



From the Frontlines:

An urgent agenda for decent work

Workers' Action Centre

720 Spadina Avenue, Suite 223,
Toronto, ON M5S 2T9
416-531-0778

info@workersactioncentre.org
www.workersactioncentre.org

May 2022



About the Workers' Action Centre

The Workers' Action Centre (WAC) is a worker-based organization committed to improving the lives and working conditions of people in low-wage and precarious work. We support workers in having a voice at work and being treated with dignity and fairness. Members meet in their local communities and together at the Centre for membership meetings. Through our workers' rights information line, we provide information and one-on-one support to workers who have workplace problems. The Centre engages with thousands of workers every year.

Acknowledgements

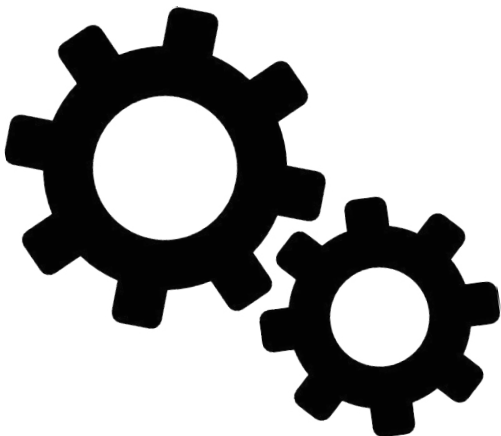
This report was a collective effort of people in precarious work, members and staff of the Workers' Action Centre, and Parkdale Community Legal Services. Everyone contributed their knowledge, skills, and insights. The report would not have been possible without the workers who participated in the survey and interviews.

We respectfully acknowledge that this report was prepared on the traditional lands of the Mississaugas of the Credit and Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples and is now home to many diverse First Nations, Inuit and Métis peoples.

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Introduction

Wave after wave of the COVID pandemic has exposed ongoing, systemic inequalities in our society. As the economy ground to a halt, millions of frontline workers were forced, unprotected, into dangerous yet essential work. Those on the frontlines, keeping society fed, cared for, clean, and connected were largely working in low-wage, dangerous work without paid sick days or health benefits – without even the full protection of the *Employment Standards Act (ESA)*.

Others were forced out of work without access to basic income support programs exposing the weaknesses and lack of coverage of Canada's Employment Insurance (EI) program. In fact, EI was more or less scrapped for a temporary system that – however meagre the benefits – covered far more people and provided a higher weekly floor of income.

For more than two years of this pandemic, journalists and health authorities have recounted hundreds of stories about how COVID has disproportionately hit low-wage workers, and how workplaces became infection sites – vectors – spreading the disease rapidly with tragic consequences. A fundamental root cause of this inequitable impact is precarious employment itself.

For people in low-wage and precarious work, this revelation is nothing new. But it has taken a global pandemic to make it visible for all the world to see.

In the early days of the pandemic, workers in low-wage, part-time, temporary and precarious jobs were far more likely to lose their jobs or most of their hours. Unemployment was much higher for women and workers who experience racism in the labour market. Similarly, these workers were most likely to work in essential, frontline jobs from growing food to processing, transporting, delivering, stocking and preparing it; from caring for people at home and in hospitals to cleaning our buildings and public spaces; from looking after kids at home to educating them in the classrooms. Because of their jobs, these workers experienced a higher risk of COVID infection and death.

Tragically, these same workers were sent into the pandemic with fewer rights and protections than they should have had. That's because, in 2018, Doug Ford's newly-elected Conservative government scrapped a hard fought minimum wage increase and cancelled legislated cost of living adjustments – freezing the minimum

wage for 26 months. The Conservative government also repealed equal pay for equal work protections, fairer scheduling rules, and paid sick days.

Now, workers who kept the economy going without adequate protections are coming together to demand legislative change to address precarious work, tackle inequality, and improve wages and working conditions.

Over the course of the pandemic, members of the Workers' Action Centre discussed how COVID not only highlighted the longstanding gender, racial and economic inequalities in our labour market, but also how the

pandemic deepened those inequalities.

Members discussed the problems they were encountering at work and the changes that are necessary to address these systemic inequalities.

This report provides an overview of the key issues facing workers today, and lays out the employment and labour law changes needed to ensure decent work for all.

About this report

The research for this report was conducted using a number of methods designed to centre the lived experience of workers themselves. In 2021, we met with workers in a variety of sectors to identify key issues and recommendations for this report. After summarizing the key issues and recommendations, we surveyed 189 people in low-wage and precarious work from across Ontario to test and verify the findings. The survey was conducted in English, Mandarin, Punjabi, Bengali, Somali, Spanish, Tamil and American Sign Language.

We asked 27 people with experience in various forms of precarious work and who represent different communities to take part in this research through in-depth interviews. Despite long hours of work, challenging conditions, and family responsibilities, workers want their voices heard so that change can happen. We have used pseudonyms for all of the workers whose experiences are shared in this report.

Decent Wages

“

Since I came to Canada in 2013, the wage rate I make is either lower than minimum wage or minimum wage. The only time I get a raise is when the minimum wage goes up.

– Bojing

During COVID we were making \$18 as PSWs. It used to be \$16. They increased our wages because they said we can only work in one nursing home. But one full-time job is not enough for my everyday necessities.

I work full-time, but after paying rent I can't afford my groceries. If you are a single person you're a really really poor person.

I feel shame. I don't know about other people, but I feel shame that I have to go to the food bank.

If I need something I have to go two or three times to Value Village. I can't even afford to go to Walmart. Sometimes when my doctor gives me a prescription I can't afford it. I feel so bad.

– Mirai

”

Decent Wages

Bojing's and Mirai's experiences are not unique. Many Ontario workers are struggling to get by.

Even before the COVID pandemic, our economy was shifting to lower-wage work. The share of minimum wage earners increased from 2.4% in 1997 to 11% in 2019. Many people earn just over the minimum wage. In 2019, one out of three Ontario workers earned \$16.60 or less.¹

Workers have faced decades of stagnant earnings and a widening of income inequality in the economy as a whole. While the average income of the top one percent roughly doubled over the past 35 years, there was a decline in average real income for taxpayers in the bottom half of the income distribution.² Canada's output and productivity have grown substantially since the 1970s, but workers' share of that productivity has not.³

Although recent minimum wage campaigns have resulted in some modest – but real – increases in purchasing power, these increases have not kept up with inflation. In March 2022, Canada's inflation rate hit 6.7% – the highest since 1991.⁴ Meanwhile Canada's housing costs are increasing at record rates, up by 6.6% in February 2022 – the fastest since 1983.⁵



**Real wages
have declined for
two-thirds
of workers**

since the start of the pandemic

To put these inflation rates in context, the Consumer Price Index (CPI) went up by 3.4% in 2021. But the costs of things that people need to survive on have gone up much more dramatically. Food prices increased by 4.2% in 2021 and are projected to increase by 5% to 7% this year.⁶ Rents in Toronto are predicted to increase by 11% in 2022 with average rent nearing \$2,500 a month.⁷ A recent study by the Canadian Centre for Policy Alternatives found that 64% of workers' wages did not keep up with inflation over the last two years. In other words, real wages have declined for two-thirds of workers across the country since the start of the pandemic.⁸

The impact of the pandemic on inequality is all too clear. Salaried professionals could work at home with full salaries and fewer costs, while workers in restaurants, hotels and retail – who are disproportionately young and workers of colour – lost income. As Lars Osberg concludes, “The pandemic’s economic impact has been “K shaped”: recovery at the top, but worsening misery at the bottom.”⁹

This underscores the way in which economic conditions perpetuate and deepen systemic racist and gendered inequality. Racialized men earn just 76 cents for every dollar earned by white men. Racialized women earn just 58 cents for every dollar earned by white men.¹⁰ In 2019, 13% of women were paid

“

My family survives from one pay cheque to another. Each part of my pay cheques are for our basic living expenses – rent, food and things that my child needs. \$15 an hour is not enough to live on.

– Tara

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minimum wage compared to only 10% of men.¹¹ Raising the minimum wage not only addresses the tremendous inequality among the working poor, it is also fundamental to addressing the racial and gendered wage divide that is one of the most persistent features of the labour market.

