove the confusing and unfair system of variable entrance requirements based on regional unemployment rates and replace with a single uniform national threshold.

Lower qualifying rule of 360 hours or 12 weeks, whichever is less

The growth of part-time, non-standard and seasonal work has made it harder to qualify for EI, especially for women, youth, racialized people, migrant workers and people with disabilities. But EI assumes a 35-hour week (12 weeks x 35 hours = 420 hours). A 360 hour eligibility requirement is based on a 30 hour work week which is the average work week in Canada. Those with fewer weekly hours should be able to access EI benefits after 12 weeks. **The 360 hour rule or 12 weeks rule should apply to both regular and special EI benefits.**

Extend EI duration to 52 weeks in all regions and extend sickness benefits

This temporary measure should be made a permanent feature of the program for regular and sickness benefits. This will provide more security to workers who need it most, and facilitates labour market re-entry that supports high quality job matches.

While the government's Budget 2021 extended EI sickness benefits from 15 to 26 weeks, we believe that these benefits should be further expanded to 52 weeks. A large proportion of the

labour force has no access to private disability insurance coverage or employer paid sick-leave. Extending sickness benefits will assist workers who face financial hardship and labour market dislocation when sick or injured.

Eliminate or significantly reduce punitive disqualification rules

Currently, people are disqualified if they quit, are fired, or if they decide to go back to school.

There are many valid reasons that force workers to terminate employment, including work that is damaging to their physical or psychological health. This is particularly true for workers of colour who face racism in the workplace.

Indeed, racialized and precarious workers are far more likely to be fired over minor incidents. No provincial jurisdiction in Canada provides just cause protection to ensure workers are not terminated for arbitrary reasons, including attempting to enforce their legal rights at work.

It's not easy for workers who already face hardship and discrimination at work to also appeal quit-fire disqualifications when the employer is being unfair. This has the effect of blocking EI access for low-paid jobless workers who would otherwise qualify, including workers of colour, newcomers, older workers, and workers with disabilities.

Access to EI for all migrants

There are over 1.6 million migrants with precarious or no immigration status. They are over-represented in low-paid, insecure work and their immigration status adds another layer of precarity. Many migrant workers are denied access to EI even though they pay into it.

We endorse the recommendations made by the Migrant Rights Network to the EI Review.

“Solution #1: Canada must reform its immigration laws to ensure full and permanent immigration status for all migrant and undocumented people in Canada. In the short-term, all restriction on work must be removed including employer specific work permits, restrictions on hour of work, and exclusion of work in “businesses related to sex trade”.

Solution #2: Canada must amend the *Employment Insurance Act* to ensure that all work in Canada is “insurable” for the purposes of accessing EI, regardless of SIN. Canada should pursue employers who fail to submit EI premiums, rather than punishing workers.

Solution #3: Service Canada must immediately issue instructions to Service Canada agents confirming eligibility for EI for all migrant workers and ensure this information is incorporated into training.

Solution #4: Service Canada must ensure the application process is accessible to all, including through interpretation services, simple explanations of the process, and explain upfront that the Record of Employment is not needed to submit an application, and alternatives to online applications / communications.

Solution #5: Amend the *Employment Insurance Regulation* to end discriminatory disentanglements to special benefits for workers outside of the country or with expired SINs.

Solution #6: Canada must take all steps necessary to ensure that information workers submit to EI is not shared with immigration officials.”

Stop employers from misclassifying workers as “self-employed”

The practice of misclassifying employees as independent contractors or self-employed is growing as a *de facto* business model, especially in platform-based sectors. Employers in sectors such as trucking, construction, and cleaning have long used misclassification as a means of avoiding their financial obligations to contribute to EI (and CPP) and denying their staff basic workplace protections. This leaves all too many workers without access to EI and unfairly deprives our EI system of sorely needed funds.

The determination of employment status in Canada involves complicated, multifactorial tests which place the burden on workers themselves to challenge and prove their status. Employers know that most workers will not have the time, resources, or confidence to undertake this challenge. To address this widespread problem, we recommend that workers be presumed to be employees until the employer proves otherwise. We believe the “ABC test” would be an effective mechanism to enact in the *Employment Insurance Act*, the *Canada Pension Plan*, and Parts II and III of the *Canada Labour Code*.

The “ABC test” provides that a worker is an employee unless the hiring entity can establish that A) the worker is free from its control, both factually, and under the terms of the contract for performing the work; B) the worker performs work outside the usual course of its business; and C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. This is a simple, clear test for the presence of an employer-employee relationship. It places the onus on the party with the power to define the relationship itself, and contains simple, clear criteria to meet.

