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REASONS TO IMPROVE EMPLOYMENT STANDARDS ENFORCEMENT IN ONTARIO

Research Brief #1

For the 73 percent of Ontario employees who aren't unionized, the *Employment Standards Act* (ESA) sets minimum conditions for wages, working time, vacation and termination. It's a baseline for both unionized and non-unionized workers below which working conditions shouldn't fall.

Yet growing evidence shows that the ESA is failing to provide a floor of rights for Ontario's employees, leaving many people vulnerable to many types of violations.

The Closing the Enforcement Gap research partnership is carrying out cutting-edge research to understand the nature and prevalence of employment standards (ES) violations and how enforcement of the ESA could work better for workers.* In our first research note, we explore five reasons why improving employment standards enforcement matters for all of us.

1 PRECARIOUS JOBS ARE COMMON

Ontario's labour market is changing. About one in three of us are working in jobs with low pay, many of which are in the service sector, which now accounts for 79 percent of all jobs in Ontario.¹ The share of Ontario employees who work for the minimum wage increased five-fold between 1997 and 2014,² growing to almost 12 percent. The number of Ontario employees who earn near the minimum wage (\$15 or under) has also grown by nearly 50 percent,³ and is now almost 33 percent.⁴

Workers in low wage jobs are more likely to have unstable schedules and insecure employment contracts. Subcontracting arrangements are being used in many workplaces. This involves outsourcing the hiring, management and firing of employees to sub-contractors and temporary help agencies. Competition among such sub-contractors puts downward pressure on wages and working conditions, and often leads to ES violations.⁵



“ Every job these days is through a temp agency...† ”

* This research brief stems from “Closing the Employment Standards Enforcement Gap: Improving Employment Standards Protections for People in Precarious Jobs,” a partnership involving researchers from eight Ontario universities and 16 cross-sectoral partner organizations. Funded by the Social Sciences and Humanities Research Council (SSHRC) and based at York University, the five-year project seeks to inform effective employment standards enforcement in Ontario.

† As part of “Closing the Enforcement Gap,” researchers have interviewed dozens of workers about their experiences on the job. In this brief, we share workers' voices from a few of these interviews.

The effects of precarious employment extend beyond the workplace. Many workers in precarious jobs experience difficulty managing their households and caring for family members, and they are more likely to suffer adverse health effects because of their jobs.⁶

Precarious employment is part of growing inequality in Canada. Between 1985 and 2005, inflation-adjusted earnings of the bottom 20 percent of workers fell by 21 percent while the earnings of the top 20 percent *increased* by 16 percent.⁷

While precarious employment is common across Ontario's workforce, women, racialized people, recent immigrants, youth and single parents are more likely to work in precarious jobs.⁸ A full 19 percent of recent immigrants work for the minimum wage. Women are more likely to work at minimum wage in all demographic groups and 26 percent of women who are recent immigrants are working for minimum wage, 3 times the rate of the total population.⁹

The rise of precarious employment and its negative impact on workers, families and communities makes strong, effective employment standards more important than ever.

“ You basically don't have a life, you can't schedule anything, you can't meet friends. You can't go to doctor's appointments, they are impossible to make... You are literally powerless when it comes to scheduling. ”

“ I needed my pay cheque... you fire me for no reason my bills don't stop. They still come in. I have kids. ”

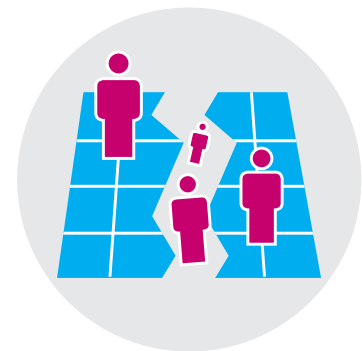
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MORE WORKERS RELY ON THE ESA, BUT TOO FEW ARE PROTECTED

Declining rates of unionization in Ontario mean that more and more employees rely on the ESA as their only source of workplace protection. But too many workers face exemptions and special rules related to their jobs or workplaces. For example:

- Certain farm employees are exempt from ESA provisions around minimum wage, hours of work, daily rest periods, time-off between shifts, weekly/bi-weekly rest periods, eating periods, overtime, public holidays and vacations with pay.
- Individuals in supervisory roles in any workplace are not covered by the ESA's provisions on hours of work, overtime, time off between shifts, weekly/bi-weekly rest periods and overtime.
- Information technology workers are exempt from the ESA's protections in the area of overtime, hours of work, daily rest periods, eating periods, time off between shifts, and weekly/bi-weekly rest periods.
- The ESA's rules on personal emergency leave apply only to employees in a workplace that regularly employ 50 or more.

Too many loopholes have made the ESA a confusing patchwork of standards, exemptions and special rules, instead of a basic floor of rights for all employees.