The minimum wage is intended to set the wage floor (an absolute bottom) to stop employers from taking unfair advantage of workers with little bargaining power.¹² That wage floor should be enough to provide all those working full-time with enough to survive and thrive on. Raising the minimum wage will help address the reality of the workers we interviewed. Namely, that wages at – or just above – the minimum wage are not enough to pay the rent and feed your family. Too many low-wage workers rely on food banks to supplement low wages and inadequate paid hours of work. A recent study done for the Daily Bread Food Bank reported that a \$1.00 minimum wage increase would lead to 36,876 fewer visits to food banks annually in Toronto and 187,756 fewer visits across Ontario.¹³

In 2018, the minimum wage increased 21% from \$11.60 to \$14



Wages
INCREASED
for those above
minimum wage



130,000+
new full-time jobs
were added



Inflation
declined



Unemployment
went down

Raising the minimum wage is not only good for workers, but also for the economy. When the minimum wage increased 21% from \$11.60 to \$14 in 2018, wages increased for those above minimum wage, inflation declined, unemployment went down and over 130,000 new full-time jobs were added, including job growth in sectors like food and accommodation with large numbers of minimum wage workers.¹⁴ By all accounts, raising the minimum wage helped workers and the economy. This is not surprising. In 2021 Dr. David Card was awarded the Nobel Prize in Economic Sciences for research undertaken more than 30 years ago that disproved the then widely-held economic wisdom that raising the minimum wage decreased employment and hours of work.¹⁵

Despite the evidence, Doug Ford's Conservative government cancelled the 2019 minimum wage increase to \$15 and imposed a 26-month freeze on the old hourly rate of \$14, which shortchanged the working poor by an average of \$3,000 to \$6,000 dollars in earnings.¹⁶ Belatedly, the government increased the minimum wage to \$15 this past January 1, 2022 – three years behind schedule. Had the minimum wage and subsequent cost of living adjustments proceeded as scheduled in 2018, the minimum wage today would be \$15.75.

Minimum wage increases also have a broader positive impact for local economies. Because working families spend wages on necessities at local businesses, raising the minimum wage helps small and medium sized businesses in our communities. As we saw clearly during the pandemic, what businesses need most to thrive are customers. Putting more money directly into the pockets of low-wage workers allows for greater and more diverse participation in the local economy. That is precisely why consumer spending is the engine that powers the bulk of Canada's domestic economy. Raising wages for low- and moderate-income workers is, therefore, not only an effective strategy for workers and their families, it is also a smart and necessary business move to kickstart Ontario's pandemic recovery.

**Farmworkers****Harvesters****Fishers****Residential care workers****Building superintendents**

When the minimum wage is increased, it is also critical that all exemptions are removed so that no worker is left behind. Currently, not all workers get minimum wage. Some workers are exempted by occupation and some workers are exempted by age.

Farmworkers, harvesters, fishers, residential care workers, and building superintendents are not entitled to Ontario's minimum wage. Employers can, and do, pay workers in these occupations less than the minimum wage. This is contrary to the principles of decent work and socially accepted minimum standards.

Workers under 18 years of age working 28 hours or less per week have a lower minimum wage in Ontario at \$14.10 per hour. Ontario is the only province that allows employers to pay young workers a lower minimum wage. All other provinces have repealed youth rates because they could be contrary to the *Canadian Charter of Rights and Freedoms*, which prohibits discrimination on the basis of age.

Recommendations:

Adopt legislation that will:



Provide a \$20 minimum wage for all.



Protect the existing legislated annual wage adjustment so wages keep up with rising prices.



End sub-minimum wage rates and remove all exemptions to the general minimum wage for students, farmworkers and others.

Decent Hours

“

Before the pandemic I was juggling four part-time jobs at the same time. Because I get a childcare subsidy I have to be working a certain number of hours per week. But each job gives me very little hours. So I have to keep getting another job and then another job to make a full-time job. This has been very difficult for me as a mother to also take care of my children.

– Larisa

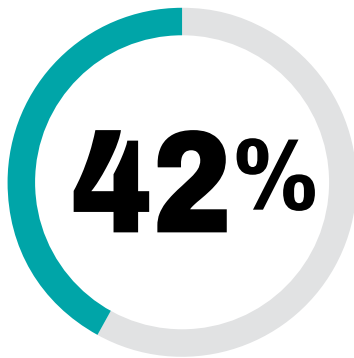
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Decent Hours

Too many workers like Larisa are struggling to piece together part-time jobs to make ends meet. Indeed, 52% of workers surveyed by WAC reported they did not have enough hours of work. The average number of hours worked per week in Canada is only 32 hours.¹⁷ Forty-two percent of workers surveyed normally work more than one job in order to survive.

Women are more likely to have part-time employment because they continue to shoulder the majority of family caring responsibilities. Black, Indigenous, Asian, migrant and other workers facing systemic discrimination in the labour market are more likely to have temporary and part-time work.¹⁸

The ESA gives employers substantial control over hours and scheduling, leaving workers with little predictability in their working lives or security of income. Some people work very long hours while others do not have enough hours to support themselves and their families.



of workers surveyed work more than one job to survive



There is nothing in the ESA requiring employers to provide a minimum number of hours per week, a predictable schedule of weekly hours, or advance notice of hours or schedules. As a result, too many workers are left not knowing how many hours of work they will get from one week to the next.

Without predictable and stable schedules, workers have difficulty budgeting, attending school, arranging childcare, and scheduling medical appointments. Unpredictable hours also make it difficult for workers to retain second – or even third – jobs. Workers get last-minute calls to work or cancellation of shifts. Some employers expect workers will be available for work at any time determined by the employer. But there is no reciprocal requirement to provide a guarantee of hours or income.

Even though many workers would like to work more hours, it is common for employers to hire more part-time workers instead because it is legal to pay them less and offer fewer benefits than full-time workers. This has been a longstanding practice in retail, especially the grocery sector. The COVID pandemic has focused attention on these trends in nursing and long-term care homes as well. Workers without full-time hours, benefits or even paid sick days work in multiple care homes in order to make ends meet. This was – and is – a recipe for spreading contagious illnesses among workplaces. The consequences during COVID were devastating and tragic. When governments clamped down to stop care workers from working at multiple locations, they provided no corresponding guarantee that workers would be given adequate hours or benefits. As a result, workers experienced these measures as a wage cut instead of a protection.

In the absence of regulation, there is no reason to believe the trend to create part-time employment will abate. Without legislative action, we will continue to see high levels of involuntary part-time employment forcing workers to work at multiple job sites and juggle unpredictable hours, with destabilising impacts on families, communities, and on public health.

“

Early on in COVID I was working in two long-term care homes and doing home care through the agency. But they don't give enough hours. It was hard to juggle, especially when I have to take care of my five kids too.

The staffing levels give us very little time to spend with each person. It makes them feel undervalued and it makes me feel like I can't do my job properly.

With the three jobs it was still tough to make a go of it. Then I had to give up one of the homes because of the COVID rules that you can only work in one long-term care home. It was good they increased the hourly wage. But then I lost hours, so I still came out behind.

– Keysha

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Regulating hours of work and providing predictable scheduling would improve the quality of existing part-time, casual and temporary jobs. Requiring employers to offer hours to existing employees before hiring new employees would contribute to the creation of full-time employment, while preserving workers' rights to work part-time as necessary.

Recommendations:

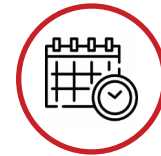
Adopt legislation that will require employers to:



Provide employees with a guaranteed minimum number of hours of work each week.



Provide employees with their work schedules two weeks in advance.



Offer additional paid hours of work to existing employees before hiring new staff.

Paid Sick Days

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At the beginning of this year, my coworker was not feeling well. He could not afford to take a day off as his wife was not working. He kept coming to work, coughing. Very quickly the situation got very bad for him and he was rushed to the hospital where he died of COVID.

The company did not tell us that he died or that he had COVID. He had worked at the company for 10 years.

My other coworker tested positive for COVID and I also got very sick and tested positive too. But I had to go back to work even though I was not feeling well as I was suffering from shortness of breath and swollen legs.

I really feel that if we had paid sick days, my coworker could still be alive today. I think that I might not have gotten infected with COVID and now living with severe post-COVID symptoms. We need paid sick days to save lives.

– Dai

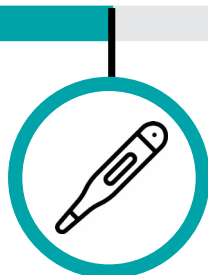
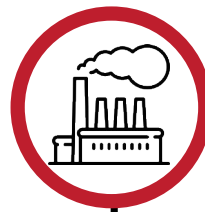
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Paid Sick Days

The COVID pandemic has confirmed that staying home when sick is fundamental to individual health, public health and the economy. But because they did not have paid sick days, workers like Dai and his coworkers could not follow health authorities' recommendation: stay home when sick. Indeed, 58% of workers in Canada do not have permanent paid sick days. That proportion rises to a staggering 70% for workers earning less than \$25,000 per year.¹⁹ This salary range includes the vast majority of minimum wage earners working everywhere from fast-food restaurants to private care homes.