Access to EI for truly self-employed

As the Canada Emergency Response Benefits (CERB) and the Canada Recovery Benefits (CRB) demonstrated, genuinely self-employed workers can and should benefit from income supports. The Quebec Parental Benefit Program is a good model with automatic registration for self-employed who pay a special premium, but not the employer share. At a minimum, this should apply to all Special Benefits and a new training benefit.

Adequate EI benefits

Guarantee a minimum EI benefit floor of \$500

In fully half of all provincial and territorial jurisdictions, the minimum wage is less than \$14 an hour and in three provinces the minimum hourly wage rate is less than \$12.00. As a result, the current EI benefit rate is woefully inadequate in protecting workers who are most in need. Workers with low earnings or precarious hours cannot survive on less than the benchmark of \$500 weekly minimum established during COVID. Our EI program must ensure that EI claimants have at least \$500 weekly while on EI. Not only does this assist low income workers,

who are more likely to be women and racialized workers, but it ensures that EI can be the economic stabilizer that our economy needs. Without a guaranteed floor, EI is unaffordable and inaccessible to low paid workers who then end up in one survival job after another.

Increase the income replacement rate to 75% of previous earnings

The current EI income replacement rate of 55% is at an historic low and is below subsistence level for low-waged workers. A 75% replacement rate would be a much better economic stabilizer for workers, our economy and would assist people transitioning back to work in jobs that match their skillset.

Eliminate the 50 week limit on combined special benefits and unemployment benefits.

Current EI rules do not allow the combination of special benefits (maternity, parental, sickness or caring for others) and unemployment benefits to a maximum of 50 weeks. This limit negatively affects more women than men, since women claim the majority of special benefits. This is unfair; women who lose their jobs before, during or shortly after taking maternity/parental leave are no less unemployed as anyone else. Extend the reference and benefit period to at least 104 weeks.

Permanently remove the one-week waiting period during which no benefits are payable.

The government temporarily removed the one-week waiting period for all EI claimants due to the need for unemployed workers to access financial supports quickly during the pandemic. This step has ensured income security, especially for the most vulnerable and low income recipients. Elimination of the one week waiting period must be made permanent.

Eliminate allocation of separation payments

Termination, severance and vacation pay are sometimes earned in years prior to job loss and should not be allocated as earnings and deducted from EI benefit entitlements. As temporary pandemic measures indicated, removing allocation of separation monies improved administrative efficiency and put more money in workers' pockets. Putting money in peoples' pockets is as beneficial to local businesses and the economy as it is to workers and their families.

Fairer EI clawback while working on a claim

Currently, workers benefits are reduced by 50% of earnings, starting with the first dollar earned, while working on a claim. Employees' earnings would be protected while working on a claim by eliminating benefits from being clawed back until a minimum income threshold is reached, similar to the approach taken with the Canada Recovery Benefit (threshold set at \$38,000, excluding CRB earnings). EI rules must ensure that those who experience reduced hours or hold multiple part-time jobs are not eliminated from working while on a claim due to the requirement of a full seven days without earnings. Workers who are not penalized financially for taking temporary or part-time work while on EI are more likely to reintegrate into the workforce quickly.

Better supports and access for claimants

For EI to be an easily understood, accessible and inclusive social benefit program, changes are needed to improve access to justice.

- Restore a Tripartite Appeal Process at step 1
- Restore local EI Public Liaison Officers
- Offer more funding for organizations providing front-line worker advocacy in order to improve accessibility for marginalized communities
- Fund special help desks for those with part-time, multiple jobs, and precarious immigration status
- Create new in-person and on-line supports for workers who are second language speakers or who lack internet skills or access, or who cope with other challenges.

Restore direct federal government contributions to EI

Currently EI is financed exclusively by employer and employee contributions. This is a departure from the funding arrangements that existed for decades prior to the 1990s.

The recent experience with CERB and CRB shows how crucial federal funding is to the adequacy of the Employment Insurance system as an economic stabilizer.

To modernize EI and permanently improve access and benefits, the federal government must reinstate its financial contributions to EI.

As we saw from COVID, it is a matter of urgency that the federal government step up -- not only to make the necessary legislative and policy changes but also to restore the historic role of the federal government in providing long-term funding for the Employment Insurance system. The time is now - before we are hit with the next economic crisis or global pandemic - for the federal government to ensure EI can truly be the economic stabilizer it was intended to be. There's not a moment to lose.