

Bill 18 – The Stronger Workplaces for a Stronger Economy Act, 2014

Submitted by

OCASI – Ontario Council of Agencies Serving Immigrants

to

Standing Committee on General Government

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Introduction

OCASI – Ontario Council of Agencies Serving Immigrants is the umbrella organization for the immigrant and refugee-serving sector in Ontario. The Council was formed in 1978 to act as a collective voice for immigrant serving agencies and to coordinate responses to shared needs and concerns. OCASI is a registered charity governed by a volunteer board of directors. We have more than 200 member agencies across Ontario. OCASI is a member of the Ministry of Labour (MOL) Vulnerable Worker Task Group. The Council is also a founding member of the Colour of Poverty/Colour of Change Network.

Employment is the number one settlement issue for immigrants, according to the landmark OCASI study, “***Making Ontario Home***” (July 2012). Immigrants and refugees are over-represented in precarious, part-time and contract work. They face a range of systemic barriers in becoming employed and remaining employed once hired. In addition, immigrants and refugees who are racialized, women, LGBTQ, people with disabilities, youth and older workers face specific equity-related challenges in employment, that are compounded by their status as immigrants and refugees. Migrant workers – especially those in low-skilled jobs – and workers without legal immigration status are further vulnerable given the threat of loss of status for the former and threat of deportation for the latter.

These factors as well as many others make immigrant, refugee, migrant workers and workers without immigration status vulnerable to abuse and exploitation by unscrupulous employers and employment agencies. Many workers lack adequate understanding of the labour protection law in Ontario, and therefore not aware when their rights and

entitlements are ignored or violated by the employer. Workers who are aware of the law may not have the ability to pursue their rights because of fear of loss of the job, loss of status for migrant workers, and threat of deportation. For many workers, violation of employment and safety standards is the norm rather than the exception. To be effective, any legislation put forward by government must also be mindful of the social, economic and immigration context that constructs and influences workers' vulnerability.

COMMENTS ON BILL 18

Bill 18 is an important initiative that promises to strengthen protection for all workers in Ontario. OCASI is putting forward these comments on the Bill with the purpose of strengthening protections for some of the most vulnerable workers in Ontario.

Temporary Agency Workers

According to the Ministry of Labour more than 600,000 people in Ontario have temporary jobs, many through temporary help agencies. People who work through temporary agencies work alongside co-workers doing the same job but for less pay, fewer or no benefits, increased job and income insecurity and little protection against employment standards violations. Far too many 'temporary' jobs last years.

Despite the introduction of Bill 139 – the Employment Standards Amendment Act (Temporary Help Agencies) in 2009, temporary agency workers continue to face many challenges including barriers to being hired directly by companies for more stable jobs, getting public holiday pay, and vacations and sick days. The Ministry of Labour 2013 inspection blitz has found that 70% of the temporary help agencies inspected were in violation of the Employment Standards Act (ESA)ⁱ.

Recommendations

- There should be joint liability between the client company and the temp agencies for ALL of the employer's obligations under the ESA.

- The ESA should be amended to require client companies and temp agencies to pay temporary agency workers the same wages and benefits as workers hired directly by the client companies.
- Amend s. 74.8(1)(8) of the ESA to eliminate barriers to client companies hiring temporary agency workers directly during the first six months by eliminating the fees charged by the temp agencies.
- Stop client companies from using temporary employees indefinitely by ensuring agency workers become directly-hired employees after a certain amount of time, and protect agency workers from unfair dismissals during that same period.

Removal of Time Limit and Monetary Limit

We are pleased to see the Bill extends the time period in which workers can file claims against employers for unpaid wages from six months to two years, and removes the \$10,000 limit on the amount of unpaid wages workers are allowed to claim. This is a much-needed change since time limits on the claim process has allowed many employers to not pay their employees what is owed to them.

OCASI is concerned that the six-month transitional provision included in the Bill will effectively deny the benefit of the extended time limit and the lifting of the monetary limit to employees who are currently owed wages. Further, while there is a time limit on workers to file a claim, there is no time limit on employers to respond to the claim or pay the workers where money is owed.

Recommendation

- Remove transitional provisions, namely ss.7(1) and 7(4).
- Impose strict time limits on employers to meet their legal obligations or to provide response to the claims. Failure on the part of employers to respond should lead to a default order being issued against them.