This helps explain why workplaces like long-term care homes, farms, meat-processing plants, nail salons, warehouses and grocery stores became hotspots for COVID. In Ontario's Peel region, 66% of community outbreaks took place in workplaces and 25% of workers went to work with COVID symptoms.²⁰ These workplaces are disproportionately staffed by non-white, racialized workers, including Black, Latinx, Asian, Filipino and Indigenous workers. And in the case of care homes, the work is not only racialized, it is gendered as well, since women form the majority of workers in these caring occupations.

In Peel Region **66%** of COVID outbreaks were in workplaces



25% of workers went to work with COVID symptoms

The lack of paid sick leave legislation denies this crucial paid leave to those who need it most. According to Public Health Ontario, after the first wave of COVID the most diverse neighbourhoods had COVID rates three times higher than predominantly white neighbourhoods. Hospitalizations and ICU admissions were 4 times higher and mortality rates were double.²¹ During Toronto's largest surge of infection, the City of Toronto found that people of colour made up 83% of reported COVID cases and 51% of reported cases were living in low-income households.²² These are the devastating consequences of structural racism and the refusal of this government to take the necessary steps to protect essential workers in the most vulnerable jobs.

Beyond the injustice that makes it more likely for white people to have better jobs and access to paid sick days, the absence of paid sick days leads to worse health outcomes and a deepening health equity gap. These structural factors shape our ability to rest and heal, as well as our ability to access medicine, decent housing and transportation and help explain why racialized and low income people are at a much higher risk of acute and chronic illness. When workers are too ill to keep working – as we have seen under COVID – lost wages can amount to hundreds of dollars annually and thousands of dollars of lost income over years. These are all factors in the structural racial and gender wealth gaps.

Women like Tara, who are more typically responsible for child and elder care, lose wages when they must take unpaid time off work to care for children who are sick and cannot go to school. This erodes wages in the short term and contributes to cumulative wealth equity gaps.

The pandemic confirmed that employer-paid sick days are an essential public health policy. Public health officials and health experts have repeatedly called on federal and provincial governments to legislate paid sick days, from Canada's Chief

“

I am a mother and I work at two part-time jobs. I don't have paid sick days in either of my jobs.

Not having paid sick days is a constant pressure and stress for me. I am worried all the time about whether or not my son or myself will get sick. I don't have any health benefits either.

I cannot afford to miss one day of work as that means a day without wages. If you rely on every single bit of your paycheque to cover your bills, how do you cover any gap if you lose a day's pay?

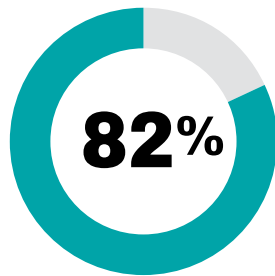
Well, the only way to do it is with less food. I need to keep a roof over our heads and that is the main expense. So if I have to be hungry, that is what I have to do.

– Tara

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Public Health Officer Dr. Theresa Tam and all Ontario medical officers of health²³ to the Ontario Medical Association²⁴ and the Ontario COVID-19 Science Advisory Table.²⁵

The federal government did introduce the temporary Canada Recovery Sickness Benefit (CRSB) in the fall of 2020 but it failed to deliver on its primary policy objective because it didn't provide seamless access to full pay for time off. As the Science Advisory Table noted, the CRSB "cannot financially protect essential workers in following all public health measures, places the administrative burden of applying for the benefit on essential workers, and neither provides sufficient, nor timely payments."²⁶



82% of Canadians would rather go to work sick than obtain a medical certificate

In April 2021, the Ontario government finally introduced a temporary paid sick day scheme but only for reasons directly related to COVID. The temporary program is limited to three paid days for limited situations related to COVID and is set to expire in July 2022. An analysis of Ontario's program found that claims for employer reimbursement for sick days taken by their employees peaked in the summer of 2021, when workers used these days to get vaccinated. By December, however, claims fell despite the massive Omicron variant wave. This suggests workers had already used the few paid sick days available or were not able to access them at all.²⁷ This temporary program is neither universal, nor seamlessly accessible to all workers. It is not fully paid by employers, nor is it adequate in number.²⁸

At present, the ESA allows employers to require workers who take up to three unpaid sick leave days per year to provide medical evidence that the employee is entitled to that leave. An Ipsos poll shows that 82% of Canadians would rather go to work sick than obtain a medical certificate.²⁹ Not only do “doctor’s notes” requirements create barriers to workers taking such leave (including user fees for obtaining medical notes, as well as the time and transit costs to visit a doctor), they waste precious public health care resources and take time away from those who actually need medical assistance. For all these practical reasons, medical professionals across Canada continue to urge governments to prevent employers from demanding medical notes for short-term illnesses.

Recommendations:

Adopt legislation that will:



Require employers to provide at least 10 employer-paid emergency leave days per year plus an additional 14 paid days during public health outbreaks.



Prevent employers from requiring employees to provide doctor’s notes to access paid emergency leave days.

Equal Pay for Equal Work

“

I worked as a PSW in a nursing home. I made \$20 an hour as a permanent part-timer. But the full-timers got much more. They also got benefits. I asked to get full-time work but they said it would take seven to 10 years to get on full-time.

It was during COVID so the government made it so we can only work in one place. Most people have two to three jobs, otherwise you can't survive.

But I need benefits and decent wages right now. I do the same work as the full-timers. Our jobs are difficult and I work just as hard.

– Krisha

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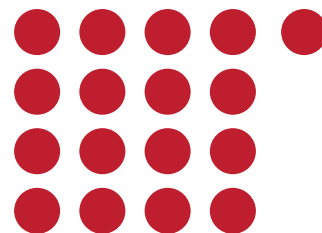
Equal Pay For Equal Work

Work is increasingly being done outside standard, full-time, permanent employment with a single employer. Part-time work makes up 19% of total employment,³⁰ temporary work 12%³¹ and self-employed with no employees makes up 16%.³²

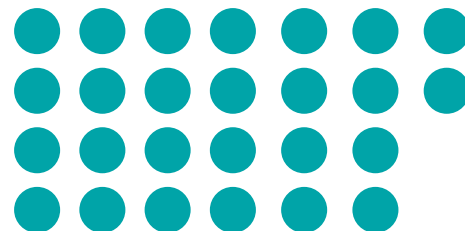
Black, Latinx, Asian, Filipino, and other workers of colour are more likely to be in involuntary part-time, temporary and contract employment. At the same time, women workers are often compelled to choose part-time employment because they continue to shoulder the majority of family caring responsibilities for children, elderly parents, and other loved-ones. For non-white, racialized women facing discrimination in the labour market, this means getting the worst of the part-time jobs, through temp agencies, gig work, and other unstable casual contracts.

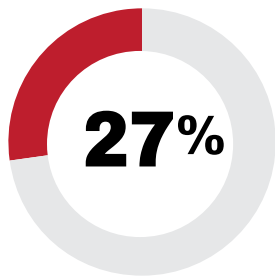
These jobs have lower wages, fewer benefits and are least likely to be unionised. In 2021, part-time workers earned a median hourly wage of \$17, while their full-time counterparts earned \$26.³³ This puts women and workers of colour at a permanent, structural disadvantage.

Part-time workers
earned a median
hourly wage of \$17

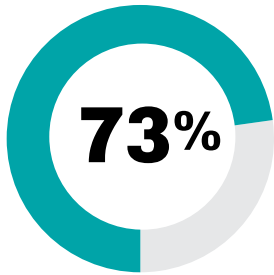


Full-time workers
earned a median
hourly wage of \$26





of part-time workers
**have access
 to benefits**



of full-time workers
**have access
 to benefits**

As Krisha notes, part-timers need benefits too. However, people in part-time and temporary work are less likely to have benefits to pay for prescriptions and health care not covered by Ontario’s health services. While 73% of full-time workers have access to benefits, only 27% of part-time workers do.³⁴

There is no legal requirement for employers to pay part-time and temporary workers the same rates as their full-time coworkers doing the same job. This establishes an economic incentive for employers to create part-time and temporary employment. It illustrates how our employment laws structure – and perpetuate – the gendered and racialized pay gap that runs through the labour market, regardless of workers’ education levels.

Other jurisdictions have already taken action to address unequal pay and benefits and reduce discrimination on the basis of type or form of employment. The federal government introduced a requirement for federally-regulated employers to pay workers doing the same work the same wages, regardless of whether the worker is employed on a part-time or full-time basis, through a temporary agency or directly-hired, or on a casual contract or permanent basis.^{i,35} Similarly in Quebec, employers cannot pay an employee less because they work fewer hours each week (e.g., part-time or casual).^{ii,36} In the European Union, part-timers must get the same working conditions as full-time workers. This includes conditions such as hourly wages, sick pay, and pensions.

