

Bill 148, Fair Workplaces, Better Jobs Act,
2017

OECTA Submission to the Standing
Committee on Finance and Economic
Affairs

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	PERSONAL EMERGENCY LEAVE – DOMESTIC AND/OR SEXUAL VIOLENCE LEAVE	2
3.	MINIMUM WAGE – EXEMPTIONS	5
4.	CONCLUSION	8
5.	RECOMMENDATIONS	8
6.	WORKS CITED	9

1. INTRODUCTION

1.01 The Ontario English Catholic Teachers' Association (OECTA) welcomes the opportunity to present issues that are of importance to our 45,000 members as the Standing Committee on Finance and Economic Affairs reviews and considers amendments to Bill 148, *Fair Workplaces, Better Jobs Act, 2017*.

1.02 Since the passage of the *Employment Standards Act (ESA)* and *Labour Relations Act (LRA)* two decades ago, trends in globalization and technology have fundamentally altered the nature of work and workplaces across the globe. In Ontario, these changes have produced a growing realization that the ESA and LRA no longer adequately recognize or protect Ontario workers, specifically those in precarious employment.

1.03 As the organization representing Catholic teachers in Ontario, we see the consequences of precarious employment every day, in a variety of ways. It affects our colleagues; cuts to transportation have resulted in rampant job insecurity for school bus drivers, whose routes may be transferred without notice to another company, forcing drivers to reapply for jobs they have held for years (UNIFOR, 2016). It affects the parents in our school communities; a recent study found that parents in precarious work situations are three times more likely to be unable to purchase school supplies and clothing for their children (POPSO, 2015). And it affects our students; the Organization for Economic Co-operation and Development (OECD) has concluded that precarious work disproportionately impacts young people entering the labour market, who are far more likely to serve in temporary or insecure positions, and who are at greater risk of enduring poverty (OECD, 2015).

1.04 Acknowledging this reality, in 2015 the Government of Ontario appointed Justices C. Michael Mitchell and John C. Murray to conduct the *Changing Workplaces Review (CWR)*. On May 23, 2017, the final report was released, which concluded that the changing

nature of work has disadvantaged far too many Ontario workers and their families. In response, the CWR proposed 173 recommendations that would create “better workplaces in Ontario, where there are decent working conditions and widespread compliance with the law” (*Changing Workplaces Review Final Report, 2017*).

1.05 Many of these recommendations are included in the government’s proposed Bill 148, which reflects broad acceptance of the CWR’s conclusions. Undoubtedly, many of the provisions outlined in the *Fair Workplaces, Better Jobs Act* will improve the lives and livelihoods of Ontario workers. However, there are several features of Bill 148, particularly in the areas of domestic violence leave and minimum wage exemptions, which remain problematic and have the potential to create gaps that further disadvantage workers across Ontario.

1.06 Having reviewed the proposed Bill 148, OECTA has several recommendations for amendments that will contribute to a legislative framework that ensures fair and decent work in Ontario. We thank the Standing Committee on Finance and Economic Affairs for receiving this submission.

2. PERSONAL EMERGENCY LEAVE – DOMESTIC AND/OR SEXUAL VIOLENCE LEAVE

2.01 We are pleased that Bill 148 proposes to remove the 50-person threshold, and extend Personal Emergency Leave (PEL) to all Ontario workers. This will ensure that the 1.7 million Ontario workers who remain ineligible for PEL are given the dignity of being able to take time away from work to deal with personal illness or family issues (Statistics Canada, 2014).

2.02 However, at the same time, subsection 50(1) of the legislation proposes to amend the reasons for which PEL may be taken, to now include “experiencing sexual or domestic

violence or the threat of sexual or domestic violence.” Although we applaud the government for explicitly recognizing that the victims of sexual and/or domestic violence are often in legitimate need of time away from work, we are troubled by the proposal that this time should be part of the regular 10-day PEL allotment.

2.03 The reality is that every day people bring the impacts of sexual and domestic violence with them to work. Those who experience domestic violence endure physical injury, sleep deprivation, and significant psychological stress, among other factors (OFL, 2016). In addition, research from the Canadian Labour Congress and Western University found that 53.5 per cent of people who experience domestic violence will also experience some form of abusive act at or near the workplace. These acts can range from abusive phone calls or text messages, to stalking and harassment, or worse (CLC, 2015).

2.04 For those who experience domestic or sexual violence, the overwhelming majority of whom are women, the decision to leave an abusive domestic relationship can be arduous. For instance, a victim may need take time off work to obtain an order of protection, engage in safety planning, seek medical attention, obtain counselling services, secure legal assistance, and/or find childcare. In the most extreme cases, they must relocate.

