

Strengthening the Stronger Workplaces for a Stronger Economy Act (Bill 146)

The Stronger Workplaces for a Stronger Economy Act (Bill 146) was introduced on December 4, 2013. Bill 146 provides legislative support for temporary agency workers and begins to address protections required by migrant workers.

The Workers Action Centre and the Migrant Workers Alliance for Change is producing this summary of the bill and recommending the following changes to strengthen the legislation.

Migrant Workers

Bill 146 takes a good step in recognizing that all migrant workers need protection from recruiters and employers who exploit them by charging thousands of dollars in fees to work in minimum wage jobs in Ontario.

The most significant limitation with Bill 146 is that it is reactive. It continues a complaint-based regulatory model that addresses violations after they have taken place. It continues to rely on low-wage migrant workers with precarious temporary status who have been placed in even deeper insecurity by unscrupulous recruiters to file legal claims against their employers and recruiters.

The government must build on this step by introducing legislation to implement a proactive system of licensing recruiters and registering employers who hire migrant workers. Recruiters must be required to put forward mandatory financial security in form of a bond, irrevocable letter of credit or deposit before being licensed to guarantee that funds are available to compensate migrant workers whose rights have been violated. Recruiters and employers must be held jointly and severally liable for exploitative recruitment practices both in Canada and abroad.

In the meantime, some changes must be introduced to Bill 146:

1. Bill 146 gives Cabinet new power to make regulations to give employers the power to recover costs from migrant workers. This opens the door to undermine the protections in the legislation. No migrant workers should have to pay fees for work. No migrant workers should bear the costs of their recruitment.
2. Bill 146 also gives Cabinet a new power to require employers to provide notice of the beginning and end of the employment. Self-reporting on employees is a very weak model and is no substitute for proactive registration and inspection. More troubling, it creates a system in which employer "reporting" of a migrant worker's termination can be used to elevate employers' threats to deport workers who complain about their treatment. This development is inconsistent with legislation that is intended to protect



migrant workers.

3. Place the onus on the recruiter to demonstrate that any fees associated with recruitment have been charged to the employer **not** the employee.
4. Extend the 3.5 year time limit to bring forward a complaint under EPFNA to 5 years. The work permit programs are up to 4 years and the vulnerability created by the programs prohibits most workers from filing while they are under the program. Further, the anti-reprisals provision of the Act should explicitly prohibit an employer from forcing “repatriation” on an employee who has filed a claim.
5. The Act should provide for third-party complaints that would trigger proactive inspections.
6. Fast-tracked and expedited investigations must be legislated where migrant workers allege reprisals.

Temporary Help Agency Workers

Bill 146 takes important steps to reduce incentives to client employers to contract out unsafe work to temporary help agencies and to avoiding liability when workers' wages go unpaid. The changes to s 74.1 make the temporary help agency and client employer jointly and severally liable for unpaid wages owing to an assignment employee.

But to fulfill the government's goal of “enhancing protection of temporary help agency workers” that it sought in 2009 and “help level the playing field for good employers” that it is seeking through Bill 146, the client employers must be jointly liable for all employment standards, not just unpaid wages and overtime.

The hopes of all too many temp agency workers that they would finally get public holiday pay; vacation pay; job protected sick days; and vacation leave after Bill 139 was passed have been largely unfulfilled. A Ministry of Labour inspection blitz on temporary help agencies in 2012 found that the most common monetary violation was unpaid public holiday pay and 72% of agencies were found to have ESA violations. Client companies are contracting out of their employment obligations for public holiday and many other standards by shifting the cost and liability to agencies that in turn pass these on to workers who can least afford it.

Legislators and policy makers in European countries, the European Union and International Labour Organization recognize that regulating employment agencies, even within a framework of protecting agency workers from abuse, serves to legitimize temporary work agencies in the process. That is why most of these bodies have tried to balance this legitimization of temp agency work by requiring equal treatment in wages and working conditions for workers hired indirectly through employment agencies. Ontario should follow suit.