Ontario had equal pay for equal work legislation from April 1, 2018 until it was repealed January 1, 2019. As Isabel observed about this brief period, “*Having equal pay was so inspiring for me. We were doing the same exact work, so we were able to*

ⁱ While this equal pay for equal work protection was passed in 2018, it has still not been brought into effect.

ⁱⁱ This does not apply to employees who earn more than twice the minimum wage.

get the same pay. No difference.” Under Ontario’s previous law, employers could not pay employees less when they did substantially the same kind of work but for fewer hours per week. Nor could employers pay workers less based on their employment status as contract, casual or hired through a temporary agency. Of workers surveyed for this report, fully 87% want equal pay for equal work reinstated in Ontario. As Alina explained: “If we gain equal pay and benefits for equal work, all workers’ lives will be easier with the same respect and dignity.”

But in order to make equal pay for equal work effective, we must also have pay transparency in our workplaces. This means requiring employers to make the pay scale public for every job. Without this transparency, pay becomes a matter of secrecy and enables employers to ignore the law. If workers don’t know the pay for every job, workers cannot enforce equal pay legislation.

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All workers, especially low-wage workers, can’t afford it if there are no benefits for them. So all workers should get benefits regardless of employment status.

- Alina

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Recommendations:

Adopt legislation that will require employers to:



Provide equal pay and benefits for equal work regardless of whether the employee works part-time, on contract or through a temporary agency.



Provide equal pay and benefits regardless of workers’ gender, racialization and/or immigration status.



Publish the wage and salary scales for all employees.

Laws that Protect Us All

“

I worked in banquet services at a big hotel. There were over 200 of us hired through a contractor to do food services, banquets and room service. We had to follow the rules of the hotel.

We were laid off at the beginning of the pandemic and promised our jobs back when the hotel reopened. But that didn't happen. The hotel replaced the food service contractor with another contractor. We were all out of a job – in the middle of a pandemic. Some of us were still owed wages and all of us were owed termination pay.

Altogether we are owed over \$1.4 million dollars. The contract company says they aren't responsible for our termination pay. The hotel is saying they don't have responsibility for us either. We've been left in limbo.

We need to close the loopholes that leave workers stuck in the middle of companies who don't want to have responsibility for our wages and working conditions.

– John

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Laws that Protect Us All

Shifting employer liability

Like many workers, Miguel was misclassified as an independent contractor. Because independent contractors are excluded from the ESA, it meant he had no employment standards entitlements or protections. Over the past three decades, employers have increasingly adopted strategies to evade core labour and employment laws by creating legal distance between companies and their workers. There has been a growth in business strategy and organisation outside the standard, full-time, permanent employment model with a single employer. Yet our labour laws and employment benefits are still based almost exclusively on the standard employment relationship.

Companies reduce costs and shift liability on to others, through contracting, outsourcing, and indirect employment.³⁷ Companies often begin by contracting out payroll, cleaning, food services and security. Once these services have been shed, the secondary businesses contract to other businesses which may then misclassify the workers as independent contractors.

Franchising is another example of this business strategy where the franchisor avoids liability for the employees involved in directly selling the product. This process of fissuring creates downward pressure on wages while shifting responsibility for working conditions to third parties. This trend creates increasingly precarious jobs for employees who perform work for contractors and subcontractors.

“

When I worked doing construction, my employer would drop us off at the worksites where there was no transportation. He would leave us there all day, sometimes until 11 pm at night so that we could finish the job. He said we were self-employed, so we got no benefits and no overtime pay.

– Miguel

”

The practice of contract flipping is also rampant in sectors where services are regularly put out to tender. Workers can lose their jobs when new companies are brought in to do the same work for less, by paying workers lower wages and offering fewer benefits. Similarly, workers who organize into unions to improve their wages and working conditions can suddenly lose their jobs – and their union – when a new, cheaper contract is signed with the client company. Workers need protections against contract flipping where cost savings are most often found by cutting the wages and benefits, or compromising workplace health and safety.

Recommendations:

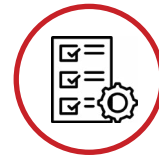
Adopt legislation that will:



Make companies fully responsible for wages, working conditions and collective bargaining, when they use temp agencies, franchises and/or subcontractors.



Make employers who enter into contracts with subcontractors and other intermediaries (either directly or indirectly), liable both separately and together for wages owed and for statutory entitlements under the ESA.



Preserve the employment, wage rate, benefits, and union rights of existing or subcontracted workers whenever a contract is put out to tender or when a business is sold.

Protect gig workers: End misclassification

A century ago, labour contracting was known as the “sweating system” where workers were labelled self-employed and paid by piece of work. Today, employers are once again misclassifying workers as “independent contractors” as a key strategy to reduce labour costs.

Companies like Uber that use platform-based work wrongly classify their employees as independent contractors. This practice cheats workers out of decent wages, overtime pay, paid leave, EI, Canada Pension Plan (CPP), and all other employment protections. Workers pay for all types of their employer’s business costs, from tools to cleaning solutions and from gas to insurance, and take on risks that regular employees would not have to deal with.

“

I used to drive for Uber but I was deactivated due to no fault of my own. I had no place to go to make any dispute.

I’m not sure exactly how much my hourly wage rate is when I drive for Lyft. Not only is the payment confusing, but also it’s hard to determine how much my real wage is because I need to subtract my costs for gas, insurance, and car maintenance. However, one thing I am sure of is that the real net wage I get from Lyft is low. It’s less than minimum wage considering how many hours I put in.

– Feng

”



I immigrated here four years ago. Since coming, I have worked for different app-based companies. This is my main income. I have a bachelor degree in engineering but I can't get a job here. They say we are independent contractors but I don't feel like that. I don't have control over my job. My job controls me.

I have to be out six days a week over lunch and dinner hours. That is when you make the money. There is nothing flexible about that schedule. The worst thing is not getting paid for all the time and effort we put into this work. The company puts on a surge map. So we go out, but find there are no orders – this time is wasted; no wages but we have to pay for the gas.

I used to work for Doordash but they fired me because I didn't accept enough orders. I didn't accept orders where I would have to wait 30 minutes or more at the restaurant because I do not get paid for waiting time. Then they deactivated my account. The company has all the control.

– Jamal



Jamal and other app-based workers have been calling on the government to stop the misclassification of their jobs. In Ontario app-based workers have been organising to assert their employment rights and have set out a Gig Workers' Bill of Rights.³⁸ Foodora workers voted almost 90% in favour of unionising in 2019, only to have it challenged at the Ontario Labour Relations Board by Foodora. The Board ruled in 2020 that Foodora workers were not independent contractors and were, indeed, entitled to unionise.³⁹ A class action is also currently before the courts in Ontario to challenge Uber's misclassification of employees as independent contractors.⁴⁰

In other jurisdictions, there have been similar efforts by app-based workers to assert their employment rights against misclassification business models. App-based workers successfully unionised in Norway in 2019.⁴¹ Employees have been fighting and winning employment rights through the courts: in California in 2018,⁴² France in 2020,⁴³ and in 2021 in the Netherlands,⁴⁴ the U.K.,⁴⁵ and Spain.⁴⁶ These cases all tackle the main problem

of the business model – the misclassification of employees as independent contractors. In each case, the courts ruled against employers, and agreed with the workers: app-based workers are not independent contractors and therefore are entitled to employment standards and labour laws.

Unfortunately, the Ontario government just adopted a new set of rules for digital platform companies on April 7, 2022 that makes it legal to pay subminimum wages. The *Digital Platform Workers' Rights Act, 2022* (Bill 88) carves platform workers out of the ESA and makes it legal for employers to cut their workers' wages by not paying for all work time. By stipulating workers must only be paid for “engaged time” – the time making the delivery, but not the time involved in returning from the delivery or waiting for an order – the new law effectively legalizes wage theft. It sets a dangerous precedent for all workers by saying we do not have to be paid for all the time that we work.

Misclassification denies employees minimum wage, pay for time worked and other minimum standards under the ESA. While misclassification dominates platform-based companies, it is also very common in other sectors, such as cleaning, trucking, construction, business services, information technology and nail salons.

Not only does misclassification harm workers, misclassification harms all of us. Every year, misclassification enables employers to avoid their legal obligations to contribute to EI, CPP, and workers' compensation. Employers who treat their workers fairly and who honour their obligations to contribute to EI, CPP, and other such programs, face unfair competition from companies that flagrantly flout the law. And now as a result of adopting Bill 88, this unethical – and previously illegal – practice has been made legal, rewarding employers who have been systematically violating the law and undermining those employers who operate fairly, without relying on misclassification to bolster their bottom line.