2.05 This process can be time-consuming and financially burdensome. It has been well established that economic independence is particularly important for women escaping abusive relationships (Bettio and Tici, 2017; OFL, 2016; Bhatt, 2016). Thus, for women who experience domestic or sexual violence, stable employment and job security are absolute imperatives, and can ensure women have the resources necessary to extricate themselves from abusive domestic relationships.

2.06 Given this, the inclusion of domestic and sexual violence as part of the 10-day PEL allotment is counterproductive. By requiring workers to access PEL days for domestic

violence, workers may be forced to choose between their health and safety, and their employment. This will have several detrimental consequences. First, accessing PEL for the purpose of domestic or sexual violence will shorten one's entitlement to take much-needed time off should instances of illness or bereavement subsequently arise. Second, of related and equal concern, allotting only two PEL days of paid leave is woefully inadequate to ensure one's economic and employment stability during the process of recovering from sexual violence or leaving an abusive domestic relationship.

- 2.07** Instead, the government should establish a designated leave for survivors of domestic and/or sexual violence. In doing so, Ontario would not be breaking new ground. Across Canada, legislation that creates a category of designated leave for domestic and/or sexual violence has already been either passed or proposed in Alberta, Manitoba, Saskatchewan, and British Columbia.
- 2.08** Similar provisions have also been proposed in Ontario. In September 2016, London West MPP Peggy Sattler introduced Private Member's Bill 26, the *Domestic and Sexual Violence Workplace Leave, Accommodation and Training Act*. Bill 26 would provide 10 days of paid leave for survivors of domestic and sexual violence, as well as additional unpaid leave, workplace accommodations, and training. Although Bill 26 unanimously passed second reading, it has not been referred to committee. Unfortunately, the provisions surrounding domestic and/or sexual violence proposed in Bill 148 fall well short of those proposed by Ms. Sattler in Bill 26.
- 2.09** Creating dedicated leave for domestic and/or sexual violence will by no means fix the issue; however, it would represent an important step in ensuring that victims/survivors have access to critical services and resources.

Recommendations:

That the government repeal subsections 50(1) and 50(2) of the ESA.

That the government amend section 50.0.1 of the ESA to add a designated leave category for domestic and/or sexual violence.

That the government make the domestic and/or sexual violence leave category accessible to all employees who experience domestic and/or sexual violence, or the threat of domestic and/or sexual violence.

That the government provide a total 10 days of paid leave and up to 60 days of unpaid leave for employees who access leave under the domestic and/or sexual violence category.

That the government recommend that an employee who wishes to take leave under the domestic and/or sexual violence category shall advise his or her employer that he or she will be doing so. If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

3. MINIMUM WAGE – EXEMPTIONS

3.01 The proposed increase to a \$15 minimum wage will have important benefits for Ontario workers; no full-time worker should face the prospect of living in poverty. There are also broader economic advantages associated with minimum wage increases. Research shows that household purchases account for 57 per cent of Canada's Gross Domestic Product, and households with lower incomes tend to spend a greater proportion of their money on

the local economy (Statistics Canada, 2017). Thus, when lower-income households experience a sustained increase in income, that money tends to be spent entirely back into the economy. In this sense, the increase in minimum wage will not only improve the lives of workers, but also will benefit the Ontario and Canadian economies from the bottom-up.

3.02 It is crucial that the government has proposed to embed the minimum wage into the ESA legislation. With nearly 30 per cent of Ontario workers earning less than \$15 per hour (Yalnizyan, 2017), this decision will add further protection for workers, making it more difficult for any future government to arbitrarily reduce wages.

3.04 But the proposed legislation also includes exemptions that will inhibit certain workers in Ontario from benefiting from the increase to a \$15 minimum wage. Specifically, students and liquor servers will experience a proportionately lower minimum wage increase compared to general workers.

3.05 As the organization representing Catholic teachers in Ontario, we strongly object to including these exemptions as part of Bill 148.

3.06 Previously, the Ministry of Labour (2001) has argued that including a student exemption to the minimum wage promotes the hiring of students, who otherwise would be at a competitive disadvantage compared to older potential hires, who possess more experience. We find this logic to be counterintuitive to the spirit of the *Fair Workplaces, Better Jobs Act*. This approach does not address workplace inequality. It suggests that students' work is inherently less valuable than that of older workers. The government has accepted the CWR's conclusion of "equal pay for equal work." As such, to exempt students from the \$15 minimum wage does little more than bracket this group, and

subject them to a differential pay scheme. Not only does this promote age bias, but the government is also open to potential Charter violations surrounding discrimination.

3.07 Proposed exemptions for liquor servers rest on similarly flawed logic. Despite pretenses to the contrary, research clearly shows that more than 20 per cent of liquor servers earn less than the general minimum wage, even after taking gratuities into account (Vosko et al., 2015). Although tipping has become commonplace, it is critical to remember that *customary* is not *mandatory*. A person's ability to afford basic goods and services should not be left to the goodwill of patrons. What is more, the strong majority of the liquor service industry is comprised of women. Thus, to include an exemption that disproportionately disadvantages women not only embeds inequality, but also reinforces gender discrimination.