In the meantime,

1. Client companies should be jointly and severally liable for all monetary and non-monetary entitlements under the ESA. Full joint and several liability is essential to fulfill the intent of this bill to “level the playing field for good employers” as Labour Minister Naqvi promised and to provide equal protection for workers. Without full joint and several liability for all standards, some employers who hire indirectly through agencies will still be able to avoid complying with the ESA.
2. The government should fulfill its goal of “removing barriers to permanent employment” by repealing s 74.8(1)8 which allows agencies to restrict, through contracts and fees, a client company from hiring an assignment employee within six months of the worker starting at the client company. This provision has trapped many temporary agency workers in precarious temporary employment.

Amend time limits and monetary Limits

Bill 146 will return Ontario to its previous practice of no monetary limits on claims and a two year time limit on filing claims. The current \$10,000 cap on unpaid wages recoverable under the Act and 6 month time limit meant workers could not pursue all the wages that they were owed. The 6 month time limit created barriers to workers owed wages who work under immigration programs, and who face language, literacy and other challenges to filing claims within 6 months. Further, the limit on employer’s liability for unpaid wages allows some employers to undercut their competitors by not paying their workers.

We support these changes but encourage the government to bring the new monetary cap and time limits into effect immediately upon passage of the *Stronger Workplaces for a Stronger Economy Act*. There is no reason to allow employers to continue limiting their liability for workers wages for 6 more months.

Further, the time limits for workers under the temporary foreign worker program (TFWP) should be extended to five years in recognition of the vulnerability created by these programs that prohibits most workers from filing claims while they are working under the program.

Copy of Ministry of Labour Information poster to be provided to each employee

The Act currently requires employers to post a poster prepared by the Ministry of Labour that provides information about the Act and regulations (for example, anti-reprisals, how to contact the Ministry of Labour, hours of work, minimum wage, vacation and public holiday etc). Bill 146 recognizes that many employers do not post the poster and many workers never see the poster. Employers would be required to provide each employee with the most recent poster



published by the Minister of Labour. Further, Bill 146 would require employers to provide available translations of the poster but only **if they are requested** by the employee.

Getting information about employment standards rights and how to enforce those rights into workers hands is an important part of a larger enforcement strategy. However, it should be the employer's responsibility to provide the poster in the language of the worker. This is necessary to fulfil the purposes of this clause, which is to address employees' lack of information about their rights and where to go to get information.

1. The onus for provision of the poster in the language of the worker should be on the employer, not on the employee, to provide the poster in a language other than English when needed by a worker.
2. **Copy of Ministry of Labour Information poster to be provided to each employee –** would come into effect **one year after Act receives Royal Assent**. This provision should come into effect immediately upon Royal Assent. The posters are currently available and there is no reason to postpone this important change.

Enforcement -- Requirement of an employer to conduct self-audit

The new provision under the Act's investigation and inspection powers section would set out the rules for employer self-audits. This is to enable the Ministry of Labour's new "Compliance Check" pilot program (supposed to run from August 2013 to February 2014). This program is an online self-audit questionnaire for employers to complete to determine if they are in compliance with non-monetary standards such as record keeping, posting ES poster, hours of work limits and vacation pay arrangements. The focus of the program is on education and voluntary compliance with the ESA. There are no consequences in this section if the employer does not comply with the request for a self-audit or submits false or misleading information.

We are disappointed that the government did not take this important opportunity for change to bring forward real deterrents to stop employers from violating employment standards (e.g., interest paid to workers on unpaid wages; set fines on confirmed violations and apply fines to expand proactive enforcement; publicize employers found in violation of the ESA etc).

Employer retaliation stops many workers from enforcing their rights at work. Workers need real protection from employer reprisals such as protection against unjust dismissal and interim reinstatement during claims investigations of reprisals.

December 16, 2013.