It's easy to see how legalising wage theft and misclassification will be generalized throughout the labour market as more

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Gig workers deserve the same rights as everyone else. All we're asking for is our basic labour rights and the right to negotiate with our company.

– Andres

”

employers are forced through competition to implement the same kind of practices. This will drive down wages, harm the well-being of our communities and accelerate the worsening of labour standards for all of us.

However, this possible future can be averted. By repealing this new law and by legislating the presumption of employee status using a simple and proven measure, the government could not only stop the race to the bottom but actually turn the tide on misclassification. Such steps will not only benefit all app-based workers, but curb misclassification across all sectors and address the huge, public costs of misclassification.

Recommendations:



Repeal the *Digital Platform Workers' Rights Act, 2022*

Adopt legislation that will:



Ensure all staff are presumed to be employees under the law.



Establish the “ABC test” as the means of establishing whether a worker is, in fact, an independent contractor, where:

- A. The worker is free from control and direction of the hiring entity in connection, both under the contract and in fact, for the performance of the work;
- B. The worker performs work that is outside the usual course of the hiring entity's business; and,
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.⁴⁷

Close loopholes, end exemptions

The ESA is intended to provide basic minimum terms and conditions of work for all workers to establish a floor of employment standards. Over the years, however, governments have agreed to employers' requests for special treatment for certain industries, occupations, or sectors. Students under 18 are paid a lower minimum wage. Farmworkers are exempt from minimum wage, hours of work, daily rest periods, time off between shifts, weekly/bi-weekly rest periods, eating periods, overtime, public holidays, and vacation with pay. Workers employed for less than five years are denied severance pay.

The ESA now contains more than 85 complex exemptions and special rules that permit some employers or industries to avoid basic standards like minimum wage, vacation pay, public holiday pay, overtime and hours of work rules, severance pay and other provisions.⁴⁸

Currently, only 24% of Ontario employees are fully covered under the ESA. Part time, temporary, low-wage, women and young workers are much less likely to be fully covered by the ESA. The cumulative cost of ESA exemptions and special rules to Ontario workers is approximately \$2 billion every year.⁴⁹ In addition to the economic costs to workers and the economy, there are social costs for families, communities, and the health care system, due to lost wages and excessive overtime and hours of work.

“

We pick grapes for your wine. We work 10 hours a day, 7 days a week. The only rest we get is when it rains. Our wages are not enough for the work we do.

– Joseph

”



of Ontario employees
**are fully covered
under the ESA**

Recommendations:



Adopt legislation that will expand the *Employment Standards Act* to include all workers, close loopholes and end all exemptions to minimum standards.

Real Protections for Temp Agency Workers

“

I worked through a temp agency at a factory. I felt like I was not even a human being when I worked there.

We all worked the night shift. The whole night shift was temp. The day shift was hired by the factory and paid regularly. But us temp workers, we had to pay the temp agency one hour of our wages. They paid us \$12 an hour but the temp agency took \$12 from us for each shift. Every agency has their own style of how they pay.

I worked from 7 pm to 7 am. I was standing the whole time. My body was shaking because I'm not used to doing that kind of physical work. I got tennis elbow from this work. I was in a lot of pain, but couldn't afford physio.

After I came back home, I went to bed. But I wouldn't know if I will have work that night or not. I'm trying to sleep, but I have to keep checking the phone to see if I have work that night. I can't afford to miss the call, so my sleeping is disturbed. It is very stressful.

– Anya

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Real Protections for Temp Agency Workers

As Anya and Hu’s experience demonstrate, temporary agency workers are more likely to be paid less than directly hired employees, have no benefits, no security in hours of work or job assignments, and face greater risk in the workplace.

Recent immigrants, undocumented people, and workers of colour are more likely to get streamed into temp agency jobs because of structural racism in the labour market. Many newcomers are denied permanent employment because of discriminatory employment requirements like insisting on “Canadian experience” or failing to recognize international qualifications. The only way for some recent immigrants to get so-called “Canadian experience” is to work through temporary agencies where they earn lower wages and have no benefits or job protection.

The temp agency industry is growing rapidly. Operating revenue grew from \$13.8 billion in 2016 to \$17.1 billion in 2019 across the country, with over half of that being generated in Ontario.⁵⁰

“

Currently I work for a temp agency as a customer service representative. I am looking for a second job.

I don’t have regular stable hours at the temp agency. My work hours vary from 0 hours to close to 40 hours. I don’t know my schedule until the last minute sometimes. Because the agency has lots of temp workers, we have to compete with each other to bid for work hours. In order to get hours, I sometimes get up early at 4 am in the morning to bid for hours. It is very stressful. I often feel tired and feel myself running around like a rat – so busy, but still not making enough money. I go to the food bank regularly and get foodboxes to help me to make ends meet.

”

– Hu

“

We need a better definition of temp agency work so that it is really a temp job like how it used to be when I was younger – a month job while someone was away or being hired temp for a one-off event. These jobs should not be taking the place of full-time jobs.

– Sara

”

There are no restrictions on how long a temporary agency assignment can go or how many temp workers there can be at a company at any given time.

Agencies are not required to disclose the mark-ups they charge the client company on workers' wages. As Anya noted, her agency charged her one hour of wages in addition to the mark-up. What research has been done on mark-ups indicates that agencies typically charge their clients about twice the workers' hourly wage.⁵¹

The lack of equal pay for equal work for temp agency workers creates an economic incentive for employers to hire workers indirectly through temp agencies.

As noted above, before being repealed by the Ford government, Ontario temp agency workers (as well as part-time, contract, and casual workers) briefly had legislated equal pay for equal work protection, from April 1, 2018 to January 1, 2019. In one warehouse where the directly-hired workforce were part of a union, the company responded to the equal pay requirement by directly hiring 700 temp agency workers. Not only did this result in workers getting permanent jobs with the company, but they also became union members with the additional bargaining power this represents.

“

We [temp workers] worked day shift and evening shift. The day shift was largely permanent workers. Sometimes when I worked the day shift I would work with the permanent workers. They were making \$25 to \$30 and I was making minimum wage – doing exactly the same work.

– Lee

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Because they are seen as disposable, temp agency workers are often tasked with the most dangerous work. In Ontario, temp agency workers are twice as likely to get hurt on the job, compared to directly-hired employees.⁵² 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.⁵³

When a temporary agency worker gets hurt, the company is not fully responsible because the temporary agency assumes liability at the workers' compensation board. This saves client companies money on insurance premiums resulting from accidents and injuries. For example, since 1999 five temporary agency workers have been killed at Fiera Foods, an industrial bakery. Despite this horrendous record, Fiera Foods has received multiple rebates from the WSIB for their so-called "low-injury" rates. This is a crucial financial incentive to use temporary agencies, which 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*.⁵⁴ Schedule 5 amended the WSIA to make client companies of temporary agencies liable for Workplace Safety and Insurance Board (WSIB) premiums based on experience ratings of injuries, accidents and deaths of the company's temporary agency workers (rather than the temp agency bearing that liability). This change will make client companies responsible for temp worker's injuries and illness. But these regulations are not in effect yet because they have not been made by Order in Council or signed by the Lieutenant Governor.

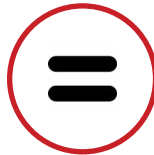
Too many temp agency workers are used for long-term assignments, because the company benefits from the financial incentives noted above. So instead of temp agency workers being used to fill legitimate unexpected and temporary gaps in a particular workforce, temp agency workers are used permanently and comprise a growing proportion of the workforce. Legislation is necessary to prevent employers from using temp agency workers as a permanent component of the workforce and to protect workers from unjust dismissal.

Recommendations:

Adopt legislation that will:



Make companies financially responsible under the Workers Safety and Insurance Act for the death and injuries of temporary agency workers.



Ensure all temporary agency workers earn the same wages as directly-hired workers when doing substantially the same work.



Ensure all temporary agency workers are hired directly by the client company after three months on assignment.



Protect temporary agency workers from being fired before the deadline to be hired directly.



Ensure employers must provide just cause (a good reason) for terminating an assignment.

Make it Easier to Join a Union

“

I organised the union in my workplace, one person at a time. When my boss found out he panicked. They started checking the cameras, watching us. The VP came in to ask me not to unionise. I could handle the pressure because my husband supports me. I wouldn't be out on the streets if they fired me. But that's not the case for my coworkers, especially the single moms. So I understand why they can't be vocal. We should have more protection when we unionise.

