

Windsor
Workers'
Action Centre

Bill 68: Opens doors for Business, Closes doors for Workers

November/
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Background Information

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Since the downturn of the economy in 2008, there has been a significant increase in the amount of workers employed in temporary or part-time jobs. As of October 2010, 37% of the workforce in Ontario do not work in full-time positions. These precarious workers have been documented as enduring more difficult work schedules, low wages, and job uncertainty. The Employment Standards Act was introduced in 1969, when full-time employment rates were high and the economy was booming. When the ESA was signed into legislation there was no prominent concern or premonition that the economy may dramatically change and require a new standard to deal with completely different workplace conditions. Only 28 percent of workers in Ontario are unionized, leaving a majority of workers reliant upon their own to ensure that their basic employment rights are being satisfied. The growing minority of unionized workplaces have accentuated the necessity for a strong ESA that is properly regulated by the provincial government to protect workers' interests.

Temporary and part-time workers have had to bear the worst misfortunes of the economic downturn, struggling to receive any kind of termination or severance pay when they were either laid off or their firms became bankrupt or insolvent. Many workers still employed in temporary jobs face employers who have tried to escape the scope of the ESA by misclassifying employees as "independent contractors", hiring actual independent contractors, and outsourcing work to intermediary contractors. The temporary worker faces an ambiguous situation of being under two bosses: the

agency and company for whom they work. If they bring up an issue with either employer, the client company rescinds the assignment and the agency denies the availability of work.

The current system is failing workers, in 2008/09 alone, over \$48 million in termination and severance pay ES claims alone have not been paid to workers. These legally owed monies are the last funds that a worker receives to support themselves or their families when they are laid off. When their employers fail to pay these wages, workers and families suffer greatly. The Federal Wage Protection Program inadequately covers most workers' losses and if the firms become insolvent with bankruptcy, Program offers no protection at all. Furthermore, once workers file a claim for termination and severance pay, they find that they have to wait up to a year for their claim to be investigated. The social and economic consequences extend across communities, including cities, the province, and at the national level. All taxpayers are affected, paying for a dysfunctional system that often fails to recover any money for workers. Even if the workers receive any of their money, the financial damage is already done.

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Harsher penalties for violating the Employment Service Act need to be put into place to deter employers from breaking the law. As it currently stands, employers are only fined \$350 for a first time offense. For August 2010 the average fine for being convicted of an offence under the ESA was \$360. This lack of an appropriate punishment for the injustice done to workers undermines the purpose of the ESA in protecting workers from exploitation. Workers lose an essential source of income and suffer unimaginable stress when laid off. This situation is made much worse when an employer fails to pay termination and severance pay. When thousands of dollars for multiple employees are withheld, this causes widespread devastation across families and communities.

Special points of interest:

- Bill 68 will make a bad situation worse
- Why the system is broken
- The need for positive changes in the Employment Services Act

Bill 68 Will Make a Bad Situation Worse

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Under Schedule 9 of Bill 68, which restructures the Employment Standards Act, 2000 (ESA), an employee who wishes to file a complaint with the Ministry of Labour has to first inform their employer of the employment standards' violation, including if the

employer has failed to pay the appropriate wages or provide the adequate entitlements due. Except for a few exceptions, claims for unpaid wages and employment standards rights will not be considered until this process is completed.

This change in legislation will greatly undermine workers' basic rights. The reform fails to address:

1. Workers' reluctance to approach their employer over violations for a fear of punishment or blacklisting. This is especially true with temporary workers who depend on their job to support their own essential ability to live. In times of high unemployment and economic uncertainty, concerns over job insecurity are heightened.
2. Many workers will not understand how to go about filing a complaint through a new employment standards process that requires workers to prove those claims. The majority of temporary workers are immigrants or racialized individuals who have literary as well as language issues, leaving them vulnerable to being easily deterred from confronting their employer. Young workers are also usually unaware of their basic right in addition to knowing how to undergo a process to lodge a formal claim.

Bill 68 does not effectively tackle the primary problem of the ineffective and inefficient enforcement of the ESA by the Ministry of Labour. This is largely due to the vast reduction of funding for enforcement over the last thirty years. While the ESA has expanded to cover more workers, such as temporary workers, there has been a decrease in funding for the program, allowing for employers to violate the standards without fear of reprisal. In the span of 1997 to 2007, the funding for the Employment Standards Program has decreased by 33 percent as the number of workers covered for the program has risen by 24 percent.

Giving Employment Standards Officers more powers to facilitate workers and employers into a settlement is also problematic since it would most likely

lead to the settlement of monies less than the worker claimed. Most of the pressure in resolving cases would become ESOs' responsibility, whose prominent interest would be to settle deals by reducing workers claims. Ultimately, this would lead to standardizing of the minimum rights set out by the ESA, which would greatly undermine workers' interests. Not only would this weaken deterrence in deviating from the law set out in the ESA, but challenge the authority of the standards in principle.



Solutions

- A) More funding and resources for standards enforcement to not only deal with the backlog of 14,000 claims, but to ensure a more aggressive challenge to those employers who are violating the law or contemplating doing so. This would eventually lead to reduced enforcement costs once strict standards were set in place.
- B) Do not require workers to first attempt self-enforcement before submitting an ESA claim. This would require the worker to have a comprehensive understanding of their ESA rights, determine what rights were violated and amount of wages owed, write up a request for unpaid wages, and contact their employer to request ESA entitlements. Most workers would be deterred from seeking enforcement, thus reducing the effectiveness of detecting violations of the ESA.
- C) Do not require workers to provide information on claims before they are considered by the Ministry of Labour. This would be a difficulty for those with language and literacy issues. The Ministry of Labour needs to ensure that workers are filling out the correct information for effective and efficient claims investigations.
- D) Allow Employment Standards Officers to set time limits for employers and workers to provide information or require participation in a decision making meeting. If the employer fails to respond, the ES Officer shall make a decision on the nature of this complaint. This is already the case with human rights and small claims and would effectively deal with the current issues of backlog and make the claims process more efficient.
- E) No facilitated settlements.
- In regards to the issue of severance and termination pay, the Windsor Workers' Action Centre proposes the creation of a trust fund to ensure that employers fulfil their legal obligations to the workers. This would greatly reduce the amount of time along with legal and government costs associated with Ministry of Labour investigations, court proceedings, and the Wage Protection Program.