3.08 The proposed minimum wage exemptions for students and liquor servers in Bill 148 undermine the principles of universality and fairness upon which minimum standards legislation is based. These proposed exemptions not only reinforce inequalities, but also embed discrimination into legislation that purports to promote fair workplaces and better jobs. We therefore urge the government to remove these exemptions from the legislation surrounding the minimum wage.

Recommendations:

That the government amend subsection 23.1(1) of the ESA to remove minimum wage exemptions that pertain to students (23.1(1) para.1.i) and liquor servers (23.1(1) para.1.ii).

That the government repeal subsections 23.1(2) and 23.1(3) of the ESA.

4. CONCLUSION

4.01 The goal of Bill 148, building on the conclusions and recommendations of the *Changing Workplaces Review*, is to ensure that “fairness and decency must continue to be the defining values of [Ontario] workplaces” (Ministry of Labour, 2017). The *Fair Workplaces, Better Jobs Act* takes positive steps towards accomplishing this objective. However, if the government hopes to achieve true fairness and equality in Ontario workplaces, it must go further in key areas and strengthen the outdated *Labour Relations Act* and *Employment Standards Act*. Doing so has the potential to create fundamental and sustained positive change for all Ontario workers, today and for future generations.

4.02 We urge the committee to consider and adopt our recommendations, which ultimately would strengthen and improve the *Fair Workplaces, Better Jobs Act, 2017*.

5. RECOMMENDATIONS

5.01 That the government repeal subsections 50(1) and 50(2) of the ESA.

5.02 That the government amend section 50.0.1 of the ESA to add a designated leave category for domestic and/or sexual violence.

5.03 That the government make the domestic and/or sexual violence leave category accessible to all employees who experience domestic and/or sexual violence, or the threat of domestic and/or sexual violence.

5.04 That the government provide a total 10 days of paid leave and up to 60 days of unpaid leave for employees who access leave under the domestic and/or sexual violence category.

- 5.05** That the government recommend that an employee who wishes to take leave under the domestic and/or sexual violence category shall advise his or her employer that he or she will be doing so. If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.
- 5.06** That the government amend subsection 23.1(1) of the ESA to remove minimum wage exemptions that pertain to students (23.1(1) para.1.i) and liquor servers (23.1(1) para.1.ii).
- 5.07** That the government repeal subsections 23.1(2) and 23.1(3) of the ESA.

6. WORKS CITED

Bettio, Francesca, and Ticci, Elisa. (2017). *Violence Against Women and Economic Independence*. Luxembourg, Publication Office of the European Union.

Bhatt, Antra. (2016). "The Role of Economic Independence in Domestic Violence: Evidence from Africa." *Chicago Policy Review* (December 7, 2016).

Ministry of Labour. (2017). "Proposed Changes to Ontario's Employment and Labour Laws." May 30, 2017.

Ministry of Labour. (2001). *Employment Standards Act, 2000 Policy & Interpretation Manual*. Toronto: Carswell.

Mitchell, C. Michael, and Murray, John C. (2017) *The Changing Workplaces Review: An Agenda for Workplace Rights, Final Report*.

OECD. (2015). *In It Together: Why Less Inequality Benefits All* OECD Publishing, Paris.

Ontario Federation of Labour. (2016). *Domestic Violence Goes to Work Every Day: A Bargaining Guide*.

Poverty and Employment Precarity in Southern Ontario. (2015). *The Precarity Penalty The impact of employment precarity on individuals, households and communities —and what to do about it*.

Statistics Canada. (2014). *Table 281-0042 - Survey of Employment, Payrolls and Hours (SEPH), employment for all employees, by enterprise size and North American Industry*

Classification System (NAICS), annual (persons), CANSIM (database). Last updated March 3, 2017 (Accessed: Jul 13, 2017).

Statistics Canada. (2017). *Table 380-0064 - Gross domestic product, expenditure-based, quarterly (dollars unless otherwise noted), CANSIM (database).* (Accessed: July 13, 2017).

Vosko, Leah F., Noack, Andrea M., and Thomas, Mark P. (2016). *How Far Does the Employment Standards Act, 2000, Extend and what are the Gaps in Coverage? An Empirical Analysis of Archival and Statistical Data, Prepared for the Ontario Ministry of Labour to Support the Changing Workplaces Review of 2015.* Toronto: Queen's Printer for Ontario.

Wathen, C. Nadine, MacQuarrie, B. J., and MacGregor, J. C. D. (2014). *Can Work Be Safe When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace.* The University of Western Ontario, Centre for Research & Education on Violence Against Women & Children.

Yalnizyan, Armine. (2017). "Why a \$15 minimum wage is good for business," *Macleans*. June 2, 2017.