– Rebecca

”

Make it Easier to Join a Union

Freedom of association and collective bargaining are constitutional rights. By organizing collectively, workers have won improvements in working conditions that have improved the lives of millions. Unionised workers have higher average wages than their non-unionised counterparts. This additional bargaining power reduces the wage gap for women and workers of colour. Unionised workers are also more likely to have pensions and health benefits, and are more likely to work full-time and for longer duration than non-union workers. Unions can also protect workers from unjust dismissal and provide an organisational basis in the workplace to improve health and safety, wages and working conditions.⁵⁵ Unionisation is an effective strategy against precarious work.

Unfortunately, it has become harder and harder to exercise the right to join a union, and as a result, union density has declined from 30% in 1997 to just over 27% in 2020. Regressive labour laws have created barriers to forming – and keeping – a union. Meanwhile, the changing nature of workplaces, including the rise of non-standard forms of work and subcontracting, have made it more difficult for workers to unionise.

The *Ontario Labour Relations Act* (LRA) governs the process of unionization. In order for more workers to have the benefits of unionisation, including protections against precarious work, urgent reforms to the LRA are needed. It should provide a one-

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I have been working in my company for 15 years. It's hard to get the union in because we work in many different locations and we don't see each other. It's hard to unite.

– Tomas

”

step certification process whereby workers can vote once, simply by signing a union membership card. Research has demonstrated that the current two-step voting process creates barriers to unionisation, particularly for people in precarious work.⁵⁶

Changes to the LRA should be made to ensure that contracting out and new forms of work organisation do not continue to create barriers to unionisation. For workers in precarious work, sectoral bargaining could play an important role. This would be particularly useful where highly fissured organisational methods are used, such as subcontracting, franchising, and third party management, as well as where treating employees as self-employed make the employee-employer ties more complicated and tenuous.

It should also be noted that ending the practice of misclassification, as described above, would also be a tremendous step forward in making it easier to form and join unions.

Union density

30% | in 1997

27% | in 2020

Recommendations:

Adopt legislation that will:



Ensure workers have the right to join unions by signing a union membership card.



Allow workers to form unions across franchises and subcontractors.



Enable broader-based bargaining where workers can bargain across regions or sectors of work.

Protection from Unjust Dismissal

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I am an RN. I was working for a home care agency. We provided in-home care for clients. I worked full time, 9 am to 5 pm. But on top of that we had to work one 16-hour on-call shift per week and one 27-hour on-call weekend shift per month. They only paid us a \$50 bonus to work an on-call shift. When you are on-call, you are dealing with phone calls from PSWs and clients pretty steady up to midnight and then you still get calls throughout the rest of the night.

I went to HR about the unpaid overtime on the on-call shifts. That's when they put a target on my back. They fired me without cause.

– Sue

”

Protection from Unjust Dismissal

Under the ESA, it is legal for employers to fire workers without warning or reason. All employers are obligated to do is provide notice or pay in lieu of notice.

In the context of a labour market rife with systemic racism, Black, Indigenous, and other workers of colour are at a far greater risk of unfair termination and discipline than their white coworkers. The same is true for other workers who face systemic discrimination, such as workers with disabilities, LGBTQ2S+ workers, and Muslim, Sikh or other workers of faith. The narrow definition of what qualifies as racial discrimination in human rights processes is inadequate to address racist terminations. Protection from unjust dismissal under the ESA would provide a more accessible way to address discrimination in workplaces.

“

At my previous job I asked my boss to pay me the wages he owed to me, then I got fired. It was not a lot of money. However, the bullying I suffered from my former boss really hurt me a lot. The unpaid wages that I finally got served to help heal the emotional and psychological hurt that I felt at being fired. It was very important for me.

- Hu

”

Ontario's anti-reprisal rules provide limited protection when a worker is trying to enforce their ESA rights. However, workers have difficulty providing evidence to support their reprisal claims and the majority of such claims fail. This creates a chill effect on workers asserting their rights in the workplace.

Without protection from unjust dismissal, workers have less power in the workplace to speak out about employment violations and unsafe working conditions. Just-cause protections require employers to provide good reasons before terminating workers. Employers would have to give workers advance notice of performance issues and a good chance to address them.

Since 1978, the *Canada Labour Code* has protected the rights of federally-regulated workers to challenge their unjust dismissal and receive effective remedies, including reinstatement, if they have been wrongly dismissed. Jurisprudence has been developed under this unjust dismissal provision providing principles of progressive discipline for employers to avoid unjustly dismissing employees. In Quebec, after two years of continuous service, an employee is protected from unjust

dismissal. The worker can file a complaint for unjust dismissal and the onus is on the employer to prove the dismissal was for good and sufficient cause.⁵⁷ Momentum is also growing in the United States for just-cause protections. In 2019, parking lot workers in Philadelphia won the right to fight unfair firings when the city council adopted a just-cause law for their sector.⁵⁸ In 2020, New York City approved just-cause protections for fast-food employees in the city.⁵⁹ In 2021, Illinois lawmakers introduced *The Secure Jobs Act*, a just-cause bill that would extend protections to all workers in the state.⁶⁰

Recommendations:

Adopt legislation that will:



Ensure employers must provide just cause (a good reason) for terminating an employee.



Provide principles of progressive discipline for employers to follow to avoid unjustly dismissing employees.

Make Employers Follow the Law

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When we all got fired during the pandemic, the company owed us mass termination pay because there were so many of us. But the company didn't pay up. So I made a Ministry of Labour claim for my wages. I won my case but what about all the others? Many people didn't know about making a claim. Why didn't the Ministry of Labour go after the company for all the workers' wages and termination pay? They know over 200 of us got fired and are owed termination pay.

– John

”

Make Employers Follow the Law

Improving the rights of workers will do little if these rights are not enforced. As John's experience demonstrates, Ontario's system of ESA enforcement relies on individual workers to enforce their own rights. Without proactive enforcement in workplaces, workers have little protection when their employers violate employment standards. They also have little protection when they stand up to enforce their rights.

Most workers file claims for unpaid wages and other violations at the Ministry of Labour when they are no longer employed. Non-unionized workers have little bargaining power to try and enforce their rights while in the workplace. Without protection from unjust dismissal, workers are too fearful to risk losing their job while seeking to enforce their rights.

When workers do file claims for ESA violations, they will only, at best, get the wages and entitlements that they should have received in the first place. The Ministry of Labour can impose some modest penalties,ⁱⁱⁱ however, they are rarely used. Nearly 90% of all employers found in violation of employment standards receive no penalty.⁶¹

The Ministry of Labour has the power to conduct proactive inspections of employers. The model of inspections is geared toward educating employers and bringing them into compliance going forward. Employers are given advance notice of inspection and are required to do a self-audit of their payroll to expose violations. Similarly, where individual claims confirm violations, the Ministry has the power to expand investigations to detect violations of other employees' rights. Over the past four years, the use of proactive inspections and expanded investigations has declined.

“

Who can afford to lose their job? I asked for my unpaid wages and I was fired on the spot.

- Hu

”

ⁱⁱⁱ \$250 for a first offence for a Notice of Contravention and \$295 for a Part I ticket under the provincial Offences Act (plus a \$75 victim surcharge).

Under this system of enforcement, employers face little risk of being detected for violating the ESA. Even if caught, employers face no penalty other than paying out what they should have paid in the first place. Consequently, there is little incentive for employers to comply with all ESA rules.

The reactive enforcement model is not capable of addressing the structural features of the labour market that produce ESA violations in the first place. This is particularly the case with respect to new forms of work organisation, where responsibility for employment is being shifted to contractors, temporary agencies, misclassified workers and workers without access to union protection. This is magnified in highly competitive environments where pressure to cut regulatory corners is high.

 **90%**
of employers
found in violation
of employment
standards receive
no penalty

Recommendations:



Adopt legislation that protects workers who stand up for their rights at work and ensure the onus is on the employer to prove wrong-doing.

In addition, the government must take all necessary steps, including hiring additional staff, to accomplish the following:



Initiate more surprise inspections of workplaces.



Institute bigger and more meaningful fines when employers break the law.



Provide full compensation for workers when employers violate the law, including all additional costs incurred by workers as a result of employer violations.

Status For All

“

I left my country to save my life. Since coming to Canada with my daughter, I have searched many places to get help and information on how to get status here or claim refugee status. My 16-year-old daughter and I had no option but for both of us to start work, accepting exploitative working conditions through agencies because I have no work permit. We have suffered bullying from supervisors in the factories where we have worked. They pressure us because they know we come from an agency that uses undocumented people.

During the pandemic we were not allowed to apply for any government benefit. So we have to risk our lives and carry on working. With the pandemic, there is a lot of fear of going out to work, because we are forced to do so to survive.