Loopholes & exemptions

are lowering the basic floor of rights

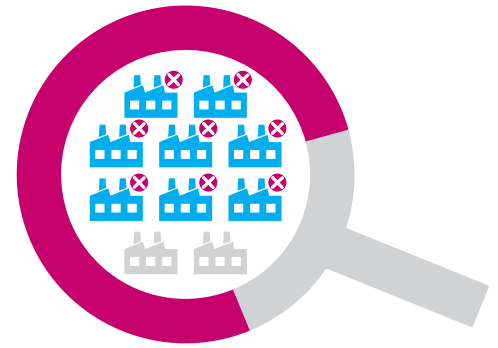
3 EMPLOYMENT STANDARDS VIOLATIONS ARE NOT JUST A PROBLEM OF BAD APPLES

While there is a tendency to blame ES violations on a few “bad apples”, there is growing evidence that violations are widespread in Ontario workplaces. Employers who violate ES are more than an unfortunate exception to the rule.

The Ministry of Labour carried out five proactive inspection blitzes between 2012 and 2014.. Blitzes targeted temporary help agencies, retail services and other sectors where precarious work is common. Results from these blitzes showed that violations in these sectors were the norm, not the exception. Of the 803 workplaces the Ministry inspected in this period, 77 percent were found to have violated the ESA.¹⁰

A survey of over 500 workers in precarious jobs carried out by the Workers' Action Centre in 2011 found that one in three employees had experienced wage theft in the last 5 years. Close to 40 percent reported never receiving overtime pay, despite working more than 44 hours per week.

ES violations have become a daily reality for many Ontario workers.



77% of employers had ES violations in recent Ministry of Labour inspections blitzes

4 WORKERS OFTEN DON'T COMPLAIN

The overwhelming majority of the Ministry of Labour's enforcement resources go toward a complaints system that requires workers to come forward with claims of workplace violations. Yet the Auditor General of Ontario found that only 10 percent of complaints received by the Ministry are from employees still on the job they are complaining about.¹¹ Power imbalances in the workplace can make filing a complaint very risky. Workers are vulnerable to employer retaliation, such as receiving undesirable assignments and schedules, being harassed or even terminated.

For other employees, ES violations become normalized in many workplaces. Workers may not see violations as unusual, resolvable or even illegal, and because of this perception, they don't complain. Researchers in the U.S. estimate that for every one complaint lodged in that context, there are about 130 ES violations.¹²

In Ontario, the number of complaints filed with the Ministry of Labour is dropping, despite the growing number of non-unionized employees in the labour force. In 2008-09, the Ministry of Labour received roughly one complaint per every 175 non-unionized employees in the province, whereas in 2012-13, the Ministry received roughly one complaint per every 270 non-unionized employees.¹³



U.S. researchers estimate that for every

130 violations, only **1 complaint** is filed

“ I have the liberty to leave, but otherwise I feel trapped. Just because of my economic circumstances. ”

This drop in claims occurred alongside the introduction of a new requirement for most employees to try and resolve their claims directly with their employers before filing a complaint. Given power imbalances in many workplaces, this new requirement risks making employees even more reluctant to file a complaint with the Ministry of Labour.

5 EMPLOYMENT STANDARDS VIOLATIONS OFTEN GO UNPUNISHED

The risk of employers getting caught violating the ESA is very small due to the limited resources for proactive inspections.

At the same time, serious penalties that could deter employers from violating ES are rarely applied. When the Ministry of Labour orders an employer to pay unpaid wages, usually the employer is only asked to pay the amount owed in the first place plus a small administrative fee.

Deterrent penalties, including Notices of Contraventions (starting at \$250 for a first contravention) and Prosecutions, are only used by the Ministry of Labour if employers don't voluntarily pay or ignore a formal order to pay. Even then, they are used infrequently.

In 2012-13, there were only 286 prosecutions initiated out of 12,344 claims investigations.¹⁴

Orders to pay issued to employers often go uncollected. According to the Toronto Star, based on data from the Ministry of Labour, only 27 percent of orders to pay were collected by the Ministry of Labour in 2014.¹⁵

The low risk of detection, and the unlikely chance of facing heavy penalties if caught, creates strong economic incentives for employers to violate the ESA.

CONCLUSION

As precarious employment affects more workers, the need for strong and effective employment standards grows.

Strengthening the enforcement of the ESA will improve working and living conditions for all Ontarians. Improved enforcement also makes good business sense by promoting a level playing field for employers.

Stronger ESA enforcement includes more support for workers reaching out for help, expanding proactive inspections, stiffer penalties and effective collection of unpaid wages. Visit closeesgap.ca to learn more about closing the ES enforcement gap.



In 2012-13 there were only **286 prosecutions** initiated out of **12,344 investigations**

“ Most people [want to] have a good life... Because these problems are not unique, they are typical... The government needs to enforce the law strictly and equally. ”

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