Ministry of Labour Poster and Employer Self Audit

At present, the ESA requires employers to display a poster prepared by the Ministry of Labour that provides information about employees' rights under the Act. Bill 18 recognizes that many employers do not display the poster and many workers never see it, and requires that employers provide each employee with the most recent poster published by the Minister of Labour. Further, Bill 18 would require employers to provide available translations of the poster but only **if they are requested** by the employee. This is particularly problematic given the over-representation of immigrants workers without legal immigration status working in low-waged precarious employment, many of whom face challenges in accessing information in English or French.

We believe that MOL has the main responsibility to make its posters accessible in different languages, and such a responsibility should not be downloaded to the individual employer. Further, poster translation should be professional and MOL must ensure the quality and consistency of the translation.

Recommendation

- The employer should be required to provide translation of the MOL poster for all workers who do not speak or read English as their first language. MOL should be responsible for providing and distributing posters in different languages to all workplaces in Ontario.

Bill 18 introduces the concept of “self-audit”, which requires employers to police themselves on their compliance with the ESA. According to MOL’s own evidence based on ‘blitz’ inspections employers continue to be in violation of the ESA, suggesting that the self-audit is of limited use. Further, as OCASI is aware through the experience of our member agencies that provide direct services, many immigrants and refugees, and especially workers without legal immigration status are part of the underground economy and more vulnerable to abuse and exploitation. These workers will typically not appear in any of the employer’s record.

Recommendation

- Should the “self audit” provision remain in the Bill, we propose an amendment to the proposed s.91.1(11) to read as follows:
 - (11) No employer shall provide a report required under this section that contains information that is false or misleading.
 - (11.1) A report filed by the employer must contain all information about all employees during the relevant time period, irrespective of their duration of work, and the manner in which they are paid.
- In addition, the ESA should be amended to impose an automatic fine on any employer who files a report that contains missing, false or misleading information, and such a fine should be increased on an escalated scale for each subsequent infraction by the employer.

Minimum Wage

OCASI welcomes the modest increase to the minimum wage, and commends the government for ensuring that it will increase in subsequent years by the inflation rate. Yet the new minimum wage still falls short of the living wage that is required for Ontario families to stay above the poverty line.

Recommendations

- The Government commits to reviewing a further increase to the minimum wage to make it a living wage.
- The Government commits to a more regular review of the minimum wage process, from the currently proposed five years to at least every three years, and ensures it does not prevent the implementation of minimum wage improvements between reviews.

In Ontario, workers in certain sectors continue to be subject to a lower minimum wage. While this is completely unfair to the worker, it has also led to situations where an employer has reclassified a worker to a job that is subject to a lower minimum wage – such as a restaurant worker reclassified as a “liquor server”, thus allowing the employer to pay a lower wage.

Recommendation

- The ESA should be amended to eliminate all minimum wage exemptions for *all* workers.

Temporary Foreign Worker Protection

OCASI is pleased that Bill 18 proposes to extend employment protection to all migrant workers in Ontario under the Federal Temporary Foreign workers Program. At the same time, certain provisions of the Bill, if implemented, may put migrant workers at great risk, such as:

- Provisions that give Cabinet the power to make regulations to recover costs from migrant workers.
- Provisions that give Cabinet the power to require employers to notify the government when employment has ended (which can be used as a threat of deportation by employers).
- The two-year time limit for filing a claim by migrant workers will not start to run until after their contract with an employer has come to an end.

The government of Ontario should consider learning from the experience of other provinces that have adopted certain measures to protect migrant workers, by adopting the following legislative amendments:

Recommendation

- Extend joint responsibility to both employers and recruiters for any violation of employment standards and other workplace safety standards.
- Require recruiters to provide a guaranteed security deposit from which migrant workers can be compensated when recruiters violate the laws.
- Require employers to register with the MOL and file employment contracts with the MOL.
- Allow third-party complaints and fast-track investigations where reprisals are alleged.

Conclusion

There are a variety of other areas of vulnerability for Ontario workers that are not addressed by Bill 18. As stated in the introduction, certain workers are more vulnerable to abuse and exploitation, as well as facing systemic barriers due to a number of factors – particularly immigrants, refugees, migrant workers and immigrants without status. Ontario's immigration-driven demographic shift continues to change the face of communities across the province. Therefore the need to ensure that legislation and regulations address the realities of these workers will become ever more urgent.

OCASI supports the submissions on Bill 18 put forward by Metro Toronto Chinese and Southeast Asian Legal Clinic, and by the Workers Action Centre which contain specific recommendations that speak to many of these concerns.

ⁱⁱ Ministry of Labour, **Temporary Help Agency Blitz Results** February 14, 2013.
http://www.labour.gov.on.ca/english/es/inspections/blitzresults_tha.php