– Mariana

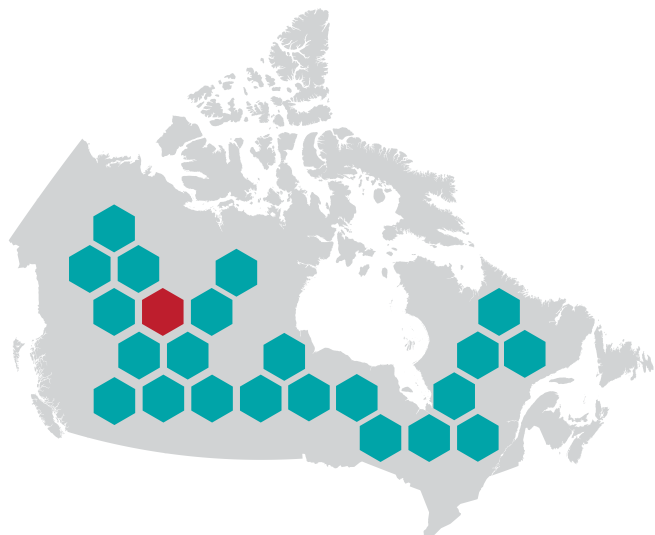
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Status for All

The pandemic has exposed the extreme precarity of migrant workers who not only face low pay and dangerous working conditions, but also the permanent threat of deportation for speaking out. Many migrants like Mariana lost work and wages during the pandemic, but many have been shut out of emergency income supports. Those without jobs were abandoned, facing a desperate situation trying to pay rent and buy food, often sacrificing essential health care. Others, like Gabriel (see below), were forced to keep working in dangerous conditions. Migrant workers working at farms, greenhouses, meat and food processing plants, and warehouses have been hit with COVID outbreaks. Thousands of migrants in health care were heralded as “guardian angels” and even though they worked throughout the pandemic, they face many barriers to regularising their status.

According to conservative estimates, there are 1.6 million temporary migrants in Canada.⁶² In other words, one in every 23 people in the country is a non-permanent resident. Migrants are essential workers. They grow food and take care of children, sick and the elderly. They are cleaners, construction workers, personal support workers, delivery workers, retail and grocery workers, and warehouse workers.

1 in every **23**
people in Canada is
a non-permanent
resident



“

You just know in construction that they don't follow the rules. They use people like me that don't have papers because they know I can't say anything. Even between us workers, we're afraid to talk about the problems with wages because you never know if it will get back to management. It is just too dangerous.

- Juan

”

Migrants work in some of the most dangerous and difficult jobs in Ontario yet they are paid some of the lowest wages. According to the 2016 census, 43% of non-permanent residents are low-income, compared to 13% of non-immigrants, and 18% of immigrants).⁶³

Precarious immigration status and immigration rules create conditions ripe for violations of minimum employment standards. Migrant workers who work on closed work permits are only allowed to work for the single employer listed on the permit. To leave abusive or unsafe work, migrants have only 90 days to find a new employer who must also be willing to pay a \$1,000 processing fee and file the required paperwork. This creates huge barriers to leaving, and finding, another job.

Migrants on study permits or other work permits have restrictions on where and for how many hours they can work. Often this does not provide enough income to survive. Migrants have faced deportation for working over the allowable number of hours.⁶⁴ For others, confusing and complicated immigration rules that do not address the reality of migrants' lives leave people without status. There are over 500,000 people in Canada without status and they are particularly vulnerable to abuse.

Migrant workers not only face reprisals at work when they speak out about bad or dangerous working conditions, they can also face deportation. As Gabriel explains:

“

I was punished for speaking up for my rights. What happened to me can, and does, happen to many migrant workers.

I came to work on Scotlynn farm in April 2020. Once we got to work, I saw that the housing conditions were very bad; it was impossible to keep distance. At work, they pressured us a lot. It was impossible to keep distance in the field or in the packing house, and we were mixed with workers from other houses. The employer never gave us protective gear – no gloves, no masks, no antibacterial gel. This situation created the perfect conditions for the COVID outbreak that made us ill.

Those who were getting sick and many others of us asked to get medical attention. They ignored us. It was not until the workers themselves called an ambulance for a coworker who was in serious condition that the employers began to pay attention. When we got tested, 199 of us were positive for COVID, including me. Five of our coworkers ended up in the hospital. Juan López Chaparro, who I shared a house with, died.

I was very unhappy with the conditions and mistreatment that led to this crisis and that is why I spoke to the press, anonymously. The owner of the company accused me of having spoken to the press in a video and said that they would be sending me back to Mexico at dawn the next morning.

What happened to me is what happens to migrant workers when they try to defend their rights. We have been subjected to a system of temporary immigration where, if we stand up for ourselves, we are deported. I deserve dignity. All of us deserve dignity. That is why we need permanent resident status now, so workers can have the power to protect ourselves. Our health, our well-being, our families, and our lives depend on it.

– Gabriel⁶⁵

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We call for a single-tier immigration system, where everyone in the country has the same rights. All migrants, refugees and undocumented people in the country must be regularised and given full and permanent immigration status. All migrants arriving in the future must do so with full and permanent immigration status.

Recommendations:

Support federal legislation that will establish:



Permanent residency status upon arrival for all new migrants.



Permanent residency status for all migrant and undocumented workers already here.

Ending Racism, Discrimination and Workplace Bullying

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There is a lot of preferential treatment if you are white, especially in home care. If you are a person of colour, you do not get the shifts that you need. If you speak up, then you get punished by not getting the shifts you ask for.

PSWs who speak English as a second language aren't taken as seriously when they make a complaint about client abuse. One time I heard a manager tell a coworker that it [the abuse] was probably because the client didn't understand her. But for someone else, the complaint will be taken seriously and they will call the family right away.

– Gloria

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Ending Racism, Discrimination and Workplace Bullying

Racism in the labour market means Indigenous, Black, Latinx, Asian, Filipino, and other workers of colour are forced into the worst jobs, with the least protections, lowest wages and highest precarity. Racism determines how you get hired, whether you can speak up and what happens when you do. The recommendations in this report are central to addressing racism and sexism in our labour markets.

The racial and gendered wage divide is one of the most persistent features of the labour market. That is why we recommend raising the wage floor by increasing the minimum wage to at least \$20 per hour. Equal pay for equal work will help Black workers, non-white racialized workers, and recent immigrants who are more likely to be in involuntary part-time, temporary and contract employment to achieve equality in wages. Enshrining just cause protection in the ESA will make it easier for racialized and women workers to speak up about workplace problems, including discrimination, without fear of retaliation. Stopping misclassification of employees as independent contractors will help ensure that Indigenous, Black, Latinx, Asian, Filipino and other workers of colour who are disproportionately pushed into sectors where misclassification is common can access basic employment rights. Some features of the structural racism that forces recent immigrants and racialized workers into temp agency work will be addressed by

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One childcare centre that I really enjoyed working at had mostly white women working at it. For us Black and Brown women trying to get full-time positions, it was impossible. We all ended up having to leave because white women were the only ones that got the full-time positions.

– Tanisha

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improving protections for temp agency workers. Ensuring status for all will provide equal rights for migrants. Improving labour and employment laws are central to racial justice.

Our society should value people's right to dignity and respect. Yet thousands of us suffer from psychological harassment and bullying in the workplace. While Ontario introduced changes to the *Occupational Health and Safety Act* requiring employers to develop a workplace harassment policy, there is nothing to ensure the employer makes the workplace free from bullying, or that the employer takes reasonable steps to prevent and stop bullying when they become aware of any problems.

Meanwhile, the chronic underfunding at the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario, has made it harder for workers to find relief from human rights violations at work. Delays, backlogs, and understaffing has resulted in years-long processes, with all the associated mental and emotional anguish. Justice delayed is, as we all know, justice denied.

Recommendations:



Actively campaign for the elimination of racism, discrimination and workplace bullying.

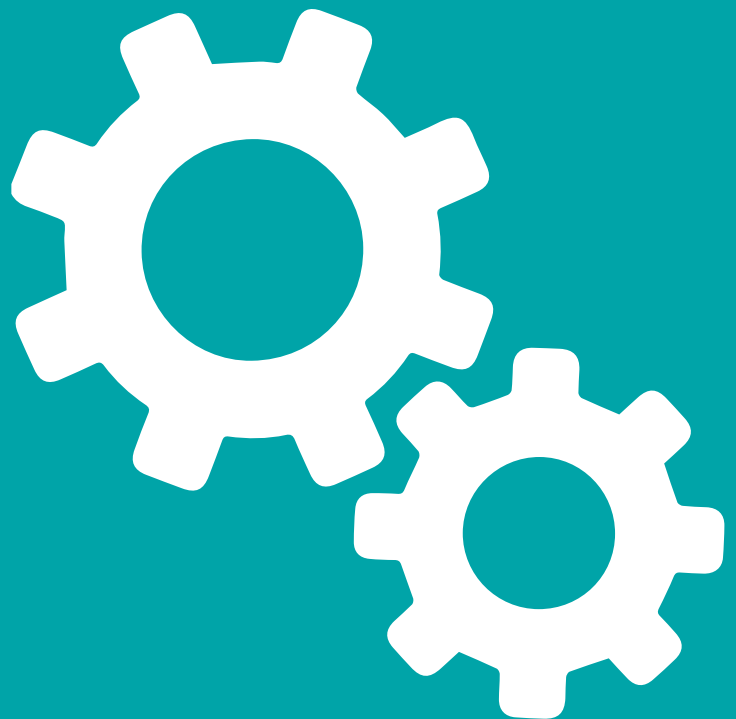


Take all necessary steps to provide full and adequate funding, staffing and resources that will result in more effective and accessible human rights complaints processes.



Adopt legislation that will provide effective and enforceable protection from workplace harassment and bullying.

Conclusion & Recommendations



Conclusion and Recommendations

The COVID pandemic highlighted the longstanding gender, racial and economic inequalities in our labour market. This report documents the gaps in our labour and employment laws that enabled the pandemic to deepen those inequalities. As we come out of COVID, it is critical that we act now to address these inequalities. That means strengthening Ontario's employment laws, closing the gaps and loopholes that give rise to precarious work; eliminating employer incentives to create low-wage, part-time, and unsafe work; enforcing the law and implementing meaningful penalties when employers break the law. Members of the Workers' Action Centre have developed the comprehensive strategies outlined in this report that, if implemented, offer a pathway to decent work for all.

Decent Wages

Adopt legislation that will:

- ◆ Provide a \$20 minimum wage for all.
- ◆ Protect the existing legislated annual wage adjustment so wages keep up with rising prices.
- ◆ End sub-minimum wage rates and remove all exemptions to the general minimum wage for students, farmworkers and others.

Decent Hours

Adopt legislation that will require employers to:

- ◆ Provide employees with a guaranteed minimum number of hours of work each week.
- ◆ Provide employees with their work schedules two weeks in advance.
- ◆ Offer additional paid hours of work to existing employees before hiring new staff.

Paid Sick Days

Adopt legislation that will:

- ◆ Require employers to provide at least 10 employer-paid emergency leave days per year plus an additional 14 paid days during public health outbreaks.
- ◆ Prevent employers from requiring employees to provide doctors' notes to access paid emergency leave days.

Equal Pay for Equal Work

Adopt legislation that will require employers to:

- ◆ Provide equal pay and benefits for equal work regardless of whether the employee works part-time, on contract or through a temporary agency.
- ◆ Provide equal pay and benefits regardless of workers' gender, racialization and/or immigration status.
- ◆ Publish the wage and salary scales for all employees.

Laws That Protect Us All

Close loopholes, end exemptions

- ◆ Adopt legislation that will expand the *Employment Standards Act* to include all workers, close loopholes and end all exemptions to minimum standards.

Shifting employer liability

Adopt legislation that will:

- ◆ Make companies fully responsible for wages, working conditions and collective bargaining, when they use temp agencies, franchises and/or subcontractors.
- ◆ Make employers who enter into contracts with subcontractors and other intermediaries (either directly or indirectly), liable both separately and together for wages owed and for statutory entitlements under the ESA.
- ◆ Preserve the employment, wage rate, benefits, and union rights of existing or subcontracted workers whenever a contract is put out to tender or when a business is sold.

Protect gig workers: end misclassification

- ◆ Repeal the *Digital Platform Workers' Rights Act, 2022*.

Adopt legislation that will:

- ◆ Ensure all staff are presumed to be employees under the law.
- ◆ Establish the “ABC test” as the means of establishing whether a worker is, in fact, an independent contractor, where:
 - A. The worker is free from control and direction of the hiring entity in connection, both under the contract and in fact, for the performance of the work;
 - B. The worker performs work that is outside the usual course of the hiring entity’s business; and,
 - C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Real Protections for Temp Agency Workers

Adopt legislation that will:

- ◆ Make companies financially responsible under the *Workers Safety and Insurance Act* for the death and injuries of temporary agency workers.
- ◆ Ensure all temporary agency workers earn the same wages as directly-hired workers when doing substantially the same work.
- ◆ Ensure all temporary agency workers are hired directly by the client company after three months on assignment.
- ◆ Protect temporary agency workers from being fired before the deadline to be hired directly.
- ◆ Ensure employers must provide just cause (a good reason) for terminating an assignment.

Make it Easier to Join a Union

Adopt legislation that will:

- ◆ Ensure workers have the right to join unions by signing a union membership card
- ◆ Allow workers to form unions across franchises and subcontractors.
- ◆ Enable broader-based bargaining where workers can bargain across regions or sectors of work.

Protection from Unjust Dismissal

Adopt legislation that will:

- ◆ Ensure employers must provide just cause (a good reason) for terminating an employee.
- ◆ Provide principles of progressive discipline for employers to follow to avoid unjustly dismissing employees.

Make Employers Follow the Law

- ◆ Adopt legislation that protects workers who stand up for their rights at work and ensure the onus is on the employer to prove wrong-doing.

In addition, the government must take all necessary steps, including hiring additional staff, to accomplish the following:

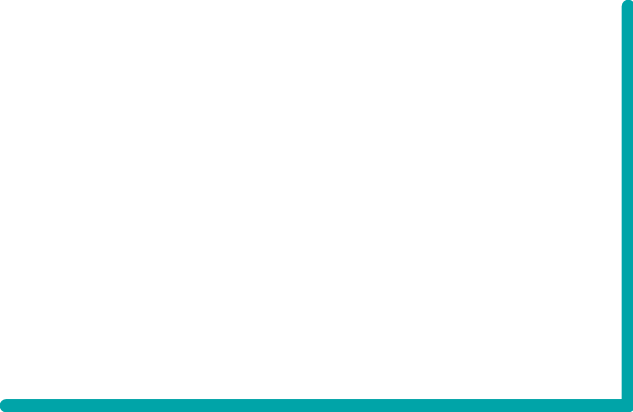
- ◆ Initiate more surprise inspections of workplaces.
- ◆ Institute bigger and more meaningful fines when employers break the law.
- ◆ Provide full compensation for workers when employers violate the law, including all additional costs incurred by workers as a result of employer violations.

Status for All

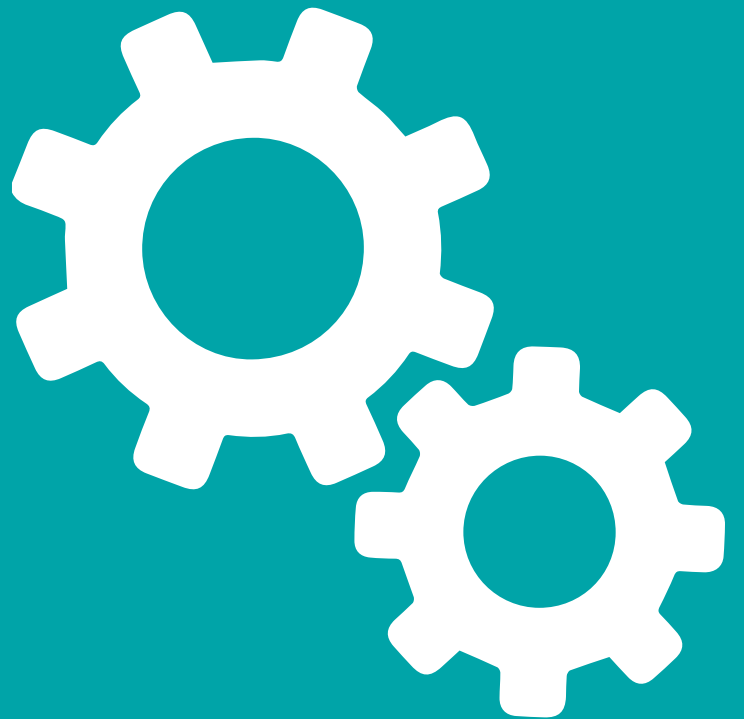
Support federal legislation that will establish:

- ◆ Permanent residency status upon arrival for all new migrants.
 - ◆ Permanent residency status for all migrant and undocumented workers already here.
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Ending Racism, Discrimination and Workplace Bullying

- ◆ Actively campaign for the elimination of racism, discrimination and workplace bullying.
 - ◆ Take all necessary steps necessary to provide full and adequate funding, staffing and resources that will result in more effective and accessible human rights complaints processes.
 - ◆ Adopt legislation that will provide effective and enforceable protection from workplace harassment and bullying